

## GUIDELINES AND PROCEDURES

For Administration of the North Carolina Esports Industry Grant Fund Set  
Forth in N.C. Gen. Stat. § 143B-437.02B

### 1.0 GENERAL ADMINISTRATION

#### 1.1 Authority

The Guidelines, criteria and procedures (“Guidelines”) set forth herein are established pursuant to [N.C. Gen. Stat. §143B-437.02B](#).

#### 1.2 Scope and Purpose of Guidelines

These Guidelines apply to funds appropriated or otherwise deposited, granted or allocated to encourage Esports events to be held within the State, as set forth in [N.C. Gen. Stat. § 143B-437.02B](#), the North Carolina Esports Industry Grant Fund (the “Program”).

They are designed to provide internal direction and guidance to state officials responsible for administering the Program and negotiating the financial terms and arrangements under which money may be allocated under it.

Any term used in these Guidelines shall have the same definition as set forth in [N.C. Gen. Stat. § 143B-437.02B](#).

In the event of any conflict between these Guidelines and the terms of [N.C. Gen. Stat. § 143B-437.02B](#), the language of [N.C. Gen. Stat. § 143B-437.02B](#) shall supersede the language found in these Guidelines. Additionally, where these guidelines are more restrictive than the express terms of [N.C. Gen. Stat. § 143B-437.02B](#), the Secretary of Commerce or her designee (the “Secretary”) has the authority to waive any of the requirements of these Guidelines.

The general procedures outlined in these Guidelines are intended to be applied consistently to all projects. Significant deviations in procedure should occur only when, in the exercise of discretion and considering the particular and unusual circumstances, the Secretary concludes that the best interests of the State and the purposes of the Program will be advanced. Such deviations should be noted when they occur.

#### 1.3 Amendments

These Guidelines may be amended from time to time as the size and nature of the Program or the economic circumstances and condition of the State may warrant.

At least 20 days before the effective date of any nontechnical amendments to the Guidelines, the North Carolina Department of Commerce (the “Department”) will

publish the proposed Guidelines on the Department's web site and provide notice to persons who have requested notice of proposed Guidelines.

The Department will accept oral and written comments on the proposed Guidelines during the 15 business days beginning on the first day that the Department has completed these notifications.

A technical amendment is either:

- 1) An amendment that corrects a spelling or grammatical error, or
- 2) An amendment that makes a clarification based on public comment and could have been anticipated by the public notice that immediately preceded the public comment.
- 3) An amendment that is necessitated by a change to the enabling statute ([N.C. Gen. Stat. § 143B-437.02B](#)) made by the N.C. General Assembly.

#### 1.4 Administration

The Secretary administers the Program. Administrative support for the Program will be provided by the Commerce Finance Center (“CFC”), or such other division as the Secretary may designate, or any successor division performing a comparable function.

### 2.0 PROGRAM MISSION AND GUIDING PRINCIPLES

#### 2.1 Purpose of Program

The purposes of the Program as set out in [N.C. Gen. Stat. § 143B-437.02B](#), includes the encouragement of Esports events to be held within the State.

#### 2.2 Recipients of Money Allocated Under the Program

Moneys from the Program will be allocated to Production Companies that meet eligibility criteria set forth in [N.C. Gen. Stat. § 143B-437.02B](#) and these Guidelines, for use in connection with efforts to secure commitments for the production of Esports events in the State.

#### 2.3 Entities in Default Barred from Receiving Funds

The Department will not make an award of grant funds (“Grant Award”) to any individual, organization, or governmental unit that is currently in default on any loan or grant previously made by the Department.

## **2.4 Form of Financial Assistance Provided from the Program**

Financial assistance provided by the Program will take the form of Grant Awards to Production Companies for qualifying expenses incurred in connection with a production (a “Grant Award”). A Production Company is defined by [N.C. Gen. Stat. § 143B-437.02B\(b\)\(7\)](#). A grantee is a Production Company that has received a Grant Award from the Department under the Program.

