

**GRANT AGREEMENT**

This Grant Agreement (this “Agreement”) made and entered the «ApprovalDate» (the “Award Date”), by and among the Tobacco Region Revitalization Commission, a body corporate and political subdivision of the Commonwealth of Virginia (the “Commission”), «Organization», (the “Grantee”), and \_\_\_\_\_ (the “Company”).

**WITNESSETH:**

**WHEREAS**, the Virginia General Assembly created the Commission to, among other things, stimulate the economic growth and development of tobacco-dependent communities in the Southside and Southwest regions (the “Region”) of the Commonwealth of Virginia (the “Commonwealth”), and

**WHEREAS**, the Grantee has submitted an application, which by this reference is incorporated herein and made a part of this Agreement (the “Application”), to the Commission for funding to induce the Company to acquire, construct, improve, equip, furnish and/or otherwise undertake the project entitled «ProjectTitle» described on Exhibit A attached hereto (the “Project”), and

**WHEREAS**, the Grantee has indicated its desire to tender the Grant to the Company for its use and benefit, provided that the Company agrees to comply with the terms of this Agreement, and

**WHEREAS**, the Commission, in reliance upon the information set forth in the Application, has determined that the Project benefits the Region and is consistent with and in furtherance of the Commission’s public purposes and approved a grant to the Grantee in the amount of «NetAwardCalc» (the “Grant”) to fund the Project, the approval and funding of such Grant the Commission has determined constitutes a valid public purpose for the expenditure of public funds and is the animating purpose for the Grant, and

**WHEREAS**, the Commission, the Company and the Grantee desire to set forth their understanding and agreement as to the use of the Grant and the obligations of the Company and the Grantee regarding the use of the Grant,

**NOW, THEREFORE**, in consideration of the foregoing, the mutual benefits, promises and undertakings of the parties to this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby represent, warrant, covenant and agree as follows:

**1. Project and Budget.** The Grantee agrees to use the Grant to provide funds to the Company for that portion of the Project not being paid from other sources as set forth in the budget for the Project attached hereto as Exhibit B (the “Project Budget”). No portion of the Grant shall be used for any purpose whatsoever other than the Project without the prior written approval of the Executive Director of the Commission (the “Executive Director”). No material changes shall be made in the scope of the Project or to the Project Budget without the prior written approval of the Executive Director. Any document signed by the Executive Director accepting a change in the scope of the Project or to the

Project Budget shall set forth with specificity the accepted change. If the maximum authorized amount of the Grant exceeds the amount necessary to complete the Project, the excess shall not be disbursed to the Grantee but shall remain with the Commission or, if previously disbursed, be returned to the Commission within thirty (30) days of the earlier of the completion of the Project or the expiration of this Agreement.

The Company agrees to cause the Project to be acquired, constructed, improved, equipped, furnished and/or otherwise undertaken as described in Exhibit A and will cause the Project to be completed on or before the expiration of this Agreement. The Company represents and warrants that Grant funds and funds available from the other sources specified in the Project Budget will be sufficient to cause the Project to be completed.

The Grantee agrees to comply with applicable governmental requirements pertaining to the Project and the use and application of Grant funds provided hereunder, including but not limited to, the Virginia Public Procurement Act (Virginia Code Section 2.2-4300 et seq., as amended), but only as and to the extent required by any such governmental requirements, and the Commission shall not in any way be responsible for determining the extent, if any, to which any such governmental requirements apply to the Grantee.

**2. Payment of Grant Funds.** Subject to the terms of this Agreement, including but not limited to, satisfaction by the Company, in the sole discretion of the Commission, of the conditions set forth on Exhibit C attached hereto, the Grant shall be disbursed to the Grantee on a reimbursement basis upon submission of a signed payment request on the Commission's then current form ("Payment Request Form") with adequate supporting documentation. The Company and the Grantee agree to comply with the Commission's General Funding Policies, Grant Disbursement Guidelines and Guidelines for Advance of Funds as adopted by the Commission as in effect from time to time and applied in the sole discretion of the Commission. Expenses incurred prior to the Award Date are not eligible for reimbursement. Prior to any disbursement, the Commission shall have on record documentation from the Grantee designating the officers, employees or agents authorized to make a reimbursement request (such documentation may be in the form of a resolution or minutes of the Grantee appointing such designee). Reimbursement requests shall be submitted not more frequently than quarterly, unless the Commission otherwise agrees. Appropriate supporting documentation shall be attached to all Payment Request Forms and may include, but is not limited to, invoices from goods purchased and services performed, receipts, vouchers, reporting forms or other evidence of the actual payment of costs related to the Project and consistent with the Project Budget. The Grantee and the Company, as appropriate, shall also provide appropriate supporting documentation of the expenditure and application of any required matching funds for the Project as set forth on Exhibit C attached hereto. The Commission may in its sole discretion refuse to make a disbursement if the documentation is not adequate or if such disbursement does not appear to be within the Project Budget or otherwise contrary to or in violation of the provisions hereof. The Commission in its sole discretion may refuse to disburse any funds to the Grantee if the Grantee has previously received a grant award and a final grant report for the previous grant award has not been received by the Commission.

Unless otherwise agreed in writing by the parties hereto, the Grantee shall disburse the Grant funds to the Company within thirty (30) days of receipt of such disbursement from the Commission or return such disbursement to the Commission.

The Grantee may request in writing an advance of up to twenty-five percent (25%) of the Grant if the Company lacks sufficient working capital to fund the Project. Approval of such request shall be in the sole discretion of the Commission and shall be available no earlier than ninety days (90) prior to the start of the Project. If an advance is disbursed, the Grantee may request additional disbursements only upon submission of signed Payment Request Forms with adequate supporting documentation for actual expenditures incurred for which the previous disbursement was used.

**3. Quality of Work.** The Commission, and its members, employees and agents, shall have the right to inspect the Project at reasonable times from time to time. Upon a determination that the quality of work done or the progress toward completion of the Project is unsatisfactory, the Commission may take whatever action is necessary to preserve the integrity of the Grant and its original intended purpose, including but not limited to, the actions set forth in Section 9 of this Agreement. The Project may be monitored through on-site visits by representatives of the Commission or in any other manner deemed appropriate by the Executive Director.

**4. Parties' Relationship.** In connection with the award or the administration of the Grant, the Commission does not and shall not assume any liability for any financial or other obligations of the Company or the Grantee made to third parties, whether or not related to the Project. The Company shall provide written notice to all vendors, contractors and any other party retained to work on the Project that neither the Commission nor the Commonwealth shall be liable for the Project or any payment failure or other obligation related thereto. Such written notice shall provide that by accepting work on the Project, all such vendors, contractors and other parties release and relinquish the Commission and the Commonwealth from any claim which might otherwise be asserted, and that each party accepting such work thereby indemnifies and holds the Commission, and its members, employees and agents, harmless against any and all such obligations; and further, that if any action is brought against the Commission, or its members, employees or agents, the party accepting such work shall be liable for all legal expenses and other costs related to such action. The Company is and will be acting as an independent contractor in the performance of the Project, and agrees to be responsible, where found liable and to the extent not covered by insurance or specified by statute, for the payment of any claim for loss, personal injury, death, property damage, or otherwise arising out of any act or omission of its members, employees or agents in connection with the performance of the Project. Nothing contained herein shall be deemed an express or implied waiver of the sovereign immunity of the Commission or the Commonwealth.

In the event the Commission is required to take legal action under this Agreement, the Company shall be liable for any of the Commission's costs expended for the administration and enforcement of this Agreement, including but not limited to, reasonable attorney's fees and court costs that are attributable to failure by the Company to comply with its obligations hereunder. In addition, to the extent permitted by law, the Grantee shall be liable for any of the Commission's costs expended for the administration and enforcement of this Agreement, including but not limited to, reasonable attorney's fees and court costs that are attributable to failure by the Grantee to comply with its obligations hereunder.

**5. Recordkeeping.** The Company shall maintain proper books of record and account with respect to the Grant and the Project in which accurate and timely entries shall be made in accordance with generally accepted accounting principles, consistently applied, during the term of this Agreement. Grant funds shall be held in a separate and segregated account (the "Fund") and the Fund shall reflect all

activity of the Grant funds received for the Project, itemized by category of expenses in the same manner as in the Project Budget. The Company shall retain all invoices from goods purchased and services performed, receipts, vouchers, reporting forms or other evidence of the actual payment of costs related to the Project. All books of record and account and all records of receipts and expenditures with respect to the Grant and the Project and copies of Payment Request Forms with supporting documentation and annual and final reports submitted to the Commission shall be retained for at least three (3) years after the later of the completion of the Project or the expiration of this Agreement. The Commission, and its members, employees and agents, shall have the right at reasonable times from time to time to inspect and make copies of the books and records of the Company and the Fund.

**6. Annual Reports.** The Company shall submit to the Commission annual financial and narrative reports reflecting activity in the Fund and progress made toward completion of the Project. Annual financial reports shall be presented on the Commission's grant reporting form then in effect (the "Grant Reporting Form"). Annual narrative reports shall indicate the progress made toward achieving the goals of the Grant and shall be submitted with the Grant Reporting Form. Annual reports shall be due one year from the Award Date and annually thereafter until the Project is complete. The Commission reserves the right to request additional information to supplement the information provided in the Grant Reporting Form or the annual narrative reports, including but not limited to, the Company's audited financial statements.

**7. Final Report.** The Company shall provide a final financial and narrative report to the Commission with the final reimbursement request. The final report shall contain the type of information contained in the annual reports, including a narrative as to the success of the Project and a description of the long-term achievements and expectations for the Project and shall be presented on the commission's grant reporting form then in effect (the "Grant Reporting Form"). Final reimbursement will not be made until final reporting is submitted.

**8. Interim Reports.** In addition to the annual reports and final report required by Sections 6 and 7 of this Agreement, the Commission may reasonably request that the Company submit additional or interim information from time to time to ensure that the provisions of this Agreement are properly carried out, administered and enforced.

**9. Misuse of Award; Rights of Commission.** If the Commission determines that the Grantee has failed to comply with any material term or condition or obligation of the Grantee in this Agreement, including but not limited to, the Grantee making in any material respect a false or misleading statement or other written or oral representation, warranty or statement furnished or made to the Commission in this Agreement, the Application or otherwise, the Commission in its sole discretion may withhold any further disbursements to the Grantee and, in addition:

- (a) rescind the Grant by written notice to the Company and the Grantee, in which event the Grantee, without regard to whether the Grantee has received repayment from the Company, shall be obligated to return to the Commission, within five (5) days following receipt of such notice, an amount, from legally available funds, equal to all Grant payments received pursuant to this Agreement, plus interest from the date of receipt of such notice at the prime rate set forth in the Wall Street Journal on the date of such notice;

(b) require the Grantee to take whatever action at law or in equity the Commission may direct in order to recover any Grant funds not used for the actual payment of costs related to the Project and consistent with the Project Budget, and comply with any procedures that the Commission may direct in order to prevent further improper use of the Grant;

(c) take any other action as necessary to preserve the integrity of the Grant and to preserve Grant funds for appropriate uses;

(d) determine that the Grantee is ineligible to receive future grant funding through the Commission;

(e) withhold any and all disbursements requested by the Grantee from the Commission under any other grant previously approved by the Commission; and/or

(f) take such judicial action as is necessary to collect any amounts owed, including legal action for breach of this Agreement, pursuant to this Section or as otherwise provided in this Agreement.

If the Commission determines that any part of the Grant has not been used for the Project or for a purpose otherwise approved in writing by the Executive Director, or that the Company has failed to comply with any material term or condition or obligation of the Company in this Agreement, including but not limited to, the Company complying with the reporting requirements of this Agreement or making in any material respect a false or misleading statement or other written or oral representation, warranty or statement furnished or made to the Commission in this Agreement, the Application or otherwise, the Commission in its sole discretion may withhold any further disbursements to the Grantee and, in addition:

(g) rescind the Grant by written notice to the Company and the Grantee, in which event the Company shall be obligated to return to the Commission, within five (5) days following receipt of such notice, an amount equal to all Grant payments received pursuant to this Agreement, plus interest from the date of receipt of such notice at the prime rate set forth in the Wall Street Journal on the date of such notice;

(h) require the Company to take whatever action at law or in equity the Commission may direct in order to recover any Grant funds not used for the actual payment of costs related to the Project and consistent with the Project Budget, and comply with any procedures that the Commission may direct in order to prevent further improper use of the Grant;

(i) take any other action as necessary to preserve the integrity of the Grant and to preserve Grant funds for appropriate uses; and/or

(j) take such judicial action as is necessary to collect any amounts owed, including legal action for breach of this Agreement, pursuant to this Section or as otherwise provided in this Agreement.

The Company agrees to pay the Commission's attorneys' fees and actual costs incurred in the collection of funds or for the enforcement of any obligations of the Company set forth in this Agreement. To the extent permitted by law, the Grantee agrees to pay the Commission's attorneys' fees and actual costs incurred in the enforcement of any obligations of the Grantee set forth in this Agreement.

The Commission reserves the right to modify or withhold any disbursement of Grant funds if the Commission in its sole discretion determines that it is necessary in order to protect the purposes and objectives of the Commission and the Grant or to comply with any law or regulation applicable to the Commission, the Grant, the Company and/or the Grantee.

**10. Sale or Encumbrance; Security Interest.** Until the Commission has determined that the public purposes of the Grant have been satisfied, none of the assets or property acquired, constructed, improved, equipped, and/or furnished as part of the Project shall be leased, sold, exchanged, disposed of, hypothecated, mortgaged or encumbered without the prior written approval of the Executive Director, including any developed intellectual property stemming, wholly or in part, from grant funds. In the event that such asset or property is leased, sold, exchanged, disposed of, hypothecated, mortgaged or encumbered without the prior written approval of the Executive Director, the Commission may assert its interest in the asset or property to recover the Commission's share of the value of such asset or property and/or recover from the Company, unless otherwise prohibited by law.

The Company hereby pledges, delivers and assigns to the Commission and, as its interests may be, to the Grantee, a security interest in, to and on all property purchased with the Grant, which security interest shall be held by the Commission and, as applicable, the Grantee to secure the Company's full performance under this Agreement. Upon the request of the Commission and, as applicable, the Grantee, the Company will execute, provide and sign all documents necessary to establish and/or perfect Commission's and, as applicable, the Grantee's security interest in such property, including deeds of trust, supplemental deeds of trust, amendments or modifications hereto, financing statements, continuation statements or other instruments and documents which may be reasonably required from time to time. The Commission's interest persists throughout the useful life of any property, real, intellectual, or otherwise, but may be discharged at the discretion of the Executive Director.

**11. Press Releases.** Each of the Company and the Grantee agrees that it shall not issue any press releases or other public statements regarding the Grant without the prior written consent of the Commission.

**12. Future Funding.** The Grant provided pursuant to this Agreement shall not be deemed to be an actual or implied promise of the Commission to fund the Project except as provided for herein. No representation by the Commission, or its members, employees or agents, shall be binding unless set forth in writing and signed by the Executive Director. In addition to the other remedies provided by law or in this Agreement, if the Company or Grantee fails to comply with the terms of this Agreement, the Project shall not be entitled to additional funding by the Commission.

**13. Entire Agreement.** To the extent there are inconsistencies between this Agreement and its supporting documents, including the Application and the exhibits attached hereto, this Agreement shall control. This Agreement expresses the entire understanding and all agreements between the

Commission, the Company and the Grantee and may not be modified except in a writing signed by the Commission, the Company and the Grantee.

**14. Governing Law; Jurisdiction; Venue.** This Agreement shall be governed by the applicable laws of the Commonwealth. The venue of any judicial action shall be in the Circuit Court of the City of Richmond, Virginia, and such litigation shall only be brought in such court.

**15. Limitation of Commission's Liability.** Nothing herein shall be deemed to be a covenant, agreement or obligation of a present or future member of the Commission or of an employee or agent of the Commission. No member, employee or agent of the Commission shall incur any personal liability with respect to any action taken by him or her pursuant to this Agreement.

**16. Severability.** If any provision of this Agreement shall be held invalid by any court of competent jurisdiction, such holding shall not invalidate any other provision hereof.

**17. Public Documents.** Unless specifically exempted pursuant to the Virginia Freedom of Information Act (Virginia Code Section 2.2-3700 *et seq.*, as amended), all reports, documents, financial data and other information provided to the Commission shall be public records.

**18. Notices.** Unless otherwise provided for herein, all notices, approvals, consents, correspondence and other communications pursuant to this Agreement shall be in writing and shall be deemed received upon receipt or refusal after mailing of the same in the United States Mail by certified mail, postage fully pre-paid or by overnight courier (refusal shall mean return of certified mail or overnight courier package not accepted by the addressee) to (a) the Commission at 701 East Franklin Street, Suite 501, Richmond, Virginia 23219, Attention: Executive Director, (b) the Grantee at the address set forth below, or (c) the Company at the address set forth below.

**19. Conditional Funding.** In the event that disbursement of Grant funds is contingent upon the happening of an event or events described herein that have not yet occurred as of the Award Date, the Commission may withdraw the Grant if such event or events have not been substantiated with appropriate documentation satisfactory to the Commission within twelve (12) months of the Award Date. This Agreement is subject to the availability of Commission funds. If such funds become unavailable and the Commission is unable to obtain sufficient funds, this Agreement shall be amended or terminated, as appropriate.

**20. Expiration.** Thirty-six (36) months after the date on which the Grant is approved, the Grant shall be automatically rescinded with respect to all funds not yet disbursed by the Commission, unless an extension is granted in writing by the Commission. Any Grant funds disbursed but not spent on the approved Project at the end of the 36-month period will be returned to the Commission.

**21. Assignment.** Neither this Agreement nor any rights under this Agreement may be assigned, by operation of law or otherwise, by the Company or the Grantee without the prior written consent of the other parties hereto. The provisions of this Agreement shall bind and inure to the benefit of the parties and their respective successors and permitted assigns.

**22. Survival.** The rights and remedies available to the Commission shall survive any expiration or termination of this Agreement, including but not limited to, Sections 4, 7, 9, 10 and 22.

**23. Counterparts.** This Agreement may be executed in counterparts, each of which shall be an original, and all of which together shall constitute but one and the same instrument.

*[Remainder of this page intentionally left blank.]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

**TOBACCO REGION REVITALIZATION COMMISSION, a body corporate and political subdivision of the Commonwealth of Virginia**

**Signature of Executive Director:** \_\_\_\_\_

**Printed Name of Executive Director:** \_\_\_\_\_ Evan Feinman \_\_\_\_\_

**Date:** \_\_\_\_\_

**«Organization»**

**Signature of Grantee's Chief Executive:** \_\_\_\_\_

**Printed Name of Grantee's Chief Executive:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Grantee Information:**

**Address** \_\_\_\_\_

**Phone #** \_\_\_\_\_ **e-mail** \_\_\_\_\_ **Federal ID #** \_\_\_\_\_

**Company Name**

**Signature of Company's Chief Executive:** \_\_\_\_\_

**Printed Name of Company's Chief Executive:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Company Information:**

**Address** \_\_\_\_\_

**Phone #** \_\_\_\_\_ **e-mail** \_\_\_\_\_ **Federal ID #** \_\_\_\_\_

**Project Description**

**Project Budget**

The Budget Worksheet is available as a separate attachment.

**Grant Conditions**

**Disbursement Limitations.** Grant funds shall not, directly or indirectly, be used for any purpose whatsoever outside of the Region without the prior written approval of the Executive Director.

**Matching Requirement.** The Company shall obtain non-Commission funding commitments for the Project in an amount at least equal to the Grant (i.e., the Commission will fund no more than fifty percent (50%) of the costs related to the Project). Prior to the disbursement of any Grant funds, Grantee shall provide documentation satisfactory to the Commission of the Company's eligible non-Commission funds. Non-Commission funds expended prior to the Award Date are not eligible. Unless otherwise approved by the Commission, eligible non-Commission funds shall mean cash available to the Company to pay costs related to the Project.

**Clawback of Grant Award in Certain Circumstances.**

- A. The Company agrees to provide not less than thirty (30) days written notice to the Commission of the occurrence of any Commercialization, Acquisition, or Licensing of its product or services created, developed, invented, manufactured, or tested using Grant funds whether within or without the Region, as provided herein.

Project Commercialization shall be defined as any event in which products or services created, developed, invented, manufactured or tested using Grant funds are produced or sold (any or all of such is to "Commercialize" or a "Commercialization"). Such Commercialization must occur fully within the Region to satisfy the public purposes of the Grant for the grant period and the immediate following three years. "Fully" shall not include vendors physically located outside of the Region and under contract to provide goods or services to the Company. However, "Fully" does require that the company remain headquartered in the Region and that the majority of production, employment, and capital investment related to sale of products or services created, developed, invented, manufactured or tested using Grant funds remain within the region for the period during which commercialization takes place. Should there be any question as to whether an activity constitutes project commercialization, that determination shall be made by the Executive Director, barring any direct determination by the full Commission.

- B. Until this period has commenced or until the Commission has determined that the public purposes of the Grant have been satisfied and all commitments of the Company and the Grantee with respect to the Project have been fulfilled, the Company shall not, nor permit any of its affiliates, subsidiaries, successors or assigns, to Commercialize outside of the Region those products or services created, developed, invented, manufactured or tested using Grant funds without the express written approval of the Executive Director.

The Commission will clawback double the full grant amount if the Company commercializes outside of the Region without the express written approval of the Executive Director. Payment will be due immediately upon determination that commercialization activity is occurring or has occurred outside of the Region.

**C. Project Acquisition.** In the event that the Company is acquired, all obligations of the grantee remain in force, as do all interests in property on the part of the Commission.

**D. Project Licensing.** In the event that products or services created, developed, invented, manufactured or tested using Grant funds are licensed outside of the TRRC footprint by another entity prior to the Commission's determination that the public purposes of the Grant have been satisfied and all commitments of the Company and the Grantee with respect to the Project have been fulfilled, the Company agrees to negotiate in good faith an appropriate and proportional claw back provision, based on the circumstances at the time, not to exceed twice the amount of this grant amount.

**Reimbursement for General Management and Administrative Expenses Limitations.** In accordance with the Project Budget, no more than ten percent (10%) of Grant funds shall be disbursed to cover costs related to the general management and administrative expenses of the Grant. This includes cost for management, planning, accounting, legal, and marketing.