CALIFORNIA COMPETES TAX CREDIT ALLOCATION AGREEMENT

This California Competes Tax Credit Allocation Agreement ("Agreement") is by and between Underground Elephant, Inc., a California Corporation ("Taxpayer") and the California Governor's Office of Business and Economic Development ("GO-Biz"), hereafter jointly referred to as the "Parties" or individually as the "Party." All capitalized terms not defined in this Agreement shall have the same meaning as in California Revenue and Taxation Code ("RTC") sections 17059.2 and 23689 and California Code of Regulations Title 10, Section 8000 et seq. as in effect on the Effective Date of this Agreement.

In consideration for the mutual covenants and promises in this Agreement, the Parties agree as follows:

1. **Term.** The effective date ("Effective Date") of this Agreement shall be on the date that this Agreement is approved by the California Competes Tax Credit Committee ("Committee").

2. **Total Credit Award.** GO-Biz, upon approval by the Committee and conditioned upon the requirements set forth in this Agreement, will award Taxpayer a California Competes Tax Credit ("CCTC") in the amount of one hundred sixty-five thousand dollars ($165,000.00)("Credit"). Specifically, Taxpayer is receiving a CCTC against the "net tax" as defined in RTC section 17039 or the "tax" as defined in RTC 23036 as applicable, pursuant to RTC section 17059.2 or 23689, as applicable.

3. **Project/Milestones**. The Taxpayer is an Internet software company in San Diego, California, specializing in advanced digital marketing. Credit recipient declares that absent award of the CCTC, it will terminate all or a portion of its employees in California or relocate all or a portion of its employees in California to another state. In consideration for the Credit, Taxpayer agrees to invest in construction of a new facility in San Diego and the acquisition of computer hardware and equipment. Additionally, Taxpayer will hire full-time employees to support its expansion goals (collectively, the "Project"). Further, Taxpayer agrees to satisfy the milestones as described in Exhibit "A" ("Milestones") and must maintain Milestones for a minimum of three (3) taxable years thereafter.

4. **Credit Allocation.** The Credit awarded in section 2 of this Agreement will be allocated to Taxpayer by taxable year as set forth in Exhibit A, provided that the Taxpayer completes the Milestones associated with the applicable taxable year, as set forth in Exhibit A. Taxpayer acknowledges and agrees that, an allocated portion of the Credit is earned by the Taxpayer in the taxable year when the Milestones associated with that allocated portion of the Credit are achieved and to avoid recapture, Taxpayer must maintain such Milestones for three (3) subsequent taxable years. All required Milestones identified on a taxable year basis in Exhibit A, must be met in order to earn the allocated portion of the Credit. In the event Taxpayer satisfies the taxable year Milestones in an earlier taxable year than described in Exhibit A (no earlier than taxable year 2015), then Taxpayer will have earned the Credit in the earlier taxable year when the Milestones are achieved. In the event that Taxpayer fails to satisfy the Milestones identified in Exhibit A in the taxable year associated with those Milestones, the allocated portion of the Credit will not be considered earned in that taxable year. Any portion of the Credit associated with a specific taxable year in Exhibit A, which is not earned in that year due to failure to achieve the Milestones associated with that taxable year will be earned in the taxable year in which the Milestones are met,

but in no event later than the last taxable year identified in Exhibit A. GO-Biz will not pro-rate the Credit allocation. If Taxpayer satisfied certain taxable year Milestones in an earlier taxable year than described in Exhibit A (no earlier than taxable year 2015), then Taxpayer need only maintain such Milestone for three (3) taxable years to avoid recapture as further described in Section 10.