## **2.5 Provisions to Ensure Performance and Recapture Funds**

It is the intent of this Program to ensure accountability for funds disbursed under it. To that end, grantees are to allow the State of North Carolina and the Department, or their agents, access to all records necessary to confirm compliance with the Guidelines and with terms of agreements negotiated and executed under them. As further addressed in Sections 3.5a and 6.0 below, such agreements are to include provisions adequate to protect the State’s interests in the funds.

## **2.6 Overdue Tax Debts**

Persons or entities with overdue tax debts to the State of North Carolina, as defined in [N.C. Gen. Stat. § 105-243.1](#), are not eligible for grants until the debts are paid.

## **2.7 Tax Events**

The State of North Carolina, including the Department, assumes no liability or responsibility for any tax implications of a project or a grant from the Program. Any tax liability arising out of a project shall be borne fully by the applicable taxpayer.

## **2.8 Specific Legislative Direction**

To the extent the General Assembly’s allocation of money to the Program directs a use or process different than those set out in these Guidelines, the General Assembly’s direction controls and supersedes these Guidelines.

## **3.0 PROCEDURE FOR COMMITMENT AND AWARD OF GRANT FUNDS**

### **3.1 Assignment of Employees of Economic Development Partnership of North Carolina, Inc. (“Partnership”)**

Projects appropriate for funding may be brought to the attention of the Department in a variety of different ways. As a general rule, when a project is first identified, it should be assigned to a representative in the Partnership. The Partnership will work as a liaison between the Department and the potential Applicant.

### **3.2 Confidentiality of Information Submitted**

All documents submitted to the Department, including Applications, Compliance Audits and Audit Reports (both addressed below), are public records governed by Chapter 132 of the General Statutes and applicable provisions of the General Statutes protecting confidential information. When specific information in an Application is regarded by the Applicant and by law as confidential and not subject to disclosure under the North Carolina Public Records Act, the Applicant should specifically and clearly designate it as such in writing on that portion of the Application in which the information appears at the time of initial disclosure to the Department. An Applicant should provide an explanation for why particular information is regarded as confidential. Applications should not be indiscriminately marked as confidential. However, the final determination of whether a document constitutes confidential information, whether or not it is so marked by the Applicant, shall be made by the Department, in accordance with applicable law.

### **3.3 Formal Application**

Potential grantees seeking money from the Program are required to submit a formal Application to the CFC. The Secretary, in consultation with CFC and Department staff, shall review the Application to reach a decision on whether an award will be made.

The Application is designed to aid the Secretary in making an assessment of whether the project will encourage a positive economic impact within the State.

The Application will solicit information regarding the project, including, among other things, information necessary to address some or all of the considerations set forth in Section 6 below.

Applicants must use the required Application forms available from the Partnership or the CFC and must fully comply with all requirements of these Guidelines within the time period specified, in order to be eligible for a Grant

Award. Applications that do not include ALL of the documents requested therein, or that contain documents that have not been fully completed, may be considered incomplete and may be returned to the Applicant without further review.

### **3.3a Information in Application Form**

The information to be collected in the process of Application for grants from the Program may include anything that allows consideration of the factors set forth in Section 3.5 below, or any other criteria considered relevant by the Department or Applicant, including financial statements of the proposed Applicant.

The Application shall include at least the following information:

- 1) Name of Individual Signing and Submitting Application
- 2) Job Title of Individual Signing and Submitting Application
- 3) Title of Production
- 4) Name of Production Company/Applicant and Identification of Any Pre-Existing Presence the Production Company Already Has in North Carolina
- 5) Production Company's Federal Employer Identification Number (FEIN)
- 6) Production Company Street/Mailing Address
- 7) Production Company/Applicant Phone Number
- 8) Production Company/Applicant Email
- 9) Approximate Overall Number of Production team members working in North Carolina
- 10) Approximate Number of Said Production Team Members Who Are Anticipated to be Permanent North Carolina Residents
- 11) Approximate Overall Number of Competitors/Players
- 12) Approximate Overall Number of In-person Spectators
- 13) Approximate Number of Viewers (non-in-person audience members)
- 14) Total Production Budget
- 15) Estimated Spending on Qualifying Expenses in North Carolina
- 16) Proposed Dates on which the Production Company Plans to Hold the Event
- 17) Anticipated Location Areas (Facilities and Towns/Cities)
- 18) Whether the Production Will Involve Permanent Improvements to Specific Identifiable Locations
- 19) If production is willing to make additional marketing opportunities available to the state (and if so, what those are)
- 20) Financial Contact Name, Street/Mailing Address, Phone and Email

