

**NATIONAL CINEMEDIA, LLC**  
**Standard Media Terms and Conditions (Rev. 12-31-21)**

The Insertion Order or other agreement ("**Order**") between National CineMedia, LLC ("**NCM**") and Advertiser (whether executed by Advertiser or an agency or media buyer on behalf of Advertiser) for the NCM services described below ("**NCM Services**") is non-cancellable by Advertiser and is subject to the following terms and conditions ("**Agreement**"):

**1. NCM Services.** Subject to Advertiser's compliance with this Agreement, NCM will use commercially reasonable efforts to cause the advertising identified in the Order ("**Advertising**") to be displayed as specified in the Order. Inventory for Advertising placement is subject to availability, and NCM may substitute inventory, screens, showings, and ratings in NCM's reasonable discretion upon notice to Advertiser. NCM does not make any representations or warranties regarding number of impressions for Advertising not sold on an impression basis. For Advertising sold on an impression basis, NCM shall deliver Advertising based on the total number of impressions set forth in the Order. Exact timing of Advertising display or impressions over the course of any Advertising campaign may vary from estimates due to actual movie attendance, among other factors.

**2. In-Theatre Advertising and Promotions.** In-theatre Advertising will be displayed on movie auditorium screens or on the lobby entertainment network. In-theatre Advertising that is not sold on an impression basis will be displayed each week on a per screen or per theatre basis and will be deemed to be delivered by NCM if it is displayed in a majority of showings on a single screen or in a single theatre during the applicable week. Timing of theatre lighting is outside of NCM's control. All materials to be distributed to theatre patrons by or on behalf of Advertiser, including lobby promotional material ("**Promotional Materials**"), will be delivered to locations at Advertiser's sole expense, with Advertiser bearing all risk of loss. Final placement of Promotional Materials is determined by theatre management. NCM may, in its discretion, (i) delay the distribution of Promotional Materials, or (ii) require Promotional Materials to include disclaimers provided by NCM or its location or media providers.

**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, located at [https://www.iab.com/wp-content/uploads/2015/06/IAB\\_4As-tsandcs-FINAL.pdf](https://www.iab.com/wp-content/uploads/2015/06/IAB_4As-tsandcs-FINAL.pdf) (the "**IAB Terms**"), are incorporated by reference into this Agreement for all internet Advertising purchased under this Agreement. "Colorado" and "City and County of Denver, Colorado" are inserted into the respective placeholders in Section XIV(d) of the IAB Terms. If there is no Agency for the Order, "Advertiser" replaces "Agency" in all instances in the IAB Terms and Section III(c) of the IAB Terms is deleted. In the event of any conflict between this Agreement and the IAB Terms, this Agreement will control.

**4. Fees and Payment.** NCM may require Advertiser to pay fees in advance. Advertiser will pay all other fees within 30 days of invoice. If Advertiser fails to pay NCM any undisputed amount when due, Advertiser will pay interest on the unpaid amount at the lower of (a) 18% per annum, or (b) the highest rate permitted by law.

**5. Content.**

**5.1 Advertiser Content.** The Advertising, Promotional Materials, and all information, data, text, photographs, videos, names, images, likenesses, voiceovers, music, audio, calls to action, trademarks, and other content provided by or for Advertiser ("**Advertiser Content**") is subject to (a) the procedures, specifications, guidelines, and deadlines at <http://adspecs.ncm.com> or otherwise provided by NCM or its location or media providers, (b) all restrictions and limitations imposed by law, rule, or regulation (including self-regulatory rules and guidelines) or by any third party, and (c) prior and on-going approval by NCM and its location and media providers. NCM or any location or media provider may reject or elect not to display any Advertising at any location or in any medium where the Advertising would not be appropriate (e.g., before any motion picture with a particular movie rating) or not permitted. If any Advertising is rejected, Advertiser will promptly replace the Advertising with Advertising acceptable to NCM and its location and media providers so as not to delay the schedule for display of the Advertising. NCM reserves the right to make changes to Advertiser Content to conform with technical specifications. NCM has no obligation to review any Advertiser Content for compliance with this Agreement or any content restrictions or limitations imposed by law, rule, or regulation (including self-regulatory rules and guidelines) or by any third party. Except for NCM Content, all Advertising provided by Advertiser is and will remain the sole and exclusive property of Advertiser, and except as otherwise provided in this Agreement, NCM receives no rights or licenses in or to any Advertising. Advertiser grants to NCM and its location and media providers the right to use, reproduce, distribute, display, perform, and modify (collectively, "**Use**") the Advertising, Advertiser Content, and Promotional Materials, as necessary or appropriate, for the performance by NCM and its location and media providers of their obligations relating to this Agreement and for promotion of NCM's business.

**5.2 NCM Content.** All materials, content, reports, information, and data prepared or provided by NCM under this Agreement ("**NCM Content**") is and will remain the sole and exclusive property of NCM or its licensors, and except as may otherwise be provided through a separate agreement (e.g., a creative license that is subject to a separate fee paid by Advertiser to NCM), Advertiser receives no rights or licenses in or to any NCM Content.

**6. Representations and Warranties.** NCM represents and warrants that NCM has the legal right and authority to enter into and provide the NCM Services under the Agreement. Advertiser represents and warrants that: (a) Advertiser (or the agency or media buyer entering into this Agreement on behalf of Advertiser) has the legal right and authority to enter into and perform its obligations under the Agreement; (b) Advertiser has obtained all rights, authorizations, consents, licenses, and clearances (collectively, "**Licenses**") necessary to enable NCM and its location and media providers to Use the Advertising, Advertiser Content, and Promotional Materials and to perform the obligations under this Agreement; (c) all information and data provided to NCM in connection with this Agreement is correct and current; (d) Advertiser will not collect any personal information or transfer such information to any third party, without the prior written approval of NCM; (e) the Advertising and Advertiser Content do not contain any viruses, Trojan horses, worms, time bombs, 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; (f) the Advertising, Advertiser Content, and Promotional Materials (i) are not in any way pornographic, obscene, abusive, threatening, indecent, vulgar, defamatory, disparaging, harassing, or otherwise objectionable, (ii) do not violate applicable laws, rules, or regulations (including self-regulatory rules and guidelines), and (iii) do not infringe, violate, or misappropriate any third party copyright, patent, trademark, trade secret, right of privacy or publicity, or any other intellectual property or proprietary right; (g) the Advertising, Advertiser Content, and Promotional Materials are not unfair or deceptive; and (h) the Advertising, Advertiser Content, and Promotional Materials are free from defects.

**7. Disclaimer and Limitation of Liability.** EXCEPT FOR NCM-OWNED APPS AND WEBSITES, NCM DOES NOT MAINTAIN ANY OF THE ADVERTISING LOCATIONS, MEDIA, OR TECHNOLOGY AND MAKES NO REPRESENTATION OR WARRANTY REGARDING THE CONDITION OR AVAILABILITY OF SUCH LOCATIONS, MEDIA, OR TECHNOLOGY. NCM PROVIDES ALL SERVICES, MEDIA, AND NCM CONTENT "AS-IS" AND "AS-AVAILABLE." NCM MAKES NO REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, REGARDING THE SERVICES, MEDIA, OR NCM CONTENT. NCM EXPRESSLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT. ADVERTISER IS SOLELY RESPONSIBLE FOR ANY LIABILITY ARISING FROM THE ADVERTISING AND ADVERTISER CONTENT, AND NCM WILL NOT BE LIABLE FOR LOSS OR DAMAGE TO ANY ADVERTISING OR ADVERTISER CONTENT. NCM'S TOTAL CUMULATIVE LIABILITY, WHETHER IN CONTRACT, TORT, OR OTHERWISE, WILL NOT EXCEED THE AMOUNT OF FEES PAID TO NCM UNDER THIS AGREEMENT, DURING THE 3 MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT(S) 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, EVEN IF NCM

~~HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.~~ ADVERTISER'S SOLE AND EXCLUSIVE REMEDY FOR NCM'S FAILURE TO DISPLAY ADVERTISING AS SET FORTH ON THE ORDER WILL BE FOR NCM TO MAKE AVAILABLE TO ADVERTISER AN ALTERNATIVE TIME PERIOD, LOCATION, OR MEDIA OF REASONABLY COMPARABLE VALUE FOR THE DISPLAY OF SUCH ADVERTISING ("MAKE-GOOD"). ADVERTISER MUST (I) REQUEST EACH MAKE-GOOD IN WRITING WITHIN ONE MONTH AFTER EACH FAILURE, AND (II) SCHEDULE MAKE-GOOD ADVERTISING FOR DISPLAY WITHIN ONE YEAR FOLLOWING SUCH FAILURE. NCM DOES NOT GUARANTEE THAT MAKE-GOOD WILL BE AVAILABLE FOR ANY PARTICULAR TIME PERIOD, LOCATION, MEDIA, RATING, OR IMPRESSION COUNT.