5. **Taxpayer – Representations and Warranties.** Taxpayer represents and warrants that:
   (a) Taxpayer is a duly organized California Corporation, validly existing and in good standing under the laws of the State of California, has registered with the Secretary of State, if required and has, or will have the requisite power, authority, licenses, permits and the like necessary to carry on its business as it is now being conducted and as contemplated in this Agreement.
   (b) Taxpayer is not a party to any agreement, written or oral, creating obligations that would prevent Taxpayer from entering into this Agreement or satisfying the terms herein.
   (c) All the information in the Application and all materials submitted to GO-Biz in Phase II, including, but not limited to the Statement Regarding California State Tax Liabilities is true and accurate.
   (d) Taxpayer authorizes the California Franchise Tax Board ("FTB") and GO-Biz to do all of the following:
      i. To provide and receive information as requested for the purpose of proper determination and administration of the Credit allocated to the Taxpayer, including determination of the amount of any recapture of the Credit.
      ii. To provide and receive documentation as requested for the purpose of proper determination and administration of the Credit allocated to the Taxpayer, including determination of the amount of any recapture of the Credit.
      iii. To discuss relevant issues pertaining to proper determination and administration of the Credit allocated to the Taxpayer, including determination of the amount of any recapture of the Credit.
   (e) Taxpayer represents that is has read the applicable RTC sections 17059.2 and 23689 and California Code of Regulations Title 10, section 8000 et seq. and acknowledges and agrees that such sections are hereby incorporated by reference into this Agreement.
   (f) Taxpayer represents all of the following:
      i. None of the Investment identified in Exhibit A will be purchased or leased from a person or entity that is treated as related to the Taxpayer under section 267, 318, or 707 of the Internal Revenue Code or from any member of a "controlled group of corporations" (as defined in RTC section 23626) in which the Taxpayer is a member.
      ii. None of the Investment identified in Exhibit A will be attributable to a conversion from a purchase to a lease or vice versa of real or personal property the Taxpayer already controls or has acquired.
      iii. None of the net increase of full-time employees or investment identified in Exhibit "A" will be due to the Taxpayer's acquisition of, or merger with, another business.
      iv. None of the net increase of full-time employees identified in Exhibit A will be due to a transfer of employees from a person or entity that is treated as related to the Taxpayer under section 267, 318, or 707 of the Internal Revenue Code or from any member of a "controlled group of corporations" (as defined in RTC section 23626) in which the Taxpayer is a member.
      v. None of the net increase of full-time employees identified in Exhibit A will be due to employment of any employees that were previously employed by a person or entity that is treated as related to the Taxpayer under section 267, 318, or 707 of the Internal Revenue Code or by any member of a "controlled group of corporations" (as defined in RTC section 23626) in which the Taxpayer is a member.

6. **Reporting Requirements.** On or before the first day of the fourth (4^{th}) month after the close of each taxable year as referenced in Exhibit A,[1] the Taxpayer shall submit to GO-Biz, at a minimum the following document(s) to demonstrate successful completion of the applicable Milestones for the prior taxable year:

[1] For a taxpayer with a taxable year on a calendar year basis, the report will be due on or before April 1^{st}.

(a) A chart substantially similar to Exhibit A identifying the numbers required under this Agreement compared to the actual numbers achieved by Taxpayer in the prior taxable year with a certification made by the Taxpayer on the chart that states "Underground Elephant, Inc. certifies to GO-Biz that the information contained in this chart is true and accurate, may be relied upon by the FTB in the event of a review by FTB of Taxpayer's records to satisfy that applicable Milestones have been met and satisfied the reporting requirements of the approved Agreement." The certification shall also identify the date the Taxpayer's CCTC was approved by the Committee and reference the contract identification number provided by GO-Biz.
(b) If any Milestones are not met in the taxable year associated with those Milestones, then Taxpayer shall describe with sufficient detail, in writing, to GO-Biz, any issues or challenges in achieving the Milestones and corrective actions being taken or anticipated to be taken in subsequent years.