- 21) Brief Synopsis of the Production
- 22) List of Local Incentives that have been extended to production
- 23) What channel/platform will broadcast of production be available on for viewing
- 24) State of North Carolina Substitute W9 Form
- 25) State of North Carolina Electronic Funds Transfer form

### **3.3b Ability to Request Additional Information**

The Secretary may require additional information to be provided from an Applicant or from a business or industry beyond that which may be contained in the Application forms or specified in these Guidelines.

### **3.3c Failure to Provide Information**

The Secretary may request supplemental materials from the Applicant, and such materials must be received within 15 days of the date of the request.

Failure to provide information requested, as well as failure to provide requested information in sufficient detail, may serve as grounds for rejecting an Application.

### **3.4 Consideration and Award**

Upon receipt of a final version of the Application, satisfactory compliance with all requirements stated in these Guidelines and consideration of the criteria set forth below, the Secretary shall determine whether or not the proposed project should receive a Grant Award under the Program. Such determination shall be made in the sole discretion of the Secretary (or his delegate, as set forth above).

The Secretary, based upon the availability of award funding, sets the available award amounts until the funds available for the Program have been exhausted.

Grant Awards are limited to one grant per Production Company for a single production. In addition, grants awarded shall not exceed any of the following criteria:

- 1) Twenty-five percent (25%) of the qualifying expenses for the production.

The final Grant Award amount may not exceed the maximum Grant Award amount certified

### 3.4a Statutory Criteria for a Grant Award

In reviewing and deciding whether to make a Grant Award, the Department will review and consider the following criteria.

Pursuant to [N.C. Gen. Stat. §143B437.02A\(a\)\(1\)](#), a Production Company that submits an Application and thereafter receives a Grant Award acknowledges in doing so that it must have qualifying expenses of at least One Hundred Fifty Thousand dollars (\$150,000).

Pursuant to [N.C. Gen. Stat. § 143B-437.02B\(a\)\(4\)](#), a Production Company will be ineligible for a grant under the Program or, if awarded a grant, will be ineligible for any disbursement of grant funds under the grant and the Program if the Secretary determines in his sole discretion that the production involves one or more of the following conditions:

- 1) The production contains material that is “obscene,” as defined in [N.C. Gen. Stat. § 14-190.1](#).
- 2) The production contains material that is “harmful to minors” as defined in [N.C. Gen. Stat. § 14-190.13](#).
- 3) The production has the primary purpose of political advertising, fundraising, or marketing (other than marketing a product or service by commercial).
- 4) The production is for news programming, including weather, financial market and/or current events reporting.
- 5) The production is for live sporting event programming, including pre-event and post event coverage and scripted sports entertainment. Note that the term does not include commercial advertising, an episodic television series, a television pilot, a music video, a motion picture, or a documentary production in which sporting events are presented through archived historical footage or similar footage taken at least 30 days before it is used. (per [N.C. Gen. Stat. §143B-437.02B\(b\)\(3\) an Esports event is not considered a live sporting event](#))
- 6) It fails to display a promotional logo, website link, statement, or some combination thereof that has been approved by the Department indicating the production was recorded in or broadcast from North Carolina.

- 7) The Production Company fails to offer marketing opportunities to be evaluated by the Partnership to ensure that they offer promotional value to the State.

### 3.4b Additional Factors to be Considered in Allocation and Award Decisions

In reviewing and deciding whether to make a Grant Award, the Department will also review and consider the following criteria.

- 1) The percentage of Production Team Members who will work on the production in North Carolina who may also be permanent State residents.
- 2) The anticipated number of in-person spectators.
- 3) Whether the production invests in permanent improvements to open public spaces, commercial districts, traditional downtown areas, public landmarks, residential areas, or similar properties or areas or in programs that develop the Esports industry in the State.
- 4) The duration of production activities in the State.
- 5) The total of anticipated in-State qualifying expenses.
- 6) Any other factors that the Department in its discretion determines are relevant.

### 3.5 Execution of Appropriate Contracts

The appropriate contract for a grant will be a satisfactory Grant Agreement (the “Grant Agreement”) between the grantee and the Department in a form acceptable to the Department and including the performance criteria necessary for funds to be released and expended. The Department will have basic forms for these Grant Agreements, although performance criteria for specific Agreements will vary.

### **3.5a Terms to be Included in Grant Agreements**

The basic form of a Grant Agreement between a grantee and the Department will be prescribed by the Department. In addition, it may contain the following:

- 1) An agreement to comply with the terms of the grantee's Application, these Guidelines and the Grant Solicitation.
- 2) An agreement to submit the information required by Exhibit A to these Guidelines and Section 8, below, including the compliance report ("Compliance Report") to the Department to be prepared by a Certified Public Accountant ("CPA") licensed to practice in the State of North Carolina.
- 3) An agreement to permit the Department access to all records necessary to evaluate compliance with the relevant law, Guidelines and all agreements executed under them.
- 4) An agreement that the Production Company will produce and commercially distribute the event within 18 months of receiving confirmation of the Grant Award.
- 5) A clawback provision, as addressed further in Section 6 below.

### **4.0 SUBMISSION OF PROOF OF PERFORMANCE AND DISBURSEMENT OF FUNDS**

Program funds shall be disbursed upon submission and confirmation of evidence of all qualifying expenses already incurred by the Production Company for the production, as set forth in Exhibit A to these Guidelines and herein. If the Department determines the appropriate performance criteria have been met, payment will be issued in a timely manner, typically within 30 days.

### **4.1 Qualifying Expenses**

Exhibit A to these Guidelines addresses the requirements for Qualifying Expenses.<sup>1</sup>

### **4.2 Compliance Report to the Department and the Partnership**

Before funds are disbursed, the Department must be provided with proof of compliance with the terms of the grant. In accordance with Exhibit A to these Guidelines, the grantee shall provide such proof as follows:

First, as set forth in Exhibit A, the Production Company shall provide the CPA with access to documentation of all of the claimed qualifying expenses for the production for review and completion of an independent compliance audit ("Compliance Audit") performed at the expense of the production.

Next, also as set forth in Exhibit A, the CPA shall submit the results as the Compliance Audit Report to the Production Company, the Department, and the Partnership.

### **4.3 Review of the Compliance Audit Report**

Following the CPA's submission of the Compliance Audit Report, the Department and the Partnership will review the Report. Both the Department and the Partnership have the absolute discretion to direct any questions or request any additional information (including supporting documents or data) from the CPA or the Production Company so as to clarify or verify a claimed qualifying expense.

If the information or any requested written responses are not forthcoming within 10 business days, the Department has the absolute discretion to consider the challenged expense to be non-qualifying.

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<sup>1</sup> Exhibit A contains non-exclusive examples of the documents the CPA should review in the course of completing the compliance audit procedures, guidance for the CPA in determining what

constitute qualifying expenses and non-exclusive requirements for what the CPA should include in its Compliance Report .

**5.0 CLOSEOUT**

Closeout shall occur upon certification and proof of completion of the entire project in a form and manner satisfactory to the Department. However, grantees may remain subject to forfeiture, repayment and other requirements following closeout, as set forth below and in the Grant Agreement.

The following should be submitted by the production company upon closeout:

- 1) CPA Report described in Exhibit A along with detailed results of their sampling
- 2) Proof CPA/firm is licensed in North Carolina
- 3) Completed Totals Summary worksheet (which will include, but is not limited to, final employment numbers, final attendance numbers, and final direct in-state spend total)
- 4) Corporate Flowchart (of Production Company)
- 5) Explanation of activities in NC (of Production Company)
- 6) Updated statement of no overdue tax debt for production company as of audit, which should be notarized
- 7) Statement (by Production Company) confirming compliance with Grant Agreement, which should be notarized
- 8) List of any permanent improvements to open public spaces, commercial districts, traditional downtown areas,

public landmarks, residential areas, or similar properties/areas

- 9) Confirmation that production company afforded marketing opportunities—including what those opportunities are/were-- to NC that offer promotional value to the state
- 10) Proof of inclusion of state logo, as supplied by the Department and/or Partnership, or other indication that the production was recorded in or broadcast from North Carolina.

**6.0 CLAWBACK**

To the extent it is discovered that grant funds already disbursed to a Production Company were expended ineligibly, or the Production Company failed to conform to any applicable grant requirements, the Department shall have the ability to recapture all grant funds disbursed to the Production Company and obligate any additional grant funds not yet disbursed.

Without limitation, the Department may recapture the grant funds if, following the Closeout of the grant, a later version of the production is released which the Department determines is violative of [N.C. Gen. Stat. § 143B-437.02B\(a\)\(4\)](#), including by being obscene or harmful to minors.

## EXHIBIT A

### Guidance for Conducting the Compliance Audit Under the North Carolina Esports Industry Grant Fund

In this Exhibit A, the North Carolina Department of Commerce (“Department”) supplements its Guidelines and Procedures (“Guidelines”) for the Administration of the North Carolina Esports Industry Grant Fund (“Program”) with non-exclusive guidance on audit procedures and the subsequent report. See [N.C. Gen. Stat. § 143B-437.02B\(e\)](#); Guidelines § 8.2.

#### A.1 THE CPA’S ROLE

The role of the independent North Carolina-licensed CPA in conducting the audit procedures under the Program is to examine the actual qualifying expenses that the overall production has incurred in North Carolina, and then provide assurance on these expenses through a report to the Department and the Economic Development Partnership of North Carolina (“Partnership”). See [N.C. Gen. Stat. § 143B-437.02B\(e\)](#) Guidelines § 8.2. For example, if a production has already incurred at least \$150,000 in qualifying expenses but has yet to finish production in North Carolina, the CPA cannot complete its audit procedures because, among other reasons, the production is still incurring qualifying expenses.

For the purposes of the Guidelines, an “independent” CPA is one within the definition of [N.C. Gen. Stat. § 97-165\(3\)](#) who has no direct financial interest in the Production Company or the production and whose compensation for the audit is not derived in any part from the outcome of the audit, including whether any specific claimed qualifying expenses in fact qualify.

The audit must be performed in accordance with generally accepted auditing standards as set forth in Generally Accepted Auditing Principles (GAAP) and Generally Accepted Auditing Standards (GAAS). Additionally, the CPA should have sufficient knowledge of accounting principles and practices generally recognized in the Esports events industry.

#### A.2 IDENTIFYING QUALIFYING AND NON-QUALIFYING EXPENSES

The CPA’s duty to identify in its compliance audit actual qualifying expenses for the overall production includes a responsibility to identify those specific expenses which the Production Company has claimed as qualifying but which, in the course of the audit, the CPA determines do not qualify.

For example, the Production Company may submit to the CPA a receipt for a rental of goods. If, upon investigation, the CPA determines the goods were not both

rented from a person with a physical location in the State and actually rented at an in-State location belonging to the person, then the CPA should specifically identify the transaction as non-qualifying in its audit. See [N.C. Gen. Stat. § 143B-437.02B\(b\)\(8\)a](#). Similarly, if the Production Company submits to the CPA receipts for payments of compensation or wages on which North Carolina withholding taxes were **not** remitted, the CPA should specifically identify such payments as non-qualifying in its audit. See [N.C. Gen. Stat. § 143B-437.02B\(b\)\(8\)b](#).