8. **Indemnification.** *To the extent allowed under the Constitution and laws of the State of Texas,*

8.1 Advertiser is responsible for and will indemnify, defend, and hold harmless NCM, its affiliates, its location, and media providers, and their respective owners, officers, directors, employees and agents, from and against any and all direct and indirect claims, 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 this Agreement; (2) Advertiser's acts or omissions; (3) Use by NCM or its location or media providers 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 Advertising, Advertiser Content, or Promotional Materials. NCM will provide Advertiser with notice of any such claim, and NCM has the right to participate in the defense of any such claim at its expense.

8.2 NCM is responsible for and will indemnify, defend, and hold harmless Advertiser, its affiliates, and their respective officers, directors, employees, and its agency or media buyer entering into this Agreement on behalf of Advertiser, 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 third party claims related to (1) NCM's gross negligence or willful misconduct; or (2) Use by NCM of the NCM Content, specifically excluding any Advertiser Content. Advertiser will provide NCM with notice of any such claim, and Advertiser has the right to participate in the defense of any such claim at its expense.

9. **Termination.** Either party may terminate this Agreement if the other party materially breaches the Agreement, and such breach remains uncured 30 days after the non-breaching party provides written notice to the breaching party.

10. **Insurance.** Advertiser will obtain and maintain a commercial general liability insurance policy with a financially sound and reputable insurance company in such amounts that are adequate for its business, including performance of its obligations under this Agreement.

11. **Confidentiality.** Advertiser acknowledges that information, knowledge, or data made available by NCM to Advertiser regarding NCM, its affiliates, its location and media providers, and each of their businesses and information, knowledge, or data of third parties, including but not limited to source code, schemata, algorithms, software techniques, processes, devices, know-how, inventions (whether or not patentable), methods, business ideas, forecasts, projections, designs, drawings, diagrams, data (including without limitation technical, marketing, accounting or financial data), pricing, fee information, posting information, post-buy analysis, post-campaign delivery reports, attendance reports, impression counts, proof of performance documentation, information from or about location or media providers, patents or potential or actual improvements on existing patents, business plans and strategies, negotiations and contracts, technical information, research, customer or vendor information and lists, and all other information constituting trade secrets and the terms of any agreement is confidential (collectively, "Confidential Information"), and Advertiser agrees (for itself, its agents, employees, and affiliates (collectively, the "Representatives")) that, it and its Representatives: (i) will not disclose any Confidential Information to any third party; (ii) will not use Confidential Information for any purpose other than to comply with its obligations under the Agreement; (iii) will implement the same controls to prevent unauthorized use or disclosure of the Confidential Information as it uses to prevent unauthorized use or disclosure of its own proprietary information of like nature, but using at least reasonable care. Advertiser will only disclose Confidential Information to its Representatives that have a need to know and who are subject to confidentiality obligations at least as restrictive as this Agreement.

12. **Additional Terms.** This Agreement will be binding on the parties and upon their heirs, personal representatives, executors, administrators, successors, and assigns. This Agreement will be governed by the laws of the State of ~~Colorado~~ *Texas*, without regard to conflict of laws principles. The parties hereby irrevocably consent to the exclusive jurisdiction and venue in the state and federal courts sitting in the ~~City and County of Denver, Colorado~~ *Kidalgo, Texas* for any dispute concerning the interpretation or effect of this Agreement. ~~In all such disputes arising under this Agreement, the parties expressly waive right to trial by jury.~~ 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 a party will be excused and will not constitute a breach of this Agreement to the extent due to any cause not reasonably within such party's control, including, without limitation, third party acts, omissions, or failures; labor disputes; natural disasters; pandemics; epidemics; disease outbreaks; shortage of materials; fire; earthquakes; floods; acts of war or terrorism; governmental action; or acts of God. This Agreement sets forth the entire understanding of the parties and supersedes all prior oral and written agreements or understandings regarding the subject matter of this Agreement. In the event of a conflict between this Agreement and any purchase order, insertion order, or other form provided by or for Advertiser, the terms of this Agreement control. NCM's location and media providers are intended third party beneficiaries of this Agreement. The Agreement may be executed in counterparts, each of which is deemed an original and all of which together constitute one document.

*Either Party may terminate this Agreement without cause upon sixty (60) days written notice to the other party. Parties may modify this Agreement by written mutual amendment.*

*To the extent allowed by the Texas Public Information Act,*

*INITIAL TO APPROVE MODIFICATIONS:*

NCM: *Huang*

09/14/22

COUNTY: \_\_\_\_\_