

# Regional Insertion Order Agreement Terms and Conditions

- 1. NCM Services.** Subject to the terms of this Agreement, NCM will arrange for the Advertising to be exhibited as specified in each Order entered into under this Agreement. Notwithstanding the foregoing, the exhibition of the Advertising and performance by NCM of its obligations under this Agreement, will be excused to the extent that (and may be delayed if) Advertiser fails to perform its obligations under this Agreement in a timely manner or otherwise fails to comply with the terms of this Agreement. ANY UNEXCUSED FAILURE BY NCM TO PERFORM ANY OBLIGATION UNDER THIS AGREEMENT WILL AFFECT ONLY THE OBLIGATION WITH RESPECT TO WHICH THE FAILURE OCCURRED AND WILL IN NO WAY AFFECT ANY OTHER OBLIGATIONS OF NCM UNDER THIS AGREEMENT. ADVERTISER'S SOLE AND EXCLUSIVE REMEDY FOR ANY SUCH UNEXCUSED FAILURE BY NCM WILL BE LIMITED TO NCM'S REPERFORMANCE. SOLELY OF THOSE OBLIGATIONS WITH RESPECT TO WHICH THE FAILURE OCCURRED WITHIN A REASONABLE TIME PERIOD FOLLOWING NOTICE OF THE FAILURE FROM ADVERTISER AND WILL NOT AFFECT ANY OTHER OBLIGATIONS OF NCM UNDER THIS AGREEMENT.
- 2. In-Theatre Advertising.** All In-Theatre Advertising or other content will be subject to any audience or advertising restrictions or limitations imposed on NCM by motion picture studios, producers, distributors, exhibitors or other third parties. In addition, in its sole and absolute discretion, NCM may elect to not exhibit or present any In-Theatre Advertising or other content before any motion picture or movie rating. Any screen count or theatre locations for In-Theatre Advertising set forth on an Order are approximate and the actual screen count and theatre locations will be mutually agreed upon by the parties or selected by NCM in its reasonable discretion.
- 3. Internet and Online Advertising.** The American Association of Advertising Agencies (AAAA) Interactive Advertising Bureau (IAB) Standard Terms and Conditions for Internet Advertising for Media Buys One Year or Less, Version 3.0 (the "Terms") a copy of which is available upon request from NCM, are incorporated into this Agreement for all Internet and online Advertising purchased under this Agreement. "Colorado" and "Denver County, Colorado" are inserted into the respective placeholders in Section XIV(d) of the Terms. If there is no Agency for this Insertion Order, "Advertiser" replaces "Agency" in all instances in the Terms and Section III(c) of the Terms is deleted. The terms of this Agreement will control over any contradictory terms set forth in the Terms in the event of a conflict between this Agreement and the Terms.
- 4. Fees and Payment.** Advertiser will pay all fees as specified on each Order under the terms set forth on that Order and in these Terms and Conditions. If Advertiser fails to pay NCM any undisputed amount when due, Advertiser will be obligated to pay interest on the unpaid amount from the date such unpaid amount was due until it is paid at the rate of 12% per annum.
- 5. Advertiser Obligations.** In addition to the other obligations of Advertiser set forth in this Agreement, Advertiser will, at its expense, and at its risk of loss, provide NCM with the Advertising material as required by NCM at least 7 to 20 business days (dependent upon Advertising vehicle selected) in advance of the date scheduled by NCM for transfer of the materials for use or production as Advertising.
- 6. Content.**
- 6.1 Advertiser Content.** All advertising, information, data, text, photographs, videos, images, audio, call to action, and other content ("Content") provided by Advertiser for use in the Advertising ("Advertiser Content"), as well as the Advertising itself, is subject to prior approval by NCM. All Advertiser Content must be in compliance with the Media Specifications, Creative Deadlines and Advertising Guidelines at <http://adspecs.ncm.com>. Advertiser Content shall not include the exhibition or display of any trademark, service mark, logo or other branding of a third party, without the prior written approval of NCM. NCM may reject any Advertiser Content of Advertising for any reason, provided that NCM has no obligation to review any Advertiser Content or Advertising for compliance with this Agreement or any applicable law, rule, or regulation. Advertiser will remain solely responsible for any liability arising from the Advertiser Content or Advertising, including but not limited to any laws relating to obscenity, defamation, trade libel, the right of publicity or likeness, the right of or to privacy, any laws relating to intellectual property, and any laws relating to advertising. If any Advertiser Content or Advertising is rejected by NCM, Advertiser will promptly replace the Advertiser Content or Advertising with Advertiser Content or Advertising acceptable to NCM so as not to delay the schedule for the display of the Advertising. Advertiser will maintain back-up copies of all Advertiser Content and Advertising and NCM will not be liable for loss or damage to any Advertiser Content or Advertising. Advertiser agrees to and hereby does grant to NCM all rights, authorizations, consents, licenses, and clearances (collectively, "Licenses") necessary or appropriate for the exhibition of the Advertising and the performance by NCM of its other obligations under this Agreement, including, without limitation, all Licenses necessary for the public performance of musical compositions. Advertiser also grants NCM a limited license to use and display portions of the Advertising solely in connection with the promotion of NCM's business.
- 6.2 NCM Content.** All Content, including, without limitation, any derivatives, modifications or new versions of any Advertiser Content prepared or delivered by NCM under this Agreement ("NCM Content") and all intellectual property rights therein and applicable thereto, are and will remain the sole and exclusive property of NCM. Advertiser agrees that NCM will retain sole and exclusive title to all NCM Content and agrees to and hereby makes all assignments necessary to provide NCM such sole and exclusive title. Advertiser receives no rights or licenses in or to any NCM Content (or in or to any NCM trademarks) under this Agreement and NCM expressly reserves all such rights.
- 7. Promotional Materials.** All materials distributed or to be distributed by or on behalf of Advertiser as part of or in connection with the Advertising, including, without limitation, toys, food, objects or other materials ("Promotional Materials") will be delivered to locations (at the sole expense of Advertiser and with Advertiser bearing all risk of loss) in accordance with the procedures, specifications and deadlines established by NCM. Certain Promotional Materials, including, without limitation, lobby displays, are subject to NCM and theatre affiliate approval, and their final placement is determined by theatre management. At its discretion, NCM may delay the distribution of Promotional Materials. Certain Promotional Material, as determined by NCM, will contain the following statement: "THIS PROMOTION IS NOT ENDORSED BY NCM. THIS THEATRE OPERATOR OR ANY OF THEIR AFFILIATES, BY HILING OUT THIS FORM, YOU WILL OR CAN BE SOLICITED."
- 8. Representations and Warranties.** Advertiser represents and warrants to NCM that: (1) Advertiser has the legal right to enter into this Agreement and to perform its obligations under the Agreement; (2) Advertiser has all rights necessary to enable NCM to exercise the rights granted under this Agreement; (3) the exhibition and other use of the Advertiser Content and Advertising, the distribution and other use of the Promotional Materials, and the other activities of Advertiser and obligations of NCM under this Agreement will not violate applicable local, state and federal laws, rules, and regulations, including, without limitation, laws and regulations governing privacy and email spam, or any self-regulatory rules or guidelines that are applicable to, or to which the Advertiser, the agency or the Advertiser Content, Advertising or Promotional Materials may be subject, or any duty toward or rights of any third party; (4) all information and data provided to NCM in connection with this Agreement is correct and current; (5) Advertiser will not collect any personally identifiable information (including, without limitation, any e-mail addresses, full names, mailing addresses and phone numbers of theatre patrons), or transfer any such information to any third party, without the prior written approval of NCM; (6) the Advertiser Content and Advertising do not contain any viruses, Trojan horses, worms, spyware or any other similar software, data or programs that may damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data, information or property of another; (7) the Advertiser Content, Advertising and Promotional Materials are not, in whole or in part, pornographic, obscene, abusive, threatening, indecent, vulgar, defamatory, harassing, do not otherwise constitute trade libel, violation of the right of publicity, or an invasion of privacy, do not violate any other laws relating to advertising, and are not otherwise objectionable or unlawful; (8) the Advertiser Content, Advertising, and Promotional Materials are not false or misleading; (9) the Advertiser Content, Advertising and Promotional Materials do not imitate, violate or misappropriate any third party copyright, trademark, right of or to privacy, publicity or likeness, or other intellectual property of

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agency or media buyer for a client, such Advertiser and its client shall be jointly and severally responsible for all payments hereunder. Advertiser covenants that if Advertiser at any time fails to have all rights necessary to enable NCM to perform its obligations and exercise its rights under this Agreement, Advertiser will obtain all such rights, and will be solely responsible for any liability of either party arising out of any claim, allegation, suit or proceeding alleging that either party does not have such rights.

**9. Disclaimer and Limitation of Liability.** NCM PROVIDES ALL NCM CONTENT AND ALL SERVICES PERFORMED BY NCM UNDER THIS AGREEMENT "AS-IS" AND "AS-AVAILABLE." NCM MAKES NO REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, REGARDING THE NCM CONTENT OR SUCH SERVICES, AND ADVERTISER HAS NOT RELIED ON ANY REPRESENTATIONS OR WARRANTIES OF NCM REGARDING THE NCM CONTENT OR SUCH SERVICES. NCM EXPRESSLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES REGARDING THE NCM CONTENT AND SUCH SERVICES, INCLUDING, WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. NCM'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT DURING THE 3 MONTH PERIOD IMMEDIATELY PRECEDING THE AMOUNT OF FEES ACTUALLY PAID TO NCM UNDER THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, WILL NOT EXCEED THE EVENTS GIVING RISE TO SUCH LIABILITY. IN NO EVENT WILL NCM BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, PUNITIVE, SPECIAL, OR INCIDENTAL DAMAGES, INCLUDING WITHOUT LIMITATION ANY DAMAGES RELATING TO LOST DATA, LOST REVENUE OR PROFITS, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, ARISING FROM OR RELATING TO THIS AGREEMENT, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE), EVEN IF NCM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**10. Indemnification.** Advertiser is responsible for and will indemnify, defend, and hold harmless NCM and its subsidiaries and affiliates, and their owners, officers, directors, employees and agents, from and against any and all direct and indirect losses, damages, liabilities, costs and expenses (including reasonable attorneys' fees) resulting from or arising out of any: (1) actual or alleged breach by Advertiser of a provision of this Agreement, (2) negligence or willful misconduct on the part of Advertiser, (3) exhibition, distribution, display, performance, reproduction, or other use by NCM of the Advertising, Advertiser Content or Promotional Materials, or (4) damage to property or injury to or death of any person directly or indirectly caused by any use or misuse of any Advertiser Content or Advertising, including without limitation, and promotional materials or other packaging or materials used in connection therewith. NCM will provide Advertiser with notice of any such claim or allegation, and NCM has the right to participate in the defense of any such claim at its expense. "To the extent provided for under the Constitution and Laws of the State of Texas.

**11. Termination and Remedies.** NCM may terminate this Agreement immediately upon any breach by Advertiser of this Agreement (in addition to any other available remedy) or upon not less than 30 days notice to Advertiser for any other reason. Upon termination for breach by Advertiser, all fees paid for Advertising which has not been exhibited will be forfeited by Advertiser. Upon any termination, NCM is not required to preserve or maintain any Advertiser Content or Advertising. If Advertiser desires NCM to provide Advertiser with a copy of any Advertiser Content or Advertising, Advertiser must notify NCM in writing within 60 days of the last exhibition of the Advertising (such copy to be provided at Advertiser's sole expense).

**12. Cancellation.** Advertiser may not modify or cancel this Agreement except by written consent of NCM.

**13. Insurance.** Advertiser will obtain a general liability insurance policy (or policies) covering such advertising, with no unusual exclusions, and with policy limits of not less than \$1,000,000 per occurrence and \$3,000,000 in the aggregate. Advertiser will also obtain an advertising errors and omissions policy with similar coverage. NCM and its affiliates will be named as additional insured's on such policy (or policies), and the policy (or policies) will provide that it (or they) will not be subject to modification or cancellation without at least thirty (30) days' prior written notice to NCM. Upon request, Advertiser will furnish NCM with a certificate of insurance evidencing the foregoing coverage before the advertising is exhibited.

**14. Additional Terms.** Advertiser may not assign or otherwise transfer this Agreement or any of Advertiser's rights hereunder without the prior permission of NCM. Any attempt to do so in violation of the foregoing sentence will be null and void. This Agreement will be binding on the parties and upon their heirs, personal representatives, executors, administrators, successors and assigns. The parties agree for themselves and their heirs, personal representatives, executors, administrators, successors or assigns to execute any instruments and to perform any acts that may be necessary or proper to carry out the purposes of this Agreement. This Agreement will be governed by the laws of the State of Colorado excluding its conflict of laws principles. The parties hereby irrevocably consent to the exclusive jurisdiction and venue in the state and federal courts sitting in Denver, Colorado for any dispute concerning the interpretation or effect of this Agreement. In all such disputes arising under this Agreement, the parties expressly waive all constitutional and statutory rights to trial by jury. In any action to enforce the terms of this Agreement, the prevailing party will be entitled to recover all of its costs relating thereto, including, without limitation, attorneys' fees, court costs and any other costs of collection. The relationship between the parties under this Agreement is one of independent contractors. The waiver by either party of a breach of any provision of this Agreement will not operate or be interpreted as a waiver of any other or subsequent breach. If any provision of this Agreement is deemed unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect. Any failure or delay in performance by NCM will be excused (and will not constitute a breach of this Agreement) to the extent due to any cause not reasonably within NCM's control, including, without limitation, third party acts, omissions or failures, casualty, labor disputes, governmental action or acts of God. This Agreement sets forth the entire understanding of the parties and supersedes any and all prior oral and written agreements or understandings between the parties regarding the subject matter of this Agreement.

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9110 East Nichols Avenue, Suite 200 \* Centennial, Colorado 80112 \* 800.828.2828

publicity or likeness, or other intellectual property or proprietary right; and (10) the Advertiser Content, Advertising and Promotional Materials will be free from defects, materials or workmanship. If Advertiser executes this contract as an agency or media buyer for a client, such Advertiser and its client shall be jointly and severally responsible for all payments hereunder. Advertiser covenants that if Advertiser at any time fails to have all of his necessary to enable NCM to perform its obligations and exercise its rights under this Agreement, Advertiser will obtain all such rights, and will be solely responsible for any liability of either party arising out of any claim, allegation, suit or proceeding alleging that either party does not have such rights.

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14. **Additional Terms.** Advertiser may not assign or otherwise transfer this Agreement or any of Advertiser's rights hereunder without the prior permission of NCM. Any attempt to do so in violation of the foregoing sentence will be null and void. This Agreement will be binding on the parties and upon their heirs, personal representatives, executors, administrators, successors and assigns. The parties agree for themselves and their heirs, personal representatives, executors, administrators, successors or assign to execute any instruments and to perform any acts that may be necessary or proper to carry out the purposes of this Agreement. This Agreement will be governed by the laws of the State of Colorado excluding its conflict of laws principles. The parties hereby irrevocably consent to the exclusive jurisdiction and venue either in the state and federal courts sitting in Denver, Colorado, or in the state and federal courts where Advertiser is located, as selected by NCM in its sole discretion for any dispute concerning the interpretation or effect of this Agreement. In all such disputes arising under this Agreement, the parties expressly waive all constitutional and statutory rights to trial by jury. In any action to enforce the terms of this Agreement, the prevailing party will be entitled to recover all of its costs relating thereto, including, without limitation, reasonable attorneys' fees, court costs and any other costs of collection. The relationship between the parties under this Agreement is one of independent contractors. The waiver by either party of a breach of any provision of this Agreement will not operate or be interpreted as a waiver of any other or subsequent breach. If any provision of this Agreement is deemed unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect. Any failure or delay in performance by NCM will be excused (and will not constitute a breach of this Agreement) to the extent due to any cause not reasonably within NCM's control, including, without limitation, third party acts, omissions or failures, casualty, labor disputes, governmental action or acts of God. This Agreement sets forth the entire understanding of the parties and supersedes any and all prior oral and written agreements or understandings between the parties regarding the subject matter of this Agreement.

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