7. **Franchise Tax Board Review.**
   (a) Notwithstanding the annual reporting requirements to GO-Biz in section 6, the Taxpayer agrees as a condition of this Agreement to comply with the FTB's review of the books and records for purposes determining if the Taxpayer has failed to comply with the requirements of this Agreement.
   (b) For any business other than a Small Business, Taxpayer acknowledges and agrees that the FTB shall review the books and records of all Taxpayers allocated a Credit pursuant to this Agreement to ensure compliance with the terms and conditions of this Agreement and shall cooperate with the FTB in such a review. In the case of a Taxpayer that is a Small Business, Taxpayer acknowledges and agrees that a review of the books and records of the Taxpayer shall be made when, in the sole discretion of the FTB, a review of those books and records is appropriate. If the FTB exercises its discretion to review the book and records of a Small Business Taxpayer, the review will be conducted to ensure compliance with the Agreement. The guidelines and procedures for these reviews are outlined in the FTB's Notice #2014-2 dated November 7, 2014.
   (c) These reviews will not constitute an audit of the tax return under Part 10.2 (commencing with section 18401) of the Revenue and Tax Code and the regulations thereunder, and will not preclude the FTB from auditing any issue in any taxable year, including a taxable year included in the term of the Agreement.
   (d) If during the review of the books and records, the FTB determines there is a material breach of the Agreement by a taxpayer, and notwithstanding RTC section 19542, the Franchise Tax Board shall notify GO-Biz and provide, in writing, detailed information regarding the basis for that determination.

8. **Assignment**. The Credit (or a portion thereof as earned) under this Agreement may be transferred to an "Affiliated Corporation" in accordance with RTC section 23663. As stated in RTC section 23689(i)(1) this Agreement cannot and does not broaden or alter the ability of a taxpayer to assign the credit. In the event that the credit or this Agreement is to be transferred pursuant to a sale or merger to an entity other than an Affiliated Corporation, prior written consent of GO-Biz must be obtained.

9. **Material Breach.** A material breach for purposes of the Agreement shall mean:
   (a) Failure to timely furnish the documents described in Section 6(a) and (b) or the information reasonably requested by the FTB which relates to validating Taxpayer's compliance with Exhibit A.
   (b) Material misstatements in any information provided to GO-Biz as part of the application process and/or during phase II and/or after the Agreement is signed.
   (c) Failure to materially satisfy applicable Milestones as set forth in Exhibit A, by the end of the last taxable year identified in Exhibit A (subject to the last sentence of Section 4 and Section 10), materially of which shall be determined by GO-Biz to the extent such Milestones are not objectively met.

10. **Recapture.** In the event of a material breach of the requirements of this Agreement, GO-Biz will notify Taxpayer in writing of the breach and provide Taxpayer with the reasonable opportunity to cure the breach within thirty (30) business days or such longer period as mutually agreed to in writing between the Parties. If Taxpayer fails to cure the breach within the prescribed timeframe, GO-Biz will notify the Taxpayer of the failure, the amount of the Allocation that it will recommend to the Committee be recaptured (which may include the entire amount of

the Allocation of credit awarded), and may recommend termination of this Agreement to the Committee. Notwithstanding the foregoing, if the material breach is the failure of Taxpayer to satisfy Milestones with respect to an allocation for a particular taxable year, then the recapture will be limited to such particular taxable year's allocation and in no event shall a recapture under this Agreement include any allocation or allocations that Taxpayer has previously earned provided that Taxpayer satisfies its obligation to retain the required Milestones for three (3) subsequent taxable years. Upon receipt of recommendations from GO-Biz, the Committee will determine whether to accept or reject GO-Biz's recommendation of recapture, and the amount thereof, and the termination of this Agreement, based on the Taxpayer's failure to fulfill the terms and conditions of this Agreement. Upon approval of the Committee to recapture some or all of the Allocation of credit awarded for failure of Taxpayer to fulfill the terms of this Agreement, GO-Biz will notify the FTB in writing as required under the applicable statutes and regulations and the FTB shall treat the recapture as a mathematical error appearing on the return. Any amount of additional tax resulting from that recapture shall be assessed by the FTB in the same manner as provided by RTC section 19051. The additional tax resulting from a recapture will be assessed in the taxable year of the Taxpayer in which the Committee's recapture determination occurred.

