

COMMONWEALTH'S DEVELOPMENT OPPORTUNITY FUND

PERFORMANCE AGREEMENT

This **PERFORMANCE AGREEMENT** made and entered this ____ day of ____, 2018, by and among the **COUNTY OF SPOTSYLVANIA, VIRGINIA** (the "Locality") a political subdivision of the Commonwealth of Virginia (the "Commonwealth"), **IDX IMPRESSIONS, LLC** (the "Company"), a Delaware limited liability company authorized to transact business in the Commonwealth, and the **ECONOMIC DEVELOPMENT AUTHORITY OF THE COUNTY OF SPOTSYLVANIA, VIRGINIA** (the "Authority"), a political subdivision of the Commonwealth.

WITNESSETH:

WHEREAS, the Locality has been awarded a grant of and expects to receive \$75,000 from the Commonwealth's Development Opportunity Fund (a "COF Grant") through the Virginia Economic Development Partnership Authority ("VEDP") for the purpose of inducing the Company, as the successor in interest to idX - Baltimore, Inc., a Delaware corporation (the "Predecessor Company") to equip, improve, expand, and operate its manufacturing and office facility in the Locality and located at 11032 Tidewater Trail, Tax Map Parcels 25-1-1, 25C-2-20, 25 C-2-21, 25C-2-22 & 25C-2-22A (the "Facility"), thereby making a significant Capital Investment, and creating and Maintaining a significant number of New Jobs, as such capitalized terms are hereinafter defined;

WHEREAS, the Locality is willing to provide to the Authority, and the Authority then to the Company, a cash grant in the amount of \$75,000 (the "Local Grant") for the purpose of inducing the Company to equip, improve, expand, and operate the Facility in the Locality.

WHEREAS, the Locality is willing to provide the proceeds of the COF Grant and the Local Grant (together, the "Grants") to the Authority with the expectation that the Authority will provide the funds to or for the use of the Company, provided that the Company promises to meet certain criteria relating to Capital Investment and New Jobs;

WHEREAS, the Locality, the Authority and the Company desire to set forth their understanding and agreement as to the payout of the Grants, the use of the proceeds of the Grants, the obligations of the Company regarding Capital Investment and New Jobs, and the repayment by the Company of all or part of the Grants under certain circumstances;

WHEREAS, the equipping, improvement, expansion, and operation of the Facility will entail a capital expenditure by or on behalf of the Company of approximately \$2,680,000, of which approximately \$1,680,000 will be invested in machinery and equipment and approximately \$1,000,000 will be invested in the up-fit of the building;

WHEREAS, the equipping, improvement, expansion, and operation of the Facility will further entail the creation and Maintenance of 25 New Jobs at the Facility;

WHEREAS, the stimulation of the additional tax revenue and economic activity to be generated by the Capital Investment and New Jobs constitutes a valid public purpose for the expenditure of public funds and is the animating purpose for the Grants;

WHEREAS, the Locality is willing to appropriate and provide funds to the Authority, in support of the Grants, with the expectation that the Authority will provide the funds to or for the use of the Company, provided that the Company meets certain criteria described herein; and

WHEREAS, the Locality is authorized by Section 15.2-953 of the Virginia Code, as hereinafter defined, and other laws, and the Authority is authorized by the Industrial Development and Revenue Bond Act, contained in Chapter 49, Title 15.2 of the Virginia Code, and other laws, to perform the activities contemplated in this Agreement:

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 covenant and agree as follows.

Section 1. Incorporation of Witnesseth Preamble; Definitions.

(a) *Incorporation:* All of the preceding "Whereas" and "Now Therefore" statements in the Witnesseth preamble above are fully incorporated herein by reference thereto and are hereby made part of this Agreement.

(b) *Definitions:* For the purposes of this Agreement, the following terms shall have the following definitions:

"April 27, 2017, Performance Agreement" means a Performance Agreement dated April 27, 2017, among the Locality, the Predecessor Company and the Authority, with respect to an earlier project at the Facility, which Performance Agreement has been assigned by the Predecessor Company to the Company and assumed in its entirety by the Company.

"Capital Investment" means a capital expenditure by or on behalf of the Company in taxable real property, taxable tangible personal property, or both, at the Facility. The Capital Investment must be in addition to the existing capital improvements at the Facility as of December 1, 2017, as well as in addition to the capital expenditures in the amount of \$7,200,000 committed to by the Company pursuant to the April 27, 2017, Performance Agreement. The purchase or lease of machinery and equipment, including under an operating lease, and expected building up-fit and improvements by or on behalf of the Company will qualify as Capital Investment. Capital Investment shall be evidenced by copies of paid invoices paid by or on behalf of the Company and, if requested by VEDP, the Locality or the Authority, those invoices must be certified by the contractor or vendor providing the goods or services.

"Maintain" means that the New Jobs will continue without interruption from the date of creation through the Performance Date. Positions for the New Jobs will be treated as Maintained during periods in which such positions are not filled due to (i) temporary reductions in the Company's employment levels (so long as there is active recruitment for open positions), (ii) strikes, and (iii) other temporary work stoppages.

"New Job" means new permanent full-time employment of an indefinite duration at the Facility for which the standard fringe benefits are provided by the Company for the employee, and for which the Company pays an average annual wage of at least \$50,000. Each New Job must require a minimum of either (i) 35 hours of an employee's time per week for the entire normal year of the Company's operations, which "normal year" must consist of at least 48 weeks, or (ii) 1,680 hours per year. Seasonal or temporary positions, positions created when a job function is shifted from an existing location in the Commonwealth, and positions with construction contractors, vendors, suppliers and similar multiplier or spin-off jobs shall not qualify as New Jobs. The New Jobs must be in addition to 150 full-time jobs at the Facility which the Company has promised to create and maintain, as required by the April 27, 2017, Performance Agreement.

"Performance Date" means June 30, 2021. If the Locality, reasonably and in consultation with the Authority and VEDP, deems that good faith and reasonable efforts have been made and are being made by the Company to achieve the Targets, the Locality may request an extension of the Performance Date by up to 15 months. Any extension of the Performance Date shall require the prior approval of the Board of Directors of VEDP. If the Performance Date is extended, the Locality shall send written notice of the extension to the Authority, the Company and VEDP and the date to which the Performance Date has been extended shall be the "Performance Date" for the purposes of this Agreement.

"Targets" means the Company's obligations to make Capital Investments at the Facility of at least \$2,680,000 and to create and Maintain at least 25 New Jobs at the Facility, all as of the Performance Date.

"Virginia Code" means the Code of Virginia of 1950, as amended.

Section 2. Targets; Statutory Criteria.

(a) ***Targets:*** The Company will equip, improve, expand, and operate the Facility in the Locality, make a Capital Investment of at least \$2,680,000, and create and Maintain at least 25 New Jobs at the Facility, all as of the Performance Date. Capital Investment shall be evidenced by copies of paid invoices paid by or on behalf of the Company and, if requested by VEDP, the Locality, or the Authority, those invoices must be certified by the contractor or vendor providing the goods or services.

(b) ***County Interactions:*** The Company covenants and agrees to use its reasonable efforts to identify and market its local business as located in Spotsylvania County and to assist the Locality and the Authority from time-to-time in promoting the Locality's attributes as a place to do business.

(c) ***Encouragement to Offer New Jobs to Residents of the Commonwealth:*** The Locality and the Authority hereby strongly encourage the Company to ensure that at least 30% of the New Jobs are offered to "Residents" of the Commonwealth, as defined in Virginia Code Section 58.1-302. In pertinent part, that definition includes natural persons domiciled in Virginia

or natural persons who, for an aggregate of more than 183 days of the year, maintained a place of abode within the Commonwealth, whether domiciled in the Commonwealth or not.

(d) *Prevailing Wage; Unemployment and Poverty Rates:* The average annual wage of the New Jobs of at least \$50,000 is more than the prevailing average annual wage in the Locality of \$38,415. The Locality is a high-unemployment locality, with an unemployment rate for 2016, which is the last year for which such data is available, of 4.1% as compared to the 2016 statewide unemployment rate of 4.0%. The Locality is not a high-poverty locality, with a poverty rate for 2016, which is the last year for which such data is available, of 7.4% as compared to the 2016 statewide poverty rate of 11.0%.

(e) *Disclosure of Political Contributions:* The Company acknowledges that the name of the Company will be shared by VEDP with the Governor of Virginia, and any campaign committee or political action committee associated with the Governor. The Company acknowledges that within 18 months of the date of this Performance Agreement, the Governor, his campaign committee, and his political action committee will submit to the Virginia Conflict of Interest and Ethics Advisory Council a report listing any contribution, gift, or other item with a value greater than \$100 provided by the Company to the Governor, his campaign committee, or his political action committee, respectively, during the period from the date of the Company's application for the COF Grant through the one-year period immediately after the date of this Agreement.

(f) *Allocation of Capital Investment and New Jobs:* Any qualifying capital expenditures or new full-time jobs created by the Company will be allocated first to the Company's obligations under the April 27, 2017, Performance Agreement and then to the Company's obligations under this Agreement. For example, if at the Performance Date, the Company has made qualifying capital expenditures of \$7,700,000 and has created and maintained 150 qualifying new full-time jobs, \$500,000 of the capital expenditures may be counted toward the Capital Investment Target under this Agreement, but none of the jobs may be counted toward the New Job Target under this Agreement.

Section 3. Disbursement of the Grants.

(a) *Disbursement of the COF Grant:* By execution and delivery of this Agreement, the Locality requests that the COF Grant be disbursed to it. The COF Grant will be paid in full to the Locality within 60 days after the date this Performance Agreement is fully executed.

The COF Grant proceeds shall be retained by the Locality and shall be disbursed in one payment as follows:

The Company will provide notice and evidence reasonably satisfactory to the Locality, the Authority, and VEDP that it has made Capital Investments of at least \$2,680,000 and created and Maintained at least 25 New Jobs. Such evidence will be subject to verification by the Locality and VEDP. Within 30 days of the verification, the Locality will disburse all \$75,000 of the COF Grant proceeds to the Authority. Within 30 days of its receipt of such COF Grant proceeds, the

Authority will disburse such COF Grant proceeds to the Company as an inducement to the Company to achieve the Targets at the Facility.

The obligation of the Locality hereunder to disburse the COF Grant proceeds to the Authority is subject to VEDP disbursing the COF Grant proceeds to the Locality. The obligation of the Authority hereunder to disburse the COF Grant proceeds to the Company is subject to the Locality disbursing the COF Grant proceeds to the Authority.

If any COF Grant proceeds have not been disbursed to the Company within 90 days after the Performance Date, the Locality shall return such proceeds to VEDP for redeposit to the Commonwealth's Development Opportunity Fund.

(b) *Use of the COF Grant Proceeds:* The Company will use the COF Grant proceeds to pay or reimburse itself for the costs of up-fit and build-out at the Facility, as permitted by Section 2.2-115(D) of the Virginia Code.

(c) *Disbursement of the Local Grant:* The Local Grant (\$75,000) will be paid in full by the Locality to the Authority at approximately the same time that the Locality pays the proceeds of the COF Grant to the Authority. The Local Grant (\$75,000) will be paid in full by the Authority to the Company at approximately the same time that the Authority pays the proceeds of the COF Grant to the Company.

(d) *Use of the Local Grant Proceeds:* The Company will use the Local Grant (\$75,000) proceeds to pay or reimburse itself for the costs of up-fit and build-out at the Facility.

Section 4. Break-Even Point; State and Local Incentives.

(a) *State-Level Incentives:* VEDP has estimated that the Commonwealth will reach its "break-even point" by the Performance Date. The break-even point compares new revenues realized as a result of the Capital Investment and New Jobs at the Facility with the Commonwealth's expenditures on incentives, including but not limited to the COF Grant. With regard to the Facility, the Commonwealth expects to provide incentives in the following amounts:

<u>Category of Incentive:</u>	<u>Total Amount</u>
COF Grant	\$75,000
Virginia Jobs Investment Program ("VJIP") (Estimated)	22,500

The proceeds of the COF Grant shall be used for the purposes described in Section 3(b). The VJIP grant proceeds shall be used by the Company to pay or reimburse itself for recruitment and training costs.

(b) *Locality-Level Incentives:* The Locality expects to provide the following incentive, as a matching grant or otherwise, for the Facility by the Performance Date:

<u>Category of Incentive:</u>	<u>Total Amount</u>
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Local Grant

\$75,000

If, by the Performance Date, the proceeds of the Local Grant disbursed or committed to be disbursed by the Locality to the Company total less than the \$75,000 COF Grant local match requirement, the Locality, subject to appropriation, will make an additional grant to the Company of the difference at the Performance Date, so long as the Company has met its Targets.

The proceeds of the Local Grant shall be used for the purposes described in Section 3(d).

(c) *Other Incentives:* This Agreement relates solely to the Grants. The qualification for, and payment of the VJIP will be governed by a separate arrangement between the Company and VEDP.

Section 5. Repayment Obligation.

(a) *If Statutory Minimum Eligibility Requirements are Not Met:* Section 2.2-115 of the Virginia Code requires that the Company make a Capital Investment of at least \$2,500,000 in the Facility and create and Maintain at least 25 New Jobs at the Facility in order to be eligible for the COF Grant. Failure by the Company to meet either of these statutory minimum eligibility requirements by the Performance Date shall constitute a breach of this Agreement and the Company must repay to the Authority all of the proceeds of the Grants previously disbursed to the Company. In such event, the Authority and the Locality, as applicable, will repay to VEDP all of the COF Grant proceeds not previously disbursed to the Company.

(b) *If Statutory Minimum Eligibility Requirements are Met:* The provisions of this subsection (b) shall become applicable only if the Company has met the statutory minimum eligibility requirements set forth in subsection (a). If the Company has made at least \$2,500,000 in Capital Investment and has fully achieved the New Jobs Target at the Performance Date, then and thereafter the Company is no longer obligated to repay any portion the COF Grant or the Local Grant. As noted in subsection (a), if the Company has not made a Capital Investment of at least \$2,500,000 and created and Maintained at least 25 New Jobs at the Facility at the Performance Date, the entire COF Grant and the Local Grant must be repaid.

(c) *Determination of Inability to Comply:* If the Locality, the Authority or VEDP shall reasonably determine at any time prior to the Performance Date (a "Determination Date") that the Company is unable or unwilling to meet and Maintain its Targets by and through the Performance Date, and if the Locality, the Authority or VEDP shall have promptly notified the Company of such determination, the Company must repay to the Authority all of the proceeds of the Grants previously disbursed to the Company. In such event, the Authority and the Locality, as applicable, will repay to VEDP all of the COF Grant proceeds not previously disbursed to the Company. Such a determination will be based on such circumstances as a filing by or on behalf of the Company under Chapter 7 of the U.S. Bankruptcy Code, the liquidation of the Company, an abandonment of the Facility by the Company or other similar significant event that reasonably demonstrates the Company will be unable or is unwilling to satisfy the Targets for the Grants.

(d) ***Repayment Dates:*** ***Such repayment shall be due from the Company to the Authority within ninety days of the Performance Date or the Determination Date, as applicable.*** Any moneys repaid by the Company to the Authority hereunder shall be repaid by the Authority to the Locality and any COF Grant proceeds shall be repaid by the Locality promptly to VEDP for redeposit into the Commonwealth's Development Opportunity Fund. Any funds received by the Authority without designation made by the Company as to the source of the funds, shall be allocated to the amounts owed to the Locality and the VEDP as follows until the Grants are paid in full: 50% to the VEDP and 50% to the Locality. The Locality and the Authority shall use their best efforts to recover such funds, including legal action for breach of this Agreement. Neither the Locality nor the Authority shall have any responsibility for the repayment of any sums payable by the Company hereunder unless said sums have been received by the Authority from the Company.

Section 6. Company Reporting.

(a) ***Progress Reporting:*** The Company shall provide, at the Company's expense, detailed verification reasonably satisfactory to the Locality, the Authority and VEDP of the Company's progress on the Targets. Such progress reports will be provided annually, starting at September 1, 2018, and covering the period through the prior June 30. Further, the Company shall provide such progress reports at such other times as the Locality, the Authority or VEDP may reasonably require. Although not required, the report may be in the form attached hereto as Exhibit A.

With each such progress report, the Company shall report to VEDP the amount paid by the Company in the prior calendar year in Virginia corporate income tax. VEDP has represented to the Company that it considers such information to be confidential proprietary information that is exempt from public disclosure under the Virginia Freedom of Information Act and that such information will be used by VEDP solely in calculating aggregate return on invested capital analyses for purposes of gauging the overall effectiveness of economic development incentives.

(b) ***Final Report:*** The Company shall provide, at the Company's expense, detailed verification reasonably satisfactory to the Locality, the Authority and VEDP of the Company's achievement of the Targets. Such verification shall include submission of paid invoices supporting the Capital Investment made at the Facility. The final report may be submitted after the Performance Date, but no later than sixty (60) days after the Performance Date. Although not required, the report may be in the form attached hereto as Exhibit B.

(c) ***Verification of Capital Investment:*** The Company hereby authorizes the Locality, including the Locality's Commissioner of the Revenue and Treasurer, to release to VEDP the Company's real estate tax, business personal property tax and machinery and tools tax information. Such information shall be marked and considered confidential and proprietary and shall be used by VEDP solely for verifying satisfaction of the Capital Investment Target. If the Locality, the Office of the Commissioner of the Revenue or the Office of the Treasurer should require additional documentation or consents from the Company to access such information, the Company shall promptly provide, at the Company's expense, such additional documentation or consents as the Locality, the Authority or VEDP may reasonably request. In accordance with

Virginia Code Section 58.1-3122.3, VEDP is entitled to receive the Company's real estate tax, business personal property tax and machinery and tools tax information from the Locality's Commissioner of the Revenue.

In addition to the verification data described above, in the sole discretion of the Locality, or of the Authority, or of VEDP, the Locality, the Authority or VEDP, respectively, may require such other documentation or audits as may be reasonably required to properly verify the Capital Investment.

(d) *Verification of New Jobs and Wages:* If requested by VEDP, the Company shall provide to VEDP copies of the Company's quarterly filings with the Virginia Employment Commission covering the period from December 1, 2017 through the Performance Date. In accordance with Virginia Code Section 60.2-114, VEDP is entitled to receive the Company's employment level and wage information from the Virginia Employment Commission.

Should the Company ever have business locations in the Commonwealth outside of the Locality, the Company agrees that its reports to the Virginia Employment Commission with respect to its employees at those other locations will be reported at the facility-level and not at the company-level.

In addition to the verification data described above, in the sole discretion of the Locality, or of the Authority, or of VEDP, the Locality, the Authority or VEDP, respectively, may require such other documentation or audits as may be reasonably required to properly verify the New Jobs.

Section 7. Notices.

Formal notices and communications between the Parties shall be given either by (i) personal service, (ii) delivery by a reputable document delivery service that provides a receipt showing date and time of delivery, (iii) mailing utilizing a certified or first class mail postage prepaid service of the United States Postal Service that provides a receipt showing date and time of delivery, or (iv) delivery by facsimile or electronic mail (email) with transmittal confirmation and confirmation of delivery, addressed as noted below. Notices and communications personally delivered or delivered by document delivery service shall be deemed effective upon receipt. Notices and communications mailed shall be deemed effective on the second business day following deposit in the United States mail. Notices and communications delivered by facsimile or email shall be deemed effective the next business day, not less than 24 hours, following the date of transmittal and confirmation of delivery to the intended recipient. Such written notices and communications shall be addressed to:

if to the Company, to:

idX Impressions, LLC
11032 Tidewater Trail
Fredericksburg, VA 22401
Attention: General Manager

with a copy to:

idX Impressions, LLC
One Rider Trail Plaza Drive
Suite 400
Earth City, Missouri 63045

Attention: General Counsel

if to the Locality, to:

with a copy to:

County of Spotsylvania, Virginia
P. O. Box 99
Spotsylvania, Virginia 22553
Facsimile: 540-507-7019
Attention: County Administrator

County of Spotsylvania, Virginia
P. O. Box 308
Spotsylvania, Virginia 22553
Facsimile: 540-507-7028
Attention: County Attorney

if to the Authority, to:

with a copy to:

Economic Development Authority of the
County of Spotsylvania, Virginia
9019 Old Battlefield Boulevard
Suite 310
Spotsylvania, Virginia 22553
Facsimile: 540-710-7207
Attention: Chair

Economic Development Authority of the
County of Spotsylvania, Virginia
c/o Hefty, Wiley & Gore, P.C.
100 West Franklin Street
Suite 300
Richmond, Virginia 23220
Facsimile: 804-225-8728
Attention: Brendan Hefty

if to VEDP, to:

with a copy to:

Virginia Economic Development Partnership
One James Center, Suite 900
901 East Cary Street
Post Office Box 798 (zip: 23218-0798)
Richmond, Virginia 23219
Facsimile: 804.545.5611
Email: moret@yesvirginia.org
Attention: President and CEO

Virginia Economic Development Partnership
One James Center, Suite 900
901 East Cary Street
Post Office Box 798 (zip: 23218-0798)
Richmond, Virginia 23219
Facsimile: 804.545.5611
Email: smcninch@yesvirginia.org
Attention: General Counsel

Section 8. Miscellaneous.

(a) *Entire Agreement; Amendments:* This Agreement constitutes the entire agreement among the parties hereto as to the COF Grant and the Local Grant and may not be amended or modified, except in writing, signed by each of the parties hereto and consented to by VEDP. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The Company may not assign its rights and obligations under this Agreement without the prior written consent of the Locality, the Authority and VEDP.

(b) *Governing Law; Venue:* This Agreement is made, and is intended to be performed, in the Commonwealth and shall be construed and enforced by the laws of the Commonwealth. Jurisdiction and venue for any litigation arising out of or involving this Agreement shall lie in the Circuit Court of the County of Spotsylvania, and such litigation shall be brought only in such court.

(c) **Counterparts:** This Agreement may be executed in one or more counterparts, each of which shall be an original, and all of which together shall be one and the same instrument.

(d) **Severability:** If any provision of this Agreement is determined to be unenforceable, invalid or illegal, then the enforceability, validity and legality of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.

(e) **Attorney's Fees:** Attorney's fees shall be paid by the party incurring such fees.

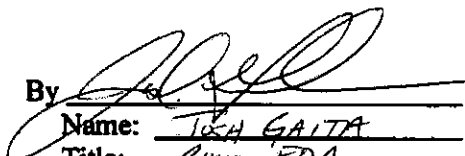
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IN WITNESS WHEREOF, the parties hereto have executed this Performance Agreement as of the date first written above.

**COUNTY OF SPOTSYLVANIA,
VIRGINIA**

By _____
Name: _____
Title: _____
Date: _____

**ECONOMIC DEVELOPMENT
AUTHORITY OF THE COUNTY OF
SPOTSYLVANIA, VIRGINIA**

By 
Name: TISHA GAITA
Title: CHAIR, EDA
Date: 8/30/18

IDX IMPRESSIONS, LLC


By 
Name: Terrence L. Schulte
Title: CEO
Date: 5/10/2018

Exhibit A: Annual Progress Report Form

Exhibit B: Final Report Form