

# PURCHASE ORDER

VENDOR

**TEXAS A&M FOREST SERVICE  
PURCHASING DEPARTMENT**

Order Date  
06/18/2020

Page 01

200 Technology Way, Suite 1120, College Station, TX 77845-3424; Phone 979-458-7380, FAX 979-458-7386

Purchase Order No.	(Include this number on all correspondence and packages)
P000371	

VENDOR GUARANTEES MERCHANDISE DELIVERED ON THIS ORDER WILL MEET OR EXCEED SPECIFICATIONS IN THE BID INVITATION.

<b>INVOICE TO:</b>
TEXAS A&M FOREST SERVICE FRD/SF--ASSOCIATE DIRECTOR 200 TECHNOLOGY WAY, SUITE 1281 COLLEGE STATION TX 77845-3424
<b>SHIP TO:</b>
TEXAS A&M FOREST SERVICE FRD/SF--ASSOCIATE DIRECTOR 200 TECHNOLOGY WAY, SUITE 1281 COLLEGE STATION TX 77845-3424

<b>VENDOR</b>
12026325050 NATIONAL CINEMEDIA LLC 6300 S SYRACUSE WAY STE 300 CENTENNIAL, CO 80111-6723

ALL TERMS AND CONDITIONS SET FORTH IN OUR BID INVITATION BECOME A PART OF THIS ORDER.

ANY EXCEPTIONS TO PRICING OR DESCRIPTION CONTAINED HEREIN MUST BE APPROVED BY THE TEXAS A&M FOREST SERVICE PURCHASING DEPARTMENT **PRIOR** TO SHIPPING.

PLEASE NOTE: IF YOUR INVOICE IS NOT ADDRESSED AS INSTRUCTED PAYMENT WILL BE DELAYED.

Item	Description	Quantity	UOM	Unit Price	Ext Price
	CHANGE ORDER 06/18/2020				
	USER REF: 000000-MY				
1	Advertising promotion with NCM - Digital Vide production - Gretchen Riley & Leah Moore	1	JOB	7,000.000	7,000.00
				<b>TOTAL</b>	<b>7,000.00</b>
	***** NET 30 *****				
	NOTE TO VENDOR: "SHIP TO" AND "INVOICE TO" ADDRESSES MAY DIFFER. FAILURE TO SUBMIT INVOICE TO PROPER ADDRESS MAY RESULT IN DELAYED PAYMENT.				
	BY ACCEPTANCE OF THIS PURCHASE ORDER VENDOR AGREES TO ALL TERMS AND CONDITIONS (AS APPLICABLE) LISTED ON ATTACHED "TEXAS A&M FOREST SERVICE PURCHASE ORDER--ATTACHMENT A".				
	EXEMPT PURCHASE - TEXAS A&M FOREST SERVICE PURCHASING PROCEDURES, SECTION 6 (EXEMPT PURCHASES).				
	REFERENCE QUOTE DATED 06/03/2020. STANDARD TFS PO TERMS AND CONDITIONS SHALL APPLY.				
	IN ADDITION TO STANDARD TFS P.O. TERMS AND CONDITIONS, THE FOLLOWING AMENDMENTS TO THIS P.O. WILL ALSO APPLY: THE AMERICAN ASSOCIATION OF ADVERTISING AGENCIES (AAAA)/INTERACTIVE ADVERTISING BUREAU (IAB) STANDARD TERMS AND CONDITIONS				

DCT

Texas A&M Forest Service cannot accept collect freight shipments.

FOB: DESTINATION FRT INCLUDED

Terms:

FAILURE TO DELIVER - If the vendor fails to deliver these supplies by the promised delivery date or a reasonable time thereafter, without giving acceptable reasons for delay, or if supplies are rejected for failure to meet specifications, the State reserves the right to purchase specified supplies elsewhere, and charge the increase in price and cost of handling, if any, to the vendor. No substitutions nor cancellations permitted without prior approval of Purchasing Department.

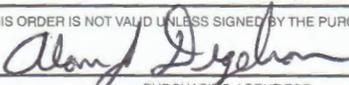
IN ACCORDANCE WITH YOUR BID, SUPPLIES/EQUIPMENT MUST BE PLACED IN THE DEPARTMENT RECEIVING ROOM BY

The State of Texas is exempt from all Federal Excise Taxes.

STATE AND CITY SALES TAX EXEMPTION CERTIFICATE: The undersigned claims an exemption from taxes under Texas Tax Code, Section 151.309 (4), for purchase of tangible personal property described in this numbered order, purchased from contractor and/or shipper listed above, as this property is being secured for the exclusive use of the State of Texas.

The Terms and Conditions of the State of Texas shall prevail.

THIS ORDER IS NOT VALID UNLESS SIGNED BY THE PURCHASING AGENT

  
PURCHASING AGENT FOR

**TEXAS A&M FOREST SERVICE**

# PURCHASE ORDER

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Item	Description	Quantity	UOM	Unit Price	Ext Price
DCT	FOR INTERNET ADVERTISING FOR MEDIA BUYS ONE YEAR OR LESS, VERSION 3.0 (THE "IAB TERMS") ARE INCORPORATED INTO THIS AGREEMENT FOR ALL INTERNET AND ONLINE ADVERTISING PURCHASED UNDER THIS AGREEMENT. AND... THE ATTACHED TFS AGREEMENT ADDENDUM.  VENDOR QUOTE: 06/03/2020 VENDOR REF: BRENT CANTWELL AT 512-897-6503				

Texas A&M Forest Service cannot accept collect freight shipments.

**FOB: DESTINATION FRT INCLUDED**

Terms:

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STATE AND CITY SALES TAX EXEMPTION CERTIFICATE: The undersigned claims an exemption from taxes under Texas Tax Code, Section 151.309 (4), for purchase of tangible personal property described in this numbered order, purchased from contractor and/or shipper listed above, as this property is being secured for the exclusive use of the State of Texas.

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*Alon D. Degehon*  
PURCHASING AGENT FOR

**TEXAS A&M FOREST SERVICE**

# Regional Insertion Order Agreement

6300 South Syracuse Way, Suite 300 \* Centennial, Colorado 80111 \* 800.828.2828

The advertiser listed below ("Advertiser") desires to place the order set forth below ("Order") with National CineMedia, LLC ("NCM") for the regional exhibition of the advertising set forth below ("Advertising") under the terms set forth in this Regional Advertising Insertion Order and Agreement ("Agreement"), including this Order and the Regional Advertising Insertion Order Agreement Terms and Conditions attached hereto (the "Terms and Conditions"). NCM and Advertiser agree as follows

<b>Advertiser Information</b> Texas A&M Forest Service 155 Texas Forest Service Loop  Lufkin, TX 75904 Phone: (936) 639-8184 Fax: Michelle Moore leah.moore@tfs.tamu.edu	<b>Billing Information</b> Texas A&M Forest Service 155 Texas Forest Service Loop  Lufkin, TX 75904 Phone: (936) 639-8184 Fax: Michelle Moore leah.moore@tfs.tamu.edu	<b>Account Director Information</b> <b>Acct. Dir.:</b> Brent Cantwell Phone: +1 (512) 897-6503 Fax: (806) 398-2321 Email: Brent.Cantwell@ncm.com <b>Digital:</b> Megan Branch
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**Order:** ORD-2006-00027    **Type:** New

## Houston OTT/CTV & Digital Video 8 wks

Cross Platform Video + OTT

**Start:** 6/10/2020      **End:** 8/4/2020

**Weeks:** 8.00

Creative #	Impressions	Net Rate	Net Media
502240	250,000	\$28.00	\$7,000.00

\*Cross Platform Video line item includes; Mobile and Desktop-Video,

CPMs do not reflect any kind of viewability guarantee

Proposal does not guarantee delivery; inventory is guaranteed with a signed insertion order

All pacing, post and billing is based on NCM's reporting unless otherwise agreed to prior to campaign launch; NCM does not cover any 3rd party, rich media ad serving fees, or research fees

NCM guarantees total campaign impressions; not by line item and will honor a mutually agreed upon makegood for any shortfalls

NCM reserves the right to optimize placements based on inventory and performance

Unless otherwise specified all assets due 3 business days prior to launch date

NCM requires 24-48 hours to implement campaign revisions once live. Re-targeting requires 72 hours for revisions

Cross Platform Video + OTT Includes Mobile Video, Desktop Video and OTT + CTV

# Regional Insertion Order Agreement

6300 South Syracuse Way, Suite 300 \* Centennial, Colorado 80111 \* 800.828.2828

<b>Payment</b>	<b>Comments &amp; Special Instructions:</b>	<b>Total Media</b>	<b>\$7,000.00</b>
<b>Payment Terms:</b> Monthly <b>Payment Method:</b> Check  <b>P.O. Number:</b>		<b>Media Services</b>	<b>\$0.00</b>
		<b>Creative Services</b>	<b>\$0.00</b>
		<b>Other Services</b>	<b>\$0.00</b>
		<b>Total Due</b>	<b>\$7,000.00</b>
Promotional items are non-commissionable. Special effects, customized placement, rush charges, and changes are extra. All duplication, creative services, and network implementation fees are at advertiser's expense. Fulfillment costs are estimated and final costs may vary.			
BY SIGNING BELOW, ADVERTISER AGREES TO BE LEGALLY BOUND BY THE TERMS OF THIS AGREEMENT (INCLUDING THE TERMS AND CONDITIONS) AS OF THE DATE OF SIGNATURE BY NCM BELOW AND HEREBY AUTHORIZES AND DIRECTS NCM TO PROCEED UNDER THE TERMS OF THIS AGREEMENT WITH THE ADVERTISING AND OTHER SERVICES SET FORTH ON THIS ORDER AND, UNLESS OTHERWISE AGREED BY THE PARTIES, ANY OTHER ORDER PLACED BY ADVERTISER FOR REGIONAL ADVERTISING INSERTIONS ACCEPTED BY NCM			

Client PO Attached

Advertiser Signature:	Date:	National CineMedia, LLC <i>Mallen Lemo</i>	Date: 6/8/2020
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Order Number: ORD-2006-00027					
A	B	C	D	E	F
Logged	Scheduled	Creative Approved	Credit Approved	Posted	Audit



**ATTACHMENT A  
TEXAS A&M FOREST SERVICE  
PURCHASE ORDER  
TERMS AND CONDITIONS**

**1. REQUIREMENTS OF AWARDED BID**

- 1.1 Vendor must comply with all rules, regulations and statutes relating to purchasing in the State of Texas in addition to the requirements of this form.
- 1.2 Vendor must have price per unit shown. Unit prices shall govern in the event of extension errors.
- 1.3 Awarded bid was submitted to the Texas A&M Forest Service (TFS) on or before the hour and date specified for the bid opening.
- 1.4 Late and/or unsigned bids were not considered under any circumstances. Person signing bid must have the authority to bind the firm in a contract.
- 1.5 Awarded bid quoted F.O.B. destination, freight prepaid and allowed unless otherwise stated within the order.
- 1.6 Bid prices are to be firm for TFS acceptance for 30 days from opening date. Cash discounts offered will be taken if earned.
- 1.7 Bid cannot be altered or amended after opening time. Any alterations made before opening time should be initiated by bidder or his authorized agent. No bid can be withdrawn after opening time without approval by TFS Purchasing Office based on a written acceptable reason.
- 1.8 Purchases made for TFS are exempt from the State Sales tax and Federal Excise tax. Do not include tax in quotation. Excise Tax Exemption Certificate will be furnished by TFS upon request.
- 1.9 TFS reserves the right to accept or reject all or any part of any bid, waive minor technicalities and award the bid to best serve the interests of the TFS.
- 1.10 Late, illegible, incomplete, or otherwise non-responsive bids will not be considered.

**2. SPECIFICATIONS**

- 2.1 Vendor shall furnish items as specified by model or catalogue numbers, brand names or manufacture referenced on the purchase order.
- 2.2 Unless otherwise specified, items shall be new and unused and of current production.
- 2.3 All electrical items must meet all applicable OSHA standards and regulations, and bear the appropriate listing from UL, FMRC or NEMA.
- 2.4 TFS will not be bound by any oral statement or representation contrary to the written specifications of this purchase order.
- 2.5 Manufacturer's standard warranty shall apply unless otherwise stated in the IFB.

**3. TIE BIDS**

Awards will be made in accordance with TAC Rule 20.36 (b) (3) and 20.38 (preferences).

**4. DELIVERY**

- 4.1 Delivery shall be within the quoted number of days required to place material in receiving agency's designated location under normal conditions. Delivery days mean calendar days, unless otherwise specified. Failure to state delivery time obligates bidder to deliver in 14 calendar days. Unrealistic delivery promises may cause bid to be disregarded.
- 4.2 If delay is foreseen, vendor shall give written notice to TFS. Vendor must keep TFS advised at all times of order status. Default of promised delivery (without accepted reasons) or failure to meet specifications authorizes TFS to purchase supplies elsewhere and charge full increase, if any, in cost and handling to defaulting vendor.
- 4.3 No substitutions permitted without TFS written approval.
- 4.4 Delivery shall be made during normal working hours only, unless prior approval has been obtained from TFS.
- 4.5 Each shipment must be accompanied by a packing slip which shows the TFS Purchase Order number and the description, quantity shipped and any back-ordered quantity for each item shipped. Each package must be clearly marked with the destination address and TFS Purchase Order number.

**5. INSPECTION AND TESTS**

All goods will be subject to inspection and test by TFS. Authorized TFS personnel shall have access to any supplier's place of business for the purpose of inspecting merchandise. Tests shall be performed on samples submitted with the bid or on samples taken from regular shipment. All costs shall be borne by the vendor in the event products tested fail to meet or exceed all conditions and requirements of the specification. Goods delivered and rejected in whole or in part may, at the TFS' option, will be returned to the vendor or held for disposition at vendor's expense. Latent defects may result in revocation of acceptance.

**6. AWARD OF CONTRACT**

A response to this IFB is an offer to contract based upon the terms, conditions and specifications contained herein. Bids do not become contracts until they are accepted through a TFS purchase order. The contract shall be governed, construed and interpreted under the laws of the State of Texas, and as same may be amended. Any legal actions must be filed in Brazos County, Texas.

**7. PAYMENT**

Vendor shall submit one (1) copy of an itemized invoice

referencing TFS Purchase Order number. TFS will incur no penalty for late payment if made in 30 or fewer days from receipt of goods or services and an uncontested invoice. **TFS will not be liable for payment of invoices received six (6) or more months after receipt of goods/services.**

**8. PATENTS OR COPYRIGHTS**

Vendor agrees to protect the TFS from claims involving infringement of patents or copyrights.

**9. VENDOR ASSIGNMENTS**

Vendor hereby assigns to TFS any and all claims for overcharges associated with this contract arising under the antitrust laws of the United States 15 U.S.C.A. Section 1, et seq. (1973), and the antitrust laws of the State of Texas, TEX. Bus. & Comm. Code Ann. Sec. 15.01, et seq. (1967). Inquiries pertaining to quotation must give the quotation number and opening date.

**10. BIDDER AFFIRMATION**

Signing a bid with a false statement is a material breach of contract and shall void the submitted bid or any resulting contracts, and the bidder shall be removed from all bid lists. By signature hereon affixed, the bidder hereby certifies that:

- 10.1 The bidder has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted quotation.
- 10.2 The bidder is not currently delinquent in the payment of any franchise tax owed the State of Texas.
- 10.3 Neither the bidder nor the firm, corporation, partnership or institution represented by the bidder, or anyone acting for such firm, corporation or institution has violated the antitrust laws of this State, or the Federal Antitrust Laws, (see Section 9 above) nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business.
- 10.4 Pursuant to Section 2155.004(a) Government Code the bidder has not received compensation for participation in the preparation of the specification for this IFB.
- 10.5 Pursuant to Section 231.006 (d), Family Code, re: child support, the bidder certifies that the individual or business entity named in this bid is not ineligible to receive the specified payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.
- 10.6 Pursuant to Section 2155.004(b) Government Code the bidder certifies that the individual or business entity name in this bid is not ineligible to receive the specified payment and acknowledges that this contract may be terminated and/or payment withheld if this certification is inaccurate.
- 10.7 The Contractor shall defend, indemnify, and hold harmless the State of Texas, all of its officers, agents and employees from and against all claims, actions, suits, demands, proceedings, costs, damages, and liabilities, arising out of, connected with, or resulting from any acts or omissions of contractor or any agent, employee, subcontractor, or supplier of contractor in the execution of performance of this contract.
- 10.8 Bidder agrees that any payment due under this contract will be applied towards eliminating any debt or delinquency, regardless of when it arises, including but not limited to delinquent taxes and child support that is owed to the State of Texas.
- 10.9 Bidder certifies that they are in compliance with section 669.003 of the Government Code, relating to contracting with executive head of a State agency. If section 669.003 applies, bidder will complete the following information in order for the bid to be evaluated:  
Name of Former Executive: \_\_\_\_\_  
Name of State Agency: \_\_\_\_\_  
Date of Separation from State Agency: \_\_\_\_\_  
Position with Bidder: \_\_\_\_\_  
Date of Employment with Bidder: \_\_\_\_\_
- 10.10 Bidder agrees to comply with Government Code 2155.4441, pertaining to service contract use of products in the State of Texas.
- 10.11 Contractor understands that acceptance of funds under this contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Contractor further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any subcontract it awards.

submitting quotation. Bidders that have pre-registered this information on the TPASS Centralized Master Bidders List have satisfied the requirement. If not pre-registered, attach name & social security number for each person. Otherwise, information must be provided prior to award.

**12. NOTE TO BIDDER**

Any terms and conditions attached to a bid will not be considered. Such terms and conditions may result in disqualification of the bid.

**13. ALTERNATIVE DISPUTE RESOLUTION**

The dispute resolution process provided for in Chapter 2260 of the Texas Government Code shall be used, as further described herein, by Texas A&M Forest Service and the Contractor to attempt to resolve any claim for breach of contract made by the contractor:

(a) A contractor's claim for breach of this contract that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Chapter 2260, subchapter B, of the Texas Government Code. To initiate the process, the contractor shall submit written notice, as required by subchapter B, to Robby DeWitt, Associate Director for Finance and Administration. Said notice shall specifically state the provisions of Chapter 2260, subchapter B, are being invoked. A copy of the notice shall be given to all other representatives of Texas A&M Forest Service and the contractor otherwise entitled to notice under the parties' contract. Compliance by the contractor with subchapter B is a condition precedent to the filing of a contested case proceeding under Chapter 2260, subchapter C, Texas Gov't Code.

(b) The contested case process provided in Chapter 2260, subchapter C, of the Texas Government Code is the contractor's sole and exclusive process for seeking a remedy for any and all alleged breaches of contract by Texas A&M Forest Service, if the parties are unable to resolve their disputes under this subparagraph (A).

(c) Compliance with the contested case process provided in subchapter C is a condition precedent to seeking consent to sue from the Legislature under Chapter 107 of the Civil Practices and Remedies Code. Neither the execution of this contract by Texas A&M Forest Service nor any other conduct of any representative of Texas A&M Forest Service relating to the contract shall be considered a waiver of sovereign immunity to suit.

(1) The submission, processing, and resolution of the contractor's claim is governed by the published rules adopted by the Office of the Attorney General of the State of Texas pursuant to Chapter 2260, as currently effective, hereafter enacted or subsequently amended. These rules are found under Title 1, Part 3, Chapter 68 of the TAC.

(2) Neither the occurrence of an event nor the pendency of a claim constitutes grounds for the suspension of performance by the contractor, in whole or in part.

(3) The designated individual responsible on behalf of Texas A&M Forest Service for examining any claim or counterclaim and conducting any negotiations related thereto as required under Title 10, Subchapter B, Section 2260.052 of the Texas Government Code shall be Robby DeWitt, Associate Director for Finance and Administration (979) 458-7300.

**14. PUBLIC DISCLOSURE**

(a) Bidder acknowledges that Texas A&M Forest Service is obligated to strictly comply with the Public Information Act, Chapter 552, *Texas Government Code*, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law.

(b) Upon Texas A&M Forest Service's written request, bidder will provide specified public information exchanged or created under this Agreement that is not otherwise excluded from disclosure under chapter 552, Texas Government Code, to Texas A&M Forest Service in a non-proprietary format acceptable to Texas A&M Forest Service. As used in this provision, "public information" has the meaning assigned Section 552.002, *Texas Government Code*, but only includes information to which Texas A&M Forest Service has a right of access.

(c) Bidder acknowledges that Texas A&M Forest Service may be required to post a copy of the fully executed Agreement on its internet website in compliance with Section 2261.253(a)(1), *Texas Government Code*.

**15. REHAB ACT, VEVRAA, SECTION 503**

This contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

#### Agreement Addendum

This Agreement Addendum ("Addendum") is between Texas A&M Forest Service ("TFS"), a member of The Texas A&M University System ("TAMUS"), an agency of the State of Texas and **National Cinemedia, LLC** ("Contractor") and is incorporated by reference into the **Purchase Order P000371** between TFS and Contractor (the "Agreement"). TFS and Contractor may be referred to singularly as a "Party" and collectively as the "Parties." If there is any conflict or contradiction between the provisions of the Agreement, including any attachments, exhibits or addenda thereto, and those in this Addendum, this Addendum will control and Contractor waives any claim to the contrary.

1. **Term Length and Termination.** If no definitive Term is stated in the Agreement, the Term will not exceed five (5) total years. TFS may terminate the Agreement, without cause, at any time upon providing at least thirty (30) days written notice to Contractor. TFS will only be liable for payment for services received prior to the effective date of such termination.
2. **Payment Terms.** Payment terms for amounts due from TFS to Contractor under the Agreement (including due dates and late fees) are governed by Chapter 2251 of the *Texas Government Code*.
3. **Payment of Debt or Delinquency to the State.** Pursuant to Section 2252.903, *Texas Government Code*, Contractor agrees that any payments owing to Contractor under the Agreement may be applied directly toward any debts or delinquencies that Contractor owes the State of Texas or any agency of the State of Texas regardless of when they arises, until such debts or delinquencies are paid in full.
4. **Delinquent Child Support Obligations.** A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25% is not eligible to receive payments from state funds under an agreement to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. The *Texas Family Code* requires the following statement: "Under Section 231.006, *Texas Family Code*, the Contractor certifies that the individual or business entity name in the Agreement is not ineligible to receive the specified grant, loan, or payment and acknowledges that the Agreement may be terminated and payment may be withheld if this certification is inaccurate."
5. **Certification Concerning Financial Participation.** Pursuant to Section 2155.004, *Texas Government Code*, the Contractor certifies that it is not ineligible to receive the contract or payments under the Agreement and acknowledges that the Agreement may be terminated and/or payments may be withheld if this certification is inaccurate.
6. **Tax Certification.** If Contractor is a taxable entity as defined by Chapter 171, *Texas Tax Code*, then Contractor certifies that it is not currently delinquent in the payment of any franchise (margin) taxes or that Contractor is exempt from the payment of franchise (margin) taxes.
7. **Tax Exemption.** TFS will not be required to pay any taxes for which it can demonstrate an exemption.
8. **Indemnification.** Contractor agrees to indemnify and hold harmless TFS from any claim, damage, liability, expense or loss to the extent arising out of Contractor's negligent or willful errors or omissions under the Agreement.
9. **Independent Contractor.** Contractor is an independent contractor, and neither Contractor nor any employee of Contