

CINEMA BUYING GROUP-NATO PARTICIPANT AGREEMENT

This **CINEMA BUYING GROUP-NATO PARTICIPANT AGREEMENT** (“Agreement”) is made this ____ day of _____, ____ by and between CINEMA BUYING GROUP-NATO (“CBG-NATO”), a program of the National Association of Theatre Owners (“NATO”), and each of those persons or entities who shall execute this Agreement, or a counterpart hereof, as participants (“Participants”) in the CBG-NATO program.

WHEREAS, the Participants and CBG-NATO desire to enter into a group buying program to promote the purposes set forth herein subject to the terms and conditions set forth in this Agreement;

NOW, THEREFORE, 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. Formation of the Group Buying Program

(a) Purpose. CBG-NATO’s membership has historically included small, independent theatre operators, who cannot negotiate prices as favorable as those enjoyed by large national or regional theatre chains. CBG-NATO’s purpose is to offer an efficient group purchasing organization for member theatre operators in the development of pricing and promotional programs designed to promote cost-savings and revenue enhancement opportunities across a broad spectrum of membership for relevant goods and services used in the operation of motion picture exhibition companies. CBG-NATO will work, on behalf of the membership, to develop and maintain relationships with industry manufacturers and suppliers that align specifically with the stated goals of CBG-NATO and negotiate and manage mutually beneficial member programs on an ongoing basis.

(b) Separate Program Within NATO. CBG-NATO is a buying program for theatre owners and operators. CBG-NATO is financially self-supporting and has a separate dedicated bank account. The program has a separate website, and its principal place of business is determined by the location of its managing director. CBG-NATO’s managing director reports to the chair and vice-chair of NATO’s Independent Theatre Owners Committee.

(c) Group Buying Program. CBG-NATO intends to approach interested manufacturers, suppliers, and vendors of goods and services to the motion picture theatre industry concerning their potential participation in the group buying program (the “Program”). CBG-NATO will promote the Program by providing various services to participating manufacturers, suppliers, and vendors (hereinafter “Approved Vendors”), which services may include:

- (1) negotiation of terms and prices with potential vendors in the best interest of Program Participants;
- (2) promotion of Approved Vendors' products and services as part of negotiated programs;
- (3) vendor-paid advertising support for Approved Vendors on the CBG-NATO website and/or in CBG-NATO newsletters; and
- (4) technical assistance to reduce Approved Vendors' costs.

(d) Application Process. The opportunity to become a Participant in the Program will be open to all qualified motion picture theatre owners on a non-discriminatory basis. However, not all programs will be available to members outside the United States.. The managing director of CBG-NATO will determine the acceptability of any applicant to become a Participant based on such factors as the applicant's:

- (1) financial strength and condition;
- (2) anticipated volume of purchases under the Program;
- (3) stated intention to participate in and support the Program;
- (4) business ethics and history of honoring contractual obligations; and
- (5) commitment to designate an employee who will participate in CBG-NATO programs, calls and meetings.

2. Annual Dues and Assessments.

(a) Annual Dues. Participants may be required to pay dues to CBG-NATO in an amount established by the Managing Director, in consultation with the chair and vice chair of the Independent Theatre Owners Committee.

(b) Additional Assessments. CBG-NATO intends to be self-supporting. Additional assessments may accordingly become necessary to ensure the solvency of the Program. Other than assessments to ensure Program solvency, no additional assessments will be issued without a vote of the CBG-NATO participants.

(c) Fees paid by vendors. CBG-NATO may, but is not required to, include in contracts with vendors a requirement that the vendor pay an administrative fee or other fees to CBG-NATO.

(d) Separate Bank Account. Dues, assessments and fees paid by vendors will be deposited in a bank account dedicated exclusively to CBG-NATO's operating expenses.

3. Records and Accounting.

Proper and complete records and books of account of the business of CBG-NATO will be maintained by CBG-NATO. Such books and records of CBG-NATO will reflect all Program transactions and will be appropriate and adequate for CBG-NATO's business and for the carrying out of the provisions of this Agreement.

4. Reports.

CBG-NATO will prepare an annual report describing CBG-NATO's activities and financial standing. Any CBG-NATO participant in good standing is entitled to receive a copy of the CBG-NATO annual report. At the request of NATO's President, Executive Committee, or Board of Directors, CBG-NATO will produce such annual report, or equivalent document, establishing CBG-NATO's solvency and financial integrity.

5. Rights and Duties of CBG-NATO.

(a) Management Power. The business and affairs of CBG-NATO will be managed by the Managing Director, who is selected by and reports to the Chair and Vice Chair of NATO's Independent Theatre Owners Committee. Except as otherwise provided in this Agreement, the Participants hereby grant and delegate to the Managing Director the right, power and authority to do on behalf of CBG-NATO all things which, in his or her judgment, in consultation as appropriate with the Chair and Vice Chair of the Independent Theatre Owners Committee, are necessary, proper or desirable to further the purposes of CBG-NATO, including but not limited to the right, power and authority to do the following:

(1) conduct special meetings among Approved Vendors and/or Participants for any lawful purpose in furtherance of the Program;

(2) conduct negotiations with potential vendors, which in the Managing Director's judgment may further the purposes of CBG-NATO and the Program, whether or not such negotiations lead to the best possible deal that could have been obtained;

(3) solicit and sell advertising for the CBG-NATO website and/or in CBG-NATO newsletters, to vendors interested in selling goods and services to CBG-NATO members

(4) put questions to a vote of CBG-NATO Participants as necessary to carry out the goals of CBG-NATO, provided that no additional assessments will be issued without a vote of CBG-NATO Participants;

(5) refuse, in consultation with counsel for NATO and in conformity with NATO's Antitrust Compliance Policy, to disclose to any Participant confidential information which would tend to restrict competition in any manner among Participants or within the motion picture theatre industry generally;

(6) cause the assets of CBG-NATO to be used in any manner which, in the Managing Director's judgment, may further the purposes of CBG-NATO and the Program;

(7) delegate any of the foregoing to CBG-NATO staff; and

(8) determine that a triggering event, as described hereunder, warrants termination of a Participant's participation in CBG-NATO, and terminating such Participant's participation after providing to the Participant notice and an opportunity to be heard.

(b) Disclaimer. The officers, employees, directors and agents of NATO, and the managing director, employees and agents of CBG-NATO, 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 CBG-NATO in good faith (except when such action or failure to act 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 NATO, its officers, employees, directors or agents, or CBG-NATO, its officers, directors, employees or agents.

EACH PARTICIPANT ACKNOWLEDGES AND AGREES THAT NATO AND ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS, AND CBG-NATO AND ITS MANAGING DIRECTOR, EMPLOYEES, AND AGENTS 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 APPROVED VENDORS 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, NATO, CBG-NATO and the Participants, are borne by the Participants. Without limiting the foregoing, neither NATO nor CBG-NATO will have any responsibility or liability to the Participants or any other person with respect to the following, regardless of the negligence of NATO or CBG-NATO, 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.

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

(c) Satisfaction of Claims. Each Participant acknowledges and agrees that CBG-NATO is a separate program with the fullest autonomy consistent with NATO's legal and fiduciary obligations, and that as to any claims a Participant may have or assert arising in any respect from such Participant's participation in or exclusion from CBG-NATO, such Participant may seek satisfaction only from assets segregated and belonging to CBG-NATO, and may not attempt to reach NATO assets. Any such attempt to reach NATO assets in contravention of this provision will entitle NATO to recover the costs of any action defending against such attempt, including costs and attorneys fees. The parties to this Agreement acknowledge that NATO is an intended beneficiary of this provision and may enforce its terms.

(d) Fiduciary Responsibility. CBG-NATO's managing director and staff have a fiduciary responsibility for the safekeeping and use of all CBG-NATO funds.

6. Placement of Orders through CBG.

(a) No Requirements. Except as provided herein, no Participant will be required to place any order for any goods or services with an Approved Vendor. To obtain any discounts negotiated by CBG-NATO from any Approved Vendors, all Participant purchases of such goods and services from Approved Vendors must be made by placing such order(s) with either the Approved Vendor or, where appropriate, through CBG-NATO, as specified in each Vendor agreement.

(b) Confidentiality of Agreements with Approved Vendors. Participants will maintain the confidentiality of the terms of contracts negotiated by CBG-NATO, including prices negotiated by CBG-NATO. Participants are prohibited from revealing CBG-NATO's negotiated terms with a vendor to negotiate an equivalent or better arrangement with another vendor. Participants are also prohibited from using CBG-NATO's negotiated terms with a particular vendor to obtain equal or better terms from the same vendor. Violation of this provision may result in expulsion from CBG-NATO.

(c) Annual List of Vendors. At least annually, CBG-NATO will provide Participants with a list of Approved Vendors, a list of products offered for sale by each Approved Vendor under the Program and a tentative price list for all such products

showing the terms and conditions of sale. Such information may be conveyed to Participants by posting on CBG-NATO's website (currently www.cbgpurchasing.com). Based upon such information, each Participant may provide CBG-NATO with an annual commitment to purchase a specific volume of products offered under the Program. Participants have no obligation to purchase any products under the Program, but are expected to honor any annual commitments to purchase a specific volume of products through the Program. Commitments will be void if the Approved Vendor increases the price or changes the terms and conditions of sale as stated in the list of Approved Vendors.

(d) Timely Payment of Approved Vendor Invoices. Each Participant agrees to pay promptly all Approved Vendors pursuant to the terms agreed upon, from time to time, with such Approved Vendors. It is understood and agreed that, notwithstanding the obligation of each Participant to place all orders under the Program with the approved Vendor or through CBG, each Participant shall be invoiced directly by Approved Vendors. All goods and services to be delivered to each Participant under the Program will be directly delivered to, or performed for, such Participant by Approved Vendors.

(e) Compliance with Antitrust Laws. Each Participant agrees to comply fully with all applicable state and federal antitrust laws, and to seek its own legal counsel as required to comply with this provision.

(f) Participation. Each Participant agrees to attend meetings (participation by proxy counts as attendance), provide timely responses to CBG-NATO's requests for data and information, and make all payments to CBG-NATO within thirty days of invoice. Failure to participate may result in expulsion from CBG-NATO.

7. Meetings and Voting.

(a) Participants in CBG-NATO will meet at least once annually during the annual NATO convention, at which meeting all business may be conducted.

(b) Additional meetings may be scheduled by the Managing Director. Such meetings may occur telephonically.

(c) Any votes taken at CBG-NATO meetings will be decided by majority vote. A quorum for votes will be one-half of the total Participants in good standing as of two weeks before the vote is taken.

(d) Participants may vote by proxy in a manner to be determined by the Managing Director. A proxy vote counts as presence at the meeting in which the vote is taken. Participants agree to use their best efforts to return their proxy forms whenever they anticipate that they may not be able to attend a CBG-NATO meeting in person (or telephonically, as the case may be). A Participant who submits a proxy and then attends the meeting or vote may rescind that proxy and cast his or her vote as though he or she had never submitted a proxy.

(e) Notice of CBG-NATO meetings and votes will be provided no more than 60 days and no less than ten days before such meeting or vote. Notice may be provided by electronic mail.

8. Termination.

(a) CBG-NATO may terminate a Participant's participation in CBG-NATO upon the occurrence of any of the following events:

(1) an assignment of the assets or business of such Participant for the benefit of its creditors, or appointment of a trustee or receiver to administer or conduct such Participant's business or affairs, or the filing of a voluntary or involuntary petition in any court of bankruptcy;

(2) if such Participant is an individual, the death of such Participant;

(3) if such Participant is a corporation, the sale or transfer at any one time, and from time to time, of fifty-one percent (51%) or more of any class of common stock of such Participant to any person or entity other than an existing stockholder of such Participant, or any other sale, pledge, hypothecation, assignment or transfer of such stock so as to change the controlling interest of such Participant;

(4) if such Participant is a corporation or other business entity, the sale or transfer for consideration to a third party or distribution to Participant's stockholders or equity holders of substantially all of such Participant's assets;

(5) the merger or consolidation of such Participant into another business entity or the merger or consolidation of another business entity into or with such Participant;

(6) a violation of the confidentiality requirements of paragraph 6(b) of this Participation Agreement;

(7) the violation of the terms or conditions of this Participation Agreement or any other agreement between such Participant and CBG-NATO;

(8) if such Participant attains enough market share of the overall domestic screen count, so as to no longer fit within the scope of CBG-NATO's membership of small, independent theatre operators.

(b) The termination of any Participant's participation in the Program will not release such Participant from its obligation to pay any sum then owing to CBG-NATO and/or any Approved Vendor. Annual dues, where applicable, will not be prorated. Any goods, documents or any other property belonging to CBG-NATO which are in the actual or constructive possession of such Participant must be forwarded to CBG-NATO at such Participant's expense.

(c) The Managing Director has authority to make the determination that any of the triggering events in subsection (a) have occurred, and to terminate a Participant's participation in CBG-NATO; provided, however, that prior to such termination becoming effective, the Participant receive notice of the basis for termination and an opportunity to state the case for retention, and, where feasible, a reasonable opportunity to correct the triggering event(s).

9. Miscellaneous.

(a) Entire Agreement. This Agreement is intended by CBG-NATO 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. No course of prior dealings between the parties or their affiliates will be relevant or admissible to supplement, explain or vary any of the terms of this Agreement.

(b) 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.

(c) Governing Law. This Agreement shall be governed by the laws of the District of Columbia 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 will lie in the District of Columbia, and each Participant waives all objections to such venue.

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

(e) Specific Performance. In the event that any Participant fails to comply with any of the terms of this Agreement, then CBG-NATO will have the right to bring legal action against said Participant to enforce compliance with this Agreement and in such action will be entitled to receive equitable relief, including but not limited to, specific performance, as well as the recovery of all damages incurred as a result of the breach of such terms and to recover all costs of such action, including court costs, interest and reasonable attorneys' fees.

(f) 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 thereof eliminated.

(g) Modifications and Waivers. No modification or waiver of any provision of this Agreement is valid unless in writing signed by a majority of all Participants eligible to

participate in CBG-NATO. No departure from the terms of this Agreement will obligate CBG-NATO to permit any subsequent departure; no waiver by CBG of any of the terms of this Agreement or any breach by any Participant will obligate CBG to waive thereafter any of said terms or any subsequent breach.

(h) Counterparts. This Agreement may be executed in multiple counterparts each of which will be deemed an original, but all of which together shall constitute one and the same instrument.

(i) Captions. The captions herein are inserted for convenience only and shall not define, limit, extend or describe the scope of this Agreement or any provision hereof, or otherwise affect the construction hereof.

[signatures on following page]

IN WITNESS WHEREOF, the parties hereto have set their hand and seals the day and year first above written.

CINEMA BUYING GROUP-NATO

By:
Managing Director

Program Participant

By:
Title: _____

Participant Address, Telephone and Email:

