**STATE OF SOUTH CAROLINA**

**COVID RELIEF FUND AGREEMENT**

This Agreement is made and entered into this [XX] day of [MONTH], 2020, by and between the South Carolina (herein called the “State”), an agency of government; and [BUSINESS NAME] (herein called the “Beneficiary”), a business legally operating in South Carolina; each individually a “Party” and collectively, the “Parties.”

**RECITALS**

WHEREAS, the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, div. A, Title V (the “CARES Act”) was passed by Congress and signed into law by the President of the United States on March 27th, 2020; and

WHEREAS, the CARES Act established the Coronavirus Relief Fund (CRF) and the State of South Carolina received an allocation of funds from the Coronavirus Relief Fund under section 601(a) of the Social Security Act, as added by section 5001 of the CARES Act; and

WHEREAS, pursuant to the requirements of the CARES Act and the Department of Treasury, Coronavirus Relief Fund (CRF) funds may only be used to cover costs that: (a) are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (“COVID-19”); (b) were not accounted for in the budget most recently approved as of March 27, 2020, for the State of South Carolina; and (c) were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020; and

WHEREAS, the State of South Carolina may, in its discretion, utilize CARES Act funds to provide economic support to businesses in response to the COVID-19 public health emergency, all as outlined in applicable U.S. Department of Treasury guidance and frequently asked questions; and

WHEREAS, the State of South Carolina has determined it is necessary to support South Carolina businesses suffering interruptions or other impacts due to COVID-19; and

WHEREAS, the State of South Carolina, as authorized by Act 154, shall award grants to qualifying minority and small business enterprises that have been adversely affected by the current COVID-19 public health emergency; and

WHEREAS, the State of South Carolina has established a Minority and Small Business Relief Grant Program and is accepting applications for such assistance through an online COVID-19 relief fund website; and

WHEREAS, Beneficiary seeks funding from the State to assist in recovery from business interruptions or other impacts related to the public health emergency with respect to COVID-19; and

WHEREAS, Beneficiary completed an application for such funding electronically through the State’s COVID-19 relief fund website as of the date of this Agreement.

**AGREEMENT**

NOW, THEREFORE, the Parties mutually agree as follows:

1. This Agreement shall remain in effect from [APPLICATION COMPLETION DATE] through December 30, 2020.

2. After a review of the application, and conditioned upon its determination, Beneficiary is eligible for assistance and the State will issue Beneficiary a payment (the “Grant”).

1. Beneficiary understands the Grant amount, if any, cannot reasonably be calculated as of the date of this Agreement. By entering into this Agreement, Beneficiary agrees any Grant amount it may receive will be determined by the business’s pro-rata share of the total funds available in the business category for which Beneficiary applied. Grant amounts are also contingent on the number of applicants in the program and the availability of funds.
2. Beneficiary agrees the business’s pro-rata share will be calculated by comparing its reduction in business due to COVID-19 with the total reduction in business due to COVID-19 of all applicants in the business category for which Beneficiary applied. Beneficiary understands the business’s pro-rata share therefore depends on the total number of other applicants and their respective reductions in business due to COVID-19, none of which can be known as of the date of this Agreement.

C. Beneficiary further agrees that, by entering into this Agreement, Beneficiary understands a business with a calculated Grant amount less than $2,500.00 is not eligible to receive a Grant. Beneficiary also accepts the State’s determination of the business’s eligibility, pro-rata share, and Grant amount, if any, is final.

3. The Grant, if any, is made with the following terms and conditions:

A. Beneficiary will use any Grant Beneficiary receives to continue the operation of the business.

B. Beneficiary will retain the original versions of any documents submitted as part of the application for five (5) years.

C. The State may audit the business, upon reasonable notice, in order to verify: 1) any information Beneficiary provided during the application; 2) the business’s eligibility for the Grant; and 3) the business’s use of the Grant following receipt.

D. In the event the State later determines the information Beneficiary provided in the application was inaccurate, Beneficiary were ineligible for the Grant, or that use of the Grant following receipt was contrary to this Agreement, Beneficiary agrees to repay the Grant to the State in full.

E. Beneficiary agrees that this Agreement, the fact the business receives a Grant, and the Grant amount are public records. The business’s financial information provided during application is exempt from disclosure under South Carolina’s public records laws. to the extent the records are trade secrets, etc. covered by Section 30-4-40 of the S.C. Code.

F. Beneficiary will comply with all Internal Revenue Service requirements relating to the tax status of funds provided to Beneficiary, including the Grant, under the CARES Act. Beneficiary is responsible for consulting any tax or legal professionals as necessary for this purpose.

4. The Grant, if any, is made on the basis of the representations and warranties that follow:

A. Beneficiary is claiming the business has been interrupted or impacted by COVID-19. Beneficiary hereby declares the reduction in business, change in expenses, or other impact that forms the basis of the Grant under this Agreement is not primarily due to another cause unrelated to the COVID-19 public health emergency.

B. Beneficiary has provided complete and accurate information about the business, including financial information, as part of the application.

C. Beneficiary has provided complete and accurate information describing the nature and amount of any federal COVID-19-related assistance Beneficiary has received or will claim in 2020. Such assistance includes, but is not limited to, amounts received under any of the following:

a. Paycheck Protection Program (“PPP”) from SBA;

b. CARES Act Provider Relief Fund from HHS;

c. Accelerated and Advance Payment Program from HHS/CMS;

d. Coronavirus Food Assistance Program (“CFAP”) from USDA;

e. Families First Coronavirus Response Act tax credits for required paid leave by small and midsize businesses;

f. CARES Act employee retention tax credit;

g. CARES Act assistance for non-profits from the National Endowment for the Arts; or

h. HHS payments to health care providers and facilities for testing and treatment of uninsured individuals.

1. Beneficiary’s business is a going concern. For purposes of this Agreement, this means:

a. Management has reviewed all conditions and events, both positive and negative, that are relevant to the business’s ability to continue as a going concern;

b. Those conditions and events, taken together, do not raise substantial doubt about the business’s ability to continue as a going concern;

c. If, instead, those conditions and events, taken together, do raise substantial doubt about the business’s ability to continue as a going concern, Beneficiary has considered the business’s plans to respond to the relevant conditions and events. Beneficiary believes it is probable that: i.) the business will implement those plans effectively within one year of this Agreement; and ii.) those plans will address the relevant conditions or events that raised substantial doubt about the business’s ability to continue as a going concern.

d. Beneficiary and the undersigned individual therefore have no substantial doubt as to the business’s ability to continue as a going concern.

1. The individual signing this Agreement understands the potential consequences, including civil or criminal liability, of providing false statements or information in order to secure a Grant from the State.
2. The individual signing this Agreement does so on behalf of the business and has full legal authority to do so.

5. This Agreement may not be assigned by either Party. The Agreement’s terms shall be binding upon, and inure to the benefit of, the Parties and their heirs and successors. Those provisions necessary to achieve the purposes of this Agreement shall survive its termination or expiration. This Agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof, and be signed by an authorized representative of each of the Parties hereto.

6. This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, this Agreement will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.

7. In the event the State determines, in its sole discretion, Beneficiary is not eligible for a Grant, this Agreement shall be deemed terminated as of the date such determination is communicated electronically to Beneficiary using the electronic mail address Beneficiary provided during the application. Beneficiary hereby consents to receive all notices under this Agreement by electronic mail.

8. In the event that any court of competent jurisdiction shall hold any provision of this Agreement unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision hereof.

9. All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.

10. Failure to comply and/or default with any of the provisions of this Agreement or the requirements of the CRF will constitute a default and require full repayment of the original Grant amount.

In Witness Whereof, the Parties signify their agreement effective the date above first written by the signatures affixed below.

**BENEFICIARY**

**Signed:**

## Chief Executive Officer or equivalent

## 

**Printed Name:**

**Title:**

**Date:**

**STATE OF SOUTH CAROLINA**

**Signed:**

## Its Duly Authorized Agent

**Printed Name:**

**Title:**

**Date:**