11. **Public Records.** Taxpayer acknowledges that GO-Biz is subject to the California Public Records Act (PRA) (Government Code section 6250 et. seq.). This Agreement and materials submitted by Taxpayer to GO-Biz may be subject to a PRA request, except in the event that such documents submitted to GO-Biz are considered confidential tax information. In such an event, GO-Biz will notify the Taxpayer, as soon as practicable that a PRA request for the Taxpayer's information has been received, but not less than five (5) business days prior to the release of the requested information to allow the Taxpayer to seek an injunction. GO-Biz will work in good faith with the Taxpayer to protect the information to the extent an exemption is provided by law, including but not limited to notes, drafts, proprietary information, financial information and trade secret information. GO-Biz will also apply the "balancing test" as provided for under Government Code section 6255 to the extent applicable. Notwithstanding the foregoing, GO-Biz agrees that any information provided to GO-Biz by the FTB, in connection with this Agreement will be treated as confidential tax information protected by Article 2 (commencing with Section 19542) of Chapter 7 of Part 10.2 of the Revenue and Tax Code, assuming that FTB can rely on such a section and shall not be disclosed to any party, other than personnel of GO-Biz, the FTB or the Committee, without Taxpayers prior written consent. Taxpayer acknowledges that this Agreement in whole or in part will be made available to the public at least ten (10) calendar days prior to the Committee hearing. Pursuant to RTC 17059.2 and 23689, in the event of approval by the Committee of this Agreement, Taxpayer acknowledges and agrees that GO-Biz will post on its website the following information:
    (a) The name of each taxpayer allocated a Credit
    (b) The estimated amount of the investment by each taxpayer
    (c) The estimated number of jobs created or retained
    (d) The amount of the credit allocated to the taxpayer
    (e) The amount of the credit recaptured from the taxpayer, if applicable

12. **Media Release.** Upon award of a Credit, Taxpayer agrees to cooperate in good faith with GO-Biz, if requested in connection with any publicity, outreach or press release related to the Credit; provided that any such publicity, outreach or press release involving or mentioning the Taxpayer shall be subject to Taxpayer's prior written consent. Taxpayer may elect to issue a press release related to this Agreement, but any release shall be approved by GO-Biz in writing prior to such release. Such approval shall not be unreasonably withheld.

13. **Indemnification/Warranty Disclaimer/Limitation of Liability**. Taxpayer shall defend, indemnify and hold GO-Biz and the FTB, its agents or assigns, harmless from and against all claims, damages, and liabilities (including reasonable attorneys' fees) arising from this Agreement due to the breach of this Agreement, negligence or willful misconduct by the Taxpayer . UNDER NO CIRCUMSTANCES WILL THE STATE OF CALIFORNIA, GO-BIZ, ITS AGENTS OR EMPLOYEES, THE COMMITTEE MEMBERS, THE FTB OR ANYONE ELSE INVOLVED IN THIS AGREEMENT BE LIABLE TO TAXPAYER FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES THAT ARISE FROM THIS AGREEMENT.

14. **Waiver**. Neither Party shall be deemed by mere lapse of time (without giving notice or taking other action) to have waived any action by the party of any of the provisions of this Agreement.

15. **Integration.** This Agreement (including the exhibits hereto and any written amendments hereof executed by the Parties) constitutes the entire Agreement and supersedes all prior agreements and understandings, oral and written, between the Parties with respect to the Allocation.

16. **Record Retention.** The Parties agree to maintain this Agreement, any exhibits related to this Agreement or any other documents specifically provided to GO-Biz by the Taxpayer in connection with the Credit for a period of no less than four (4) years from the end of the last taxable year identified in Exhibit A.

17. **Notice**. Any notices required or permitted to be given under this Agreement shall be given in writing and shall be delivered (a) in person, (b) by certified mail, (c) by facsimile with confirmed receipt required, electronic communication with confirmed receipt required, or (d) by commercial overnight courier that guarantees next day delivery and provides a receipt, and such notices shall be addressed as set forth below, or as the applicable party shall specify to the other party in writing

If to GO-Biz:

1325 J Street
18th Floor
Sacramento, California, USA 95814

Attention: Deputy Director, California Competes Tax Credit Program
Phone: (916) 322-0694
Email: Calcompetes@gov.ca.gov

If to Taxpayer:

600 B Street #1300
San Diego CA 92101

Attention: JARROD M. RUSSELL
Phone: 858-888-5976
Email: jrussell@undergroundelephant.com

18. **Modification**. This Agreement may be amended or modified only by mutual agreement of the Parties in written addendum. If Committee approval is necessary, the modification of the agreement will not be valid until the addendum is approved by the Committee.

19. **Time of the Essence.** Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a Party of the benefits of any cure period allowed in this Agreement.

20. **Ambiguities**. Each Party has had the opportunity to seek the advice of counsel or has refused to seek the advice of counsel. Each Party and its counsel, if appropriate, have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any Party.

21. **Necessary Acts, Further Assurances**. The Parties shall at their own cost and expense execute and deliver any further documents and shall take such other actions as may be reasonably required or appropriate to carry out the intent and purposes of this Agreement.

22. **Sections and Other Headings**. The section and other headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

23. **Consultants and Attorney's Fees**. Each of the Parties shall be responsible for and pay in their entirety its respective attorney's fees, auditors and consultant fees, costs and expenses in connection with the subject matter of the Agreement and any audit that may be conducted as a result of the transaction contemplated herein. Notwithstanding RTC section 19717, under no circumstances is any Party to this contract entitled to attorney's fees with regard to litigation resulting from this Agreement.

24. **Limitation of Remedy**: The only remedy that the Taxpayer shall have in the event of breach or alleged breach by GO-Biz, shall be the normal administrative and judicial rights accorded to a taxpayer in the state of California who has been denied a tax credit claimed on their return.

25. **Representation on Authority of Parties/Signatories**. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each Party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such Party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms.

26. **Severability.** If any term of this Agreement is to any extent invalid, illegal, or incapable of being enforced, such term shall be excluded to the extent of such invalidity, illegality, or unenforceability; all other terms hereof shall remain in full force and effect.

27. **Approval**. This Agreement shall not be binding until it has been approved by the Committee during a duly noticed Committee meeting.

28. **Execution**. This Agreement may be executed in parts, by fax, or other similar electronic means.

Remainder of the page is intentionally left blank. Signature page immediately follows.

Governor's Office of Business and Economic Development

By: _____

Name: William Koch

Its: Deputy Director

Date: 01/02/2015

TAXPAYER
Underground Elephant, Inc.

By: _____

Name: JARROD RUSSELL

Its: Director of Public Affairs

Date: December 29, 2014

Exhibit "A" Milestones

Taxpayer: Underground Elephant, Inc.

	2013 Tax Year (Base)	2014 Tax Year	2015 Tax Year	2016 Tax Year	2017 Tax Year	2018 Tax Year	Total
Total California Full-Time Employees[1]	62	58	65	71	74	78	
Net Increase of Full-Time Employees Compared to the Base Year		0	3	9	12	16	
Minimum Annual Salary of California Full-Time Employees Hired		$0	$40,000	$40,000	$40,000	$40,000	
Cumulative Average Annual Salary of California Full-Time Employees Hired		$0	$55,000	$55,000	$55,000	$55,000	
Investments		$0	$1,569,800	$26,400	$6,600	$15,400	$1,618,200
Tax Credit Allocation		$0	$41,250	$41,250	$41,250	$41,250	$165,000

[1] Determined on an annual full-time equivalent basis