CITY CLERK ORIGINAL

USE AGREEMENT
Glendale Media Center Studios

C-7893
12/20/2011

This USE AGREEMENT for the Glendale Media Center Studios ("Agreement"), is entered into this 20th day of December, 2011, between the City of Glendale, an Arizona municipal corporation ("CITY"), and Smithdirects, Inc. :Whole Brain Films, (USER"), and is effective only for the date(s) of use listed below.

1. PURPOSE AND EVENT NAME: USER has the nonexclusive right to occupy and use the Glendale Media Center, Studio A ("Studio"), for the following purposes and no other: **rental of Studio A, including all existing lighting & lighting board, teleprompter and dolly for two days during January 2012; for the purpose of shooting on the green screen for inserts into medical programming.**

2. GRANT OF USE AND RENT: CITY grants to USER the right to use the Studio and any authorized surrounding parking lots or equipment staging areas located in the vicinity of 9494 W. Maryland Avenue, Glendale, Arizona, for and in consideration of the rents and charges listed within this Agreement. The date(s) of use and rate along with a description of the rented space and use of the rented space are as follows:

a)	Date(s):	January 10 and January 11, 2012
b)	Deposit:	$0.00
c)	Rent:	$3,000 ($1,500 per day for two days)
d)	Costs:	$0.00
e)	Total Due:	$3,000
f)	Deposit:	$0.00
g)	Balance:	$3,000

3. RESERVATION: Return of this Agreement, properly signed on the last page, along with a deposit of 50% of the amounts listed above and proof of insurance as required under paragraph 17, constitutes a reservation for the planned date(s) of use. Payment in full of rent is due upon completion of the planned use. All payment instruments should be made payable to the City of Glendale. The CITY reserves the right to require further assurances of the method of payment.

4. CANCELLATION OF RESERVATION: Upon cancellation of the reservation by the USER with notice to the CITY of at least 48 hours prior to the planned use date(s), USER will receive a full refund of any deposit, rent or other costs paid to the CITY. Upon cancellation of the reservation by the USER with less than 48 hours notice, CITY retains the deposit but the USER will be refunded any rent or other costs paid to the CITY. Upon cancellation of the reservation by the CITY the USER will receive a full refund of any monies paid to the CITY in connection with the reservation. USER understands that CITY assumes no liability for cancellation of a reservation but that CITY will engage in reasonable efforts with the USER to secure a new reservation.

5. TERMINATION OF AGREEMENT: The CITY may terminate this Agreement at its convenience after commencement of use. If the CITY terminates this Agreement, it will prorate USER's rent or other services as the CITY deems appropriate in its sole discretion. If CITY terminates this Agreement USER agrees to forego any and all claims for damages against CITY and further agrees to waive any and all rights which may arise by reason of the termination and USER shall have no recourse of any kind against the CITY. USER may terminate this Agreement after commencement of use upon providing CITY as much notice as is reasonably practical. USER shall receive a refund of any rents paid for any full standard use days not utilized. Partial day uses are not refundable.

6. USE INTERRUPTION: CITY retains the right to cause the interruption of any activity in the interests of public safety, and to likewise cause the termination of USER's activities, when in the sole judgment of CITY, the acts are necessary in the interest of public safety. If the interruption is due to an evacuation order, USER may re-enter the Studio after release from the order for sufficient time to complete the planned use without additional rental charge so long as the time does not interfere with other CITY uses. If it is not possible to complete the planned use, rental and costs shall be forfeited, prorated, or adjusted, based upon the situation, at the discretion of the CITY. USER waives any claim for damages or compensation from the CITY for use interruption.

7. ARRANGEMENTS AND DETAILS: All Studio setups and production details should be finalized at least ten (10) days prior to the starting day of the use with Laurie Berg Sapp, General Manager, at (623) 930-4510. If required information is not provided, the CITY will determine needs based upon available information. Changes requested within ten days of the starting date of use are subject to surcharges.

8. SERVICES PROVIDED: Green room, make-up and bathroom areas, tables, chairs and all facility integrated equipment, including general house and studio lighting, heating, air conditioning and custodial service.

9. OTHER SERVICES AND EQUIPMENT: Other services and equipment may be available for additional charge(s). Requested services and equipment must be coordinated with the CITY point of contact listed in paragraph 7 above.

10. DAMAGE TO BUILDING, CONTENTS/EXTERIOR FACILITIES: USER is responsible for damage to Studio furnishings, fixtures, cyc wall or equipment as well as any damage to CITY facilities located on the exterior of the Studio caused by USER'S guests, agents or contractors, ordinary wear exempted. USER shall take all precautions to maintain the Studio in good repair and restore and return the Studio back to the CITY upon the termination of this Agreement. If USER does not maintain the Studio as required by this Agreement the CITY may enter the Studio and do all things necessary to restore the Studio to the prior condition, with all costs being charged to the USER. *Warning:* cyc wall repair or replacement is very expensive and by signing this Agreement USER agrees to all charges related to repair or replacement of the cyc wall that may be necessary as a result of USER's occupancy of the Studio.

11. ATTACHMENTS: No attachments are allowed on any surface in the Studio, including pins, staples, nails or similar fasteners nor shall any adhesive tapes be applied to flooring unless approved in advance by the CITY.

12. PUBLIC SAFETY: USER agrees that at all times it will conduct its authorized activities with full regard to public safety and will observe and abide by all applicable municipal, state and federal laws and regulations as well as requests by CITY and duly authorized governmental agencies responsible for public safety. CITY also reserves the right to eject or cause to be ejected from the Studio any person engaging in objectionable conduct, including, but not limited to: disruption of other Studio or Media Center operations; exposing property or persons to risk of damage or injury; unreasonable noise; or any illegal conduct. Neither the CITY, nor any of its officers, agents or employees is liable to USER for any damages or injuries sustained by USER through CITY's exercise of its right to eject.

13. PROPERTY LIABILITY: CITY assumes no responsibility whatsoever for any property placed by USER in the Studio. USER expressly releases and discharges CITY from any and all liabilities for any loss, injury or damages to property which may or do arise out of or be related to the use of the Studio under this Agreement. Any additional security or other protective service desired by USER must be arranged for by special agreement with the CITY and USER is responsible for all costs connected with any additional services.

14. COMPETENCY OF PERSONNEL: USER certifies that all employees, agents or others working for or on behalf of USER in the Studio are knowledgeable in the operation of Studio equipment and procedures.

15. PROPERTY LEFT BEHIND: The CITY assumes no responsibility for personal items, equipment or other items that remain in the Studio after the expiration of this Agreement. Items left will be maintained for a period of 30 days. If not claimed within 30 days, the items are subject to disposal at the CITY'S discretion. The CITY reserves the right to charge storage for items left in the Studio.

16. ACCESS: It is understood and agreed that the CITY reserves the right to control and manage the Studio and to enforce all necessary and proper rules for its management and operation. Authorized CITY employees will have free access at all times to all spaces occupied by USER.

17. PUBLIC LIABILITY INSURANCE REQUIRED: Comprehensive Liability Insurance is required for use of the Studio. USER'S insurance coverage must be primary insurance and non-contributory with respect to all other available sources. Insurance certificates must meet the following conditions: a) provide at least $1 million combined single limit per occurrence of Comprehensive Liability Insurance from an insurance company with a Standard & Poor's rating of at least "BB"; b) if an Aggregate Policy, the combined limit must be at least $2 million; c) name the City of Glendale as additional insured by endorsement; and d) specify the dates applicable inclusive of the use requested.

18. INDEMNIFICATION: USER shall indemnify, defend, save and hold harmless the CITY and its officers, agents, contractors, volunteers, and employees from and against any and all claims, actions, liabilities, damages, losses, or expenses including court costs, attorneys' fees, and costs of claim processing, investigation and litigation (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss of damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of USER or any of its owners, officers, directors, agents, employees,

invitees or contractors, arising out of or related to USER'S occupancy and use of the Studio. It is the specific intention of the Parties that the CITY shall, in all instances, except for claims arising solely from the negligent or willful acts or omissions of the CITY, be indemnified by USER from and against any and all claims. It is agreed that USER will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration for the use and occupancy of the Studio, USER agrees to waive all rights of subrogation against the CITY its officers, officials, agents and employees for losses arising from the use, occupancy or condition of the Studio unless the rights arise due to the negligent or willful acts or omissions of the CITY.

19. ASSIGNMENT: USER may not assign or sublet this Agreement without the written consent of the CITY.

20. COOPERATION: USER and CITY mutually agree to provide reasonable notice and opportunity to address or cure the performance of the terms or issues related to the use authorized under this Agreement. USER acknowledges that situations involving safety of personnel or imminent risk of damage to the Studio may provide little or no opportunity for notice or cure before CITY action is required.

21. PATENTS, TRADEMARKS, LICENSES: USER assumes all costs arising from the use of patented, trademarked, franchised or copyrighted music, materials, devices, processes or dramatic rights used on or incorporated in its use. USER agrees to indemnify, defend and hold harmless CITY from any claims or costs, including, but not limited to, penalties and legal fees, which might arise from use of any of the material described above.

22. SCHEDULING OF OTHER EVENTS: CITY may schedule and contract with other parties for uses that are adjacent to, in close proximity of or similar in nature to the use authorized under this Agreement. The CITY may schedule and contract for these events during USER'S planned use without notice to USER, unless otherwise specified in writing by the CITY.

23. JURISDICTION: The laws of the state of Arizona shall govern this Agreement.

24. NOTICES: Any notice permitted or required under this Agreement must be delivered personally or by United States Postal Service, certified mail with return receipt requested to the addresses as shown below. Notice is considered received upon date of delivery.

25. CONFLICTS: This Agreement is subject to cancellation for conflicts of interest under the provisions of A.R.S. § 38-511.

26. ENTIRE AGREEMENT: The Parties agree that all agreements are fully set forth above and that no oral statement or representations of any kind have been made upon which either party shall have the right to rely. This provision does not limit the CITY from imposing any reasonable additional rules or regulations that may be necessary for the implementation of this Agreement or that would be in the best interests of the operation of the Studio.

27. AUTHORITY. The individual signing below and on behalf of USER certifies that the individual is authorized to enter into this Agreement and to bind USER to all of its term and conditions.

[Signatures to appear on following page.]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as shown below.

CITY: **City of Glendale**
Attention: Marketing
5850 West Glendale Avenue
Glendale, AZ 85301
with a copy to:
City Attorney
5850 West Glendale Avenue
Glendale, AZ 85301

Title: ***Cable Media Administrator***

Signature

Date: 1/10/12

USER: **Smithdirects, Inc: Whole Brain Films**
301 East Alvarado
Phoenix, Arizona 85004

Title: ***Director*** Walt Smith

Signature

Date: 1/10/12

ATTEST:

City Clerk **(SEAL)**

APPROVED AS TO FORM:

City Attorney

SMITINC-01 GRVA

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 12/15/2011

PRODUCER (602) 954-7200
Sterling Grant & Associates, L.L.C.
2200 E. Camelback Rd. Ste 222
Phoenix, AZ 85016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED Smithdirects, Inc.; Whole Brain Films
301 East Alvarado
Phoenix, AZ 85004

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: Fireman's Fund Insurance Companies	
INSURER B:	
INSURER C:	
INSURER D:	
INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	X	GENERAL LIABILITY X COMMERCIAL GENERAL LIABILITY CLAIMS MADE X OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY X PRO-JECT LOC	XPK80926305	1/26/2011	1/26/2012	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 1,000,000 $ 300,000 $ 10,000 $ 1,000,000 $ 2,000,000 $ 1,000,000
A		AUTOMOBILE LIABILITY ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS X HIRED AUTOS X NON-OWNED AUTOS X Physical Damage Limit: X $125,000	XPK80926305	1/26/2011	1/26/2012	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 1,000,000 $ $ $
		GARAGE LIABILITY ANY AUTO				AUTO ONLY - EA ACCIDENT OTHER THAN AUTO ONLY: EA ACC AGG	$ $ $
		EXCESS/UMBRELLA LIABILITY OCCUR CLAIMS MADE DEDUCTIBLE RETENTION $				EACH OCCURRENCE AGGREGATE	$ $ $ $ $
A		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	XWC80989516	1/26/2011	1/26/2012	X WC STATU-TORY LIMITS OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ 500,000 $ 500,000 $ 500,000
		OTHER					
A		Equipment	MSF07004858	1/26/2011	1/26/2012	Rented/Leased Equip.:	$500,000
A		Equipment	MSF07004858	1/26/2011	1/26/2012	Special Form/RC	$2,500

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

*Except 10 days for non-payment of premium. Additional Insured does not apply to Workers Compenstaion. Verification of Insurance as their interest may appear.

Re: Glendale Media Center
Certificate Holder is named as Additional Insured with respects to the insured's operations.

CERTIFICATE HOLDER

City of Glendale
5850 W. Glendale Ave., #B29
Glendale, AZ 85301-

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

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