



MASTER PARTICIPATION AGREEMENT

This MASTER PARTICIPATION AGREEMENT (“Agreement”) is made by and between the Cinema Buying Alliance (“CBA”), an Independent Cinema Alliance (“ICA”) company, and each person, and entity represented by that person, who executes this Agreement as a participant in the CBA buying program (“Participant”).

The ICA is a not-for-profit trade association dedicated to the preservation and prosperity of American and Canadian independent cinemas, and the CBA is its wholly-owned for-profit LLC dedicated to providing a buying program for independent cinemas that strives to level the playing field for independents in the cost of certain goods and services.

Participants signing this Agreement desire to participate in the CBA’s buying program and to assist in good faith in the mission of aggregating the buying power of independent cinemas.

In consideration of the premises set forth above, the mutual promises and covenants set forth below and for other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, the parties, desiring to be legally bound, agree as follows.

1. Description of the Group Buying Program

(a) Purpose. The CBA buying program is formed to enhance the ability of its Participants to obtain cost-justified discounts, rebates, and more favorable payment terms with respect to their purchases of goods and services used in their cinema operations, and to assist industry manufacturers and suppliers in promoting their goods and services and in obtaining accurate information regarding product performance in the industry.

(b) Participation. Qualifying American and Canadian cinema operators may participate in the CBA buying program in two ways: (1) by joining the ICA, and being a dues-paying ICA member in good standing, and thus receiving complimentary participation in the CBA; or (2) by declining ICA membership but paying the separate CBA Participation Fee, which may, in the discretion of the ICA Board of Directors, be higher than the ICA dues structure.

(c) Managing Director. The CBA Managing Director negotiates with potential vendors toward deals that benefit Participants. Participant agrees to cooperate with the Managing Director in developing the best negotiating posture for independents.

(d) Limitations. Any ICA membership or CBA participation right may be limited, suspended or terminated for any breach of warranty or other term described herein and otherwise according to rules established by the ICA Board of Directors.

2. Term and Termination

(a) The term of this Agreement will be for the duration of Participant’s participation in the buying program, or until this Agreement is terminated as set forth herein.

(b) This Agreement may be terminated by either party upon 30 days written notice, provided that (i) any specific obligation already incurred under this Agreement or any Program Opt-In Agreement will persist beyond termination until duly discharged, unless expressly excused by the other party; (ii) termination will not excuse misuse of information gained through the buying program; and (iii) confidentiality obligations as detailed hereunder will survive termination of this Agreement.

(c) Upon termination of this Agreement, subject to the provisions of subsection (b), Participant will not have access to the CBA's buying program, or any specific programs therein, and will not attempt to obtain the benefits of the buying program through subterfuge and will not explicitly or implicitly represent to any vendor that it is a CBA participant. After a suitable time, depending on the reason for the termination, a former participant may re-apply for participation in the CBA, which application will be considered by the Managing Director, in consultation with the ICA Board and any relevant committee(s), and decided without unreasonable delay.

3. Participant's Warranty

Participant promises and warrants that it will participate in good faith and acknowledges that good-faith participation of CBA participants is the only way that the CBA can achieve its purposes. Participant's good faith participation includes the following:

(a) Participant will respect all confidential information and never reveal or exploit confidential information obtained through any CBA or ICA communication or transaction (as further detailed in Section 4 below concerning Confidentiality);

(b) Participant will never take information it gains from the CBA to negotiate any deal with another vendor (double dealing), and Participant specifically acknowledges that double dealing has a ruinous effect on a buying program;

(c) Participant will never opt in to a CBA program and then in bad faith fail to participate;

(d) In recognition of the critical importance of aggregating many independents in order to negotiate the best prices, Participant will use its best and good faith efforts to opt in to CBA programs, especially where, at a minimum, it makes economic sense for Participant to do so, regardless of existing vendor relations;

(e) Participant will monitor its profile information and always ensure that its member information is up-to-date and accurate;

(f) Participant will comply with all applicable state and federal antitrust laws, and seek legal counsel where circumstances or questions dictate its prudence;

(g) In the event of a dispute or grievance, Participant will use the dispute resolution provisions set forth in Section 7 hereunder;

(h) Participant will timely pay all approved vendors pursuant to the terms agreed upon with such vendors; and

(i) Participant will participate in CBA functions and programs to the extent practicable, timely provide responses to CBA requests for data and information, and make timely ICA or CBA dues payments.

4. Confidentiality

(a) Confidential Information. Participant agrees to maintain the strict confidentiality of all information (i) designated as "confidential," (ii) concerning pricing and other obviously sensitive information obtained from participation in this program, and (iii) which, in the common-sense business judgment of Participant a vendor or the CBA would not wish to be publicly disclosed ("Confidential Information"). Participant more specifically agrees that it will never disclose its ultimate price (net of rebate) for any particular program, and that the negotiated or actual amount of a rebate, if any, is strictly confidential and cannot be disclosed.

(b) Exception. Confidential Information does not include information, pricing or otherwise, that is already generally available to the public, or publicly disclosed by the vendor, or otherwise part of the public domain, or becomes so, through no fault of Participant, provided that: (i) Participant does not gratuitously add to the disclosure; and (ii) merely because some general information is publicly available, such as general pricing information, does not mean that CBA-specific information, such as specific pricing information, may be disclosed; and (iii) even if specific information is in the public domain, the prohibition against “double dealing” persists.

(c) Permitted Disclosures. Except as expressly provided otherwise in this Agreement, Participant may disclose Confidential Information: (i) to the extent required to those of its employees, agents and representatives who reasonably need to know such Confidential Information in order to advise or assist Participant in connection with the performance of its obligations or exercise of its rights granted or reserved in this Agreement, provided that any employee, agent or representative so informed be subject to appropriate confidentiality and non-disclosure agreement; (ii) as required by applicable law, provided, however, that Participant will limit any such disclosure to the minimum necessary to comply with the applicable law and cooperate with the CBA (or vendor) in maintaining as much confidentiality as possible; (iii) to the extent mutually agreed to in writing by the parties to this Agreement.

(d) Breach. Participant acknowledges that material breach of this confidentiality provision warrants, among other rights and remedies, expulsion from the CBA and the ICA.

(e) Survival. These confidentiality provisions will survive the termination or expiration of this Agreement for a period of two years.

5. Rights and Duties of the CBA.

(a) Management Power. The business and affairs of the CBA will be managed by the ICA Board of Directors.

(b) Delegation. The ICA Board may delegate powers of management to specific individuals and describe the scope of their authority. The ICA Board and/or its delegated representatives may conduct negotiations with potential vendors, which in their judgment may further the purposes of the CBA, whether or not such negotiations lead to the best possible deal that could have been obtained.

(c) Good Faith. The officers, employees, directors and agents of the ICA and the CBA will not be liable, responsible or accountable in damages or otherwise to the Participants for any action taken or failure to act on behalf of the CBA or ICA in good faith (unless such action or failure to act clearly constitutes gross negligence or willful or wanton misconduct), whether or not caused, or alleged to be caused, in whole or in part, by the joint or several negligence, breach of contract or other breach of duty on the part of the ICA, its officers, employees, directors or agents, or CBA, or its independent contractors, agents or employees.

(d) Disclaimer Regarding Any Vendor Goods or Services. The ICA and its officers, directors, employees, and agents, and the CBA and its independent contractors, agents and employees DO NOT MAKE, HAVE NOT MADE, WILL HAVE NO AUTHORITY TO MAKE, AND WILL NOT BE DEEMED TO MAKE OR HAVE MADE, ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, WRITTEN OR ORAL, WITH RESPECT TO THE GOODS AND SERVICES TO BE PURCHASED FROM ANY APPROVED VENDOR UNDER THE GROUP BUYING PROGRAM, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY AS TO ACCURACY IN ADVERTISING, DESIGN, COMPLIANCE WITH SPECIFICATIONS, QUALITY OF MATERIALS OR WORKMANSHIP, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, USE OR OPERATION, SAFETY, PATENT, TRADEMARK OR COPYRIGHT INFRINGEMENT OR TITLE. All such risks, as between Approved Vendors, ICA, CBA, and the Participants, are borne by the Participants. Without limiting the foregoing, neither the ICA nor the CBA will have any responsibility

or liability to the Participant or any other person with respect to the following, regardless of the negligence of the ICA or the CBA, or their officers, directors, employees and agents:

- (1) any liability, loss or damage caused or alleged to be caused directly or indirectly by any goods or services provided by an Approved Vendor, any inadequacy thereof or any deficiency or defect (latent or otherwise) therein, or any other circumstance in connection therewith;
- (2) the use, operation or performance of any supplies and services purchased from an Approved Vendor or any risks relating thereto;
- (3) any interruption of service, loss of business or anticipated profits, consequential or any other types of damages;
- (4) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any supplies or services purchased from an Approved Vendor; or
- (5) any failure to forward to the Participants any notice received from any Approved Vendor regarding the legality or use of any supplies or services available for purchase under the Program, it being understood that all such notices be sent by any and all Approved Vendors directly to the Participants.

(e) Participant may assert and enforce, at its sole expense and in its name, whatever claims and rights Participant may have against any Approved Vendor.

(f) The CBA may conduct negotiations with potential vendors, which in the CBA's judgment may further the purposes of the CBA, whether or not such negotiations lead to the best possible deal that could have been obtained. The CBA will never guarantee that the terms obtained from an Approved Vendor are the best deal that a CBA participant could obtain.

(g) The CBA may cause the assets of the CBA to be used in any manner which may further the purposes of the CBA and may delegate any powers herein to CBA agents or staff.

(h) The CBA may determine that a triggering event, such as a breach of Participant's warranty, warrants suspension or termination of a Participant's participation in the CBA, provided, however, that before such penalty, Participant is entitled to notice and the opportunity to be heard, as detailed further in Section 7.

6. Records and Accounting

(a) Proper and complete records and books of account of the business of the CBA will be maintained and accurately reflect Program transactions.

(b) The CBA will prepare an annual report describing CBA's activities. Any CBA participant in good standing is entitled to receive a copy of the CBA annual report.

7. Dispute Resolution

(a) The Parties hereto will use their best efforts to resolve any dispute, grievance or controversy informally by good faith negotiations. If good faith negotiations fail to resolve the matter, Participant is entitled to notice and the opportunity to be heard before any penalty, policy or decision affecting Participant takes final effect. Good faith negotiations will presumptively constitute "notice" unless Participant demands in writing formal notice of the penalty, policy or decision affecting Participant and the reasons therefor.

(b) If, after good faith negotiations, Participant still objects to any penalty, policy or decision of the CBA affecting Participant, Participant agrees that it will – before initiating any lawsuit, pre-litigation demand, demand for arbitration, or any other external dispute resolution procedure – make exclusive use of the **internal CBA dispute resolution procedures** described below, in order to give the parties a chance to resolve the matter without the expense and vexation of external dispute resolution, regardless whether Participant believes internal dispute resolution will be effective. Participant further agrees that failure to properly use internal dispute resolution entitles the CBA to

move for immediate dismissal of any external proceeding for breach of this provision and to recover attorney's fees and costs for all external proceedings.

- (1) Participant must file, within 30 days of the disputed penalty, policy or decision affecting Participant, a statement of its objection(s) and the reasons therefor.
- (2) Upon receiving Participant's statement of objection, the ICA Board of Directors will promptly convene a three-member panel ("Panel") consisting of members of the ICA board and/or professional staff, provided that no person with an actual or potential material financial interest in or clear bias as to the dispute is eligible for the Panel.
- (3) Within a reasonable time specified by the Panel, Participant may submit a statement, evidence, testimony and other materials it deems relevant to resolution of the dispute. The Panel may question the Participant and may solicit and consider other evidence it deems relevant to the matter.
- (4) After a reasonable period of deliberation and without undue delay, the Panel will issue its decision. The Participant may request that the decision be in writing.
- (5) The parties may by mutual agreement waive the internal dispute resolution procedures, for example in the event of legal complexity, and proceed directly to external arbitration.

(c) Any dispute, grievance or controversy which is not resolved by internal dispute resolution, or where internal dispute resolution is waived by mutual agreement, will be settled by **binding arbitration** in Dallas, Texas in accordance with the applicable rules of the American Arbitration Association. Participant understands and acknowledges that it will submit its claims to binding arbitration for complete and final resolution, and that it accordingly waives any right to trial by jury or appeal, other than the narrow grounds for appeal of arbitral decisions. Participant further understands and acknowledges that all claims known to Participant, or which should have been known to Participant, at the time of filing the demand for arbitration must be presented in the demand for arbitration or be forever waived.

(d) In the event the CBA seeks to enforce terms of this Agreement, or the terms of any Program Opt-In Agreement, against Participant, the CBA will inquire with Participant whether it will agree to be bound by a determination of the panel convened to decide the matter. If the Participant agrees to be bound, then the CBA, if it prevails, may not recover the costs of bringing such proceeding, including outside counsel costs. If the Participant does not agree to be bound, then the CBA may proceed directly to external arbitration, as outlined in subsection (c), and may recover, if it prevails to any material degree, all costs – including court costs, attorney's fees, and interest – associated with bringing such action. Moreover, the CBA will, whether it uses internal or external dispute resolution, be entitled to seek equitable relief, including specific performance, as well as all damages incurred as a result of the breach of the terms of this Agreement or any Program Opt-In Agreement.

8. Miscellaneous

(a) ICA as Intended Beneficiary. The ICA is an intended beneficiary of this Agreement and may enforce its terms.

(b) Satisfaction of Claims. Participant acknowledges and agrees that the CBA is a separate legal entity with the fullest autonomy consistent with ICA's legal and fiduciary obligations as sole owner of the CBA, and that as to any claims a Participant may have or assert arising in any respect from participation in or exclusion from the CBA, Participant may seek satisfaction only from assets segregated and belonging to the CBA and may not attempt to reach ICA assets. Any such attempt to reach ICA assets in contravention of this provision will entitle the ICA to recover the costs of any action defending against such attempt including costs and attorney's fees.

(c) Entire Agreement. This Agreement is intended by the CBA and all Participants as the final integrated expression of their agreement and as a complete and exclusive statement of the terms

thereof, all negotiations, considerations and representations between such parties having been incorporated herein.

(d) Notices. Each Participant will provide prompt written notice of any change of physical or electronic mail address. Notices, offers, consents and communications will be deemed to have been delivered and received: (i) in the case of personal delivery, or fax, on the date of such delivery; (ii) in the case of delivery by overnight courier, on the first business day after the date sent; (iii) in the case of mailing, on the third business date following such mailing; and (iv) in the case of electronic mail, on the date of transmission, provided no message of failed or aborted delivery is promptly received.

(e) Governing Law and Venue. This Agreement shall be governed by the laws of the State of Texas and shall be construed, enforced and performed in accordance with the Laws thereof. Venue for any action or proceeding arising out of, construing or enforcing this Agreement, subject to the Dispute Resolution provisions set forth in Section 7 above, will lie in the State of Texas, County of Dallas, and Participant waives all objections to such venue.

(f) Companies Bound. Any individual signing this Agreement warrants that he or she has authority to bind their cinema company or companies and the company or companies is/are so bound.

(g) Electronic Signatures. Electronic signatures of this Agreement and collateral agreements, such as Program Opt-In Agreements, fully suffice to bind the signing party.

(h) Successors and Assigns. This Agreement will inure to the benefit of the parties and their respective successors and assigns, legal representatives and heirs.

(i) Severability. Should any part of this Agreement, for any reason, be declared invalid, such decision will not affect the validity of any remaining portion, which remaining portion shall remain in full force and effect as if this Agreement had been executed with the invalid portion eliminated.

(j) Modifications and Waivers. No modification or waiver of any provision of this Agreement is valid unless in writing. The CBA may from time to time issue updates or modifications to this Agreement as changing business circumstances or fairness dictate, provided that Participant may opt out of this Agreement if it does not wish to be bound by any such update or modification. No departure from the terms of this Agreement will obligate the CBA to permit any subsequent departure; no waiver by the CBA of any of the terms of this Agreement or any breach by any Participant will obligate the CBA to waive thereafter any of said terms or any subsequent breach.

[Signatures, which may be electronic, on following page.]

CBA PARTICIPANT

- Check this box if you have read, understood, and agree to the foregoing Master Participation Agreement, sought counsel or guidance for any questions, and voluntarily enter into this Agreement.

By typing your name below, you are executing this binding contract.

Name: _____

Title: _____

Company: _____

Address of Headquarters/Main Location: _____

Participant's Telephone: _____

Participant's Email: _____

Date: _____

CINEMA BUYING ALLIANCE

Rob Del Moro _____

CBA Managing Director, on behalf of the CBA

Date: _____