#### A.3 DOCUMENTS THE CPA SHOULD REVIEW IN COMPLETING THE AUDIT PROCEDURES

The following is a non-exclusive list of documents to which the CPA should obtain access and which the CPA should review in the course of completing its audit:

1. A detailed explanation of the Production Company’s business activities in North Carolina throughout the course of the production, including a listing of all State locations at which the production took place.
2. A detailed Schedule of all claimed qualifying non-payroll expenses in North Carolina. The schedule should include the name, address and business location of the relevant lessor, retailer or vendor, as applicable. Further, the schedule should include the price of any claimed qualifying expenses and a description of the nature of such expenses.
3. For the period covering the claimed qualifying expenses, detailed payroll Schedules from the Production Company, any payroll company and any loan-out company registered to do business in North Carolina for all work performed on the production in North Carolina. The schedules must be run on a pay-period basis, which will usually be a weekly basis. They cannot be run on a summary-period basis.
4. For any individual working on the production in North Carolina during the period covering the claimed qualifying expenses, copies of all North Carolina withholding tax returns filed by the production Company, any payroll company and any loan-out company registered to do business in North Carolina.
5. Any other information that the Production Company or CPA deems necessary to substantiate a claimed qualifying expense.

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charged, from fuel taxes to sales taxes to lodging taxes, and remove them from the pool of qualified expenses.

#### A.4 QUALIFYING EXPENSES

1. [N.C. Gen. Stat. § 143B-437.02B\(b\)\(8\)](#) provides:

Qualifying expenses. – The sum of the amounts listed in this subdivision, substantiated pursuant to subsection (d) of this section, and spent in this State by a production company in connection with a production, less the amount paid in excess of one million dollars (\$1,000,000) to a highly compensated individual.

Goods and services leased or purchased in this State from a North Carolina vendor. For goods with a purchase price of twenty-five thousand dollars (\$25,000) or more, the amount included in qualifying expenses is the purchase price less the fair market value of the good at the time the production is completed. Goods and services include the cost of tangible and intangible property used for, and services performed primarily and customarily in, production, including preproduction and postproduction and other direct costs of producing the production in accordance with generally accepted Esports events industry practices. Goods and services exclude costs for development, marketing, and distribution; costs of financing for the event, of bonding related to the event, of production-related insurance coverage obtained on the event; and expenses for insurance coverage purchased from a related member.

Compensation and wages and payments on which withholding payments are remitted to the Department of Revenue under Article 4A of Chapter 105 of the General Statutes. Payments made to a loan-out company for services provided in North Carolina shall be subject to gross income tax withholding at the applicable rate under Article 4 of Chapter 105.

Employee fringe contributions, including health, pension, and welfare contributions.

Per diems, stipends, and living allowances paid for work being performed in the State.

2. Taxes

Other than withholding taxes, taxes paid, whether federal, local or state, are never qualifying expenses. The CPA should carefully examine documents supporting a claimed qualifying expense for any taxes

3. Qualifying Expenses “In Connection with” a Certified Production

The Department considers otherwise qualifying expenses incurred up to 30 days prior to the production and up to 7 days after the production to be expenses incurred “in connection with” the certified production. Deposits for goods or services paid more than 30 days prior to the production will be deemed eligible to the extent the goods or services are actually delivered within the period above and are otherwise a qualifying expense.

4. Qualifying Payments for Goods and Services in North Carolina

a. Goods

The Production Company must make the payment for goods to a person with a physical location in North Carolina. That the person merely charged the Production Company North Carolina sales tax, such as for equipment rentals, is not necessarily evidence that the person has a physical location in the State.

But, even if the Production Company rents the goods from an individual with a physical location in North Carolina, if the goods are used for production outside of the State for half of the rental period, only half of the rental price is a qualifying expense.

The fact that a retailer or lessor obtains a good from outside of the State may not necessarily be relevant to determining whether the good is a qualifying expense. For example, if a Production Company asks a North Carolina retailer to order a piece of equipment, the retailer orders it from South Carolina, and the Company picks it up from the retailer in North Carolina, it is a qualifying expense.

b. Services

Services do not have to be rendered by a North Carolina resident or by an individual with a physical location in the State so long



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as they are actually rendered within the State.

payments to a shipping company (such as Fed Ex, DHL or UPS) are qualifying expenses so long as the shipping services are obtained from a North Carolina location of the shipping company. If goods are delivered into North Carolina from an out-of-state location, the shipping services charge does not qualify because it is not considered to have been rendered within the State.

CPAs may confront “mixed transactions” involving, for example, goods brought from outside the State but used for services performed inside the State. For example, if an out-of-state caterer brings its mobile kitchen and food from outside North Carolina and then charges the Production Company for the use or consumption of these items inside the State as well as for its food-preparation services rendered inside the State, only the food preparation services are qualifying expenses.

- c. As the statute notes, goods used and services performed primarily and customarily in pre-production and post-production are qualifying expenses. The statute also specifically excludes certain typical production costs, however, such as financing, marketing and production insurance costs.
- d. The cost of the CPA’s Compliance Audit and its creation of the Report is not a qualifying expense because, but for the Grant Award, these services would not be customarily performed in post-production.

#### A.5 QUALIFYING COMPENSATION, WAGES OR PAYMENTS

1. If a payment is made for wages or compensation to an individual for whom no withholding taxes have been remitted, it is not a qualifying expense. The only exception to this rule is if the CPA determines, after reviewing N.C. Gen. Ch. 105, Art. 4A and applying the IRS independent contractor test and any related guidance by the North Carolina Department of Revenue, that the payment represents a payment to a true service provider/independent contractor.

2. If the CPA identifies a payment for wages or compensation to an individual for whom no withholdings have been remitted, the relevant payor (whether the Production Company, payroll company or loan-out company registered to do business in North Carolina) can always remit the withholdings, thereby converting the payment into a qualifying expense.
3. Payroll companies or Production Companies must remit taxes on their payments to out-of-state loan-out companies that are not registered to do business in North Carolina.
4. Only the first \$1 million of each individual’s compensation and wages will count towards the qualifying expenses total.

#### A.6 QUALIFYING PAYMENTS FOR EMPLOYEE FRINGE BENEFIT CONTRIBUTIONS

1. In order for a payment for an employee fringe benefit contribution to be a qualifying expense, it must relate exclusively to compensation or wages for work performed on the production in North Carolina.
2. Additionally, to determine whether a payment is a qualifying expense for an employee fringe benefit contribution, the CPA must determine whether the payment is for an “employee.” For employee fringe benefits under the statute, an employee is “a person who is employed for consideration and whose wages are subject to withholding under Article 4A of Chapter 105 of the General Statutes.” [N.C. Gen. Stat. § 143B-437.02B\(b\)\(2\)](#).
3. If it so qualifies, an employee fringe benefit payment can include health insurance, pension and other employee fringe benefit contributions by the Production Company. The CPA must be certain to distinguish any such payment from required federal or State tax payments, however.

#### A.7 QUALIFYING PAYMENTS FOR PER DIEMS, STIPENDS AND LIVING ALLOWANCES

Per diems, stipends and living allowance payments are qualifying expenses so long as they represent payments for work actually performed in North Carolina. The CPA may have to review hotel receipts, production schedules and related documents to determine whether the payment at issue represents an allowance for expenses on a date on which the individual who received the payment was actually working in North Carolina. Records of such qualifying payments are

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not necessarily located in payroll reports but rather may only be reflected in petty cash receipts or other accounts payable invoices.

#### A.8 THE COMPLIANCE AUDIT REPORT

The CPA's Audit Report is a public record governed by N.C. Gen. Ch. 132, including the confidentiality exceptions therein.

The CPA's audit report to the Department and the Partnership must be submitted in two (2) hard copies and in **electronic form**.

The report should include a Cost Report of Production Expenditures broken out by (i) goods, (ii) services, (iii) wages/compensation/payments on which withholdings were remitted, (iv) employee fringe benefit contributions and (v) per diems, stipends and living allowances. If requested, the production company shall make available to the Department and any other State officials designated in the Grant Agreement documents required under section A.3 above, as well as any other documents or data substantiating the CPA's conclusion in the audit.

The report should also include a note as to whether non-qualifying expenditures were identified.

#### A.9 ADDITIONAL INFORMATION

The CPA shall provide any additional information requested by the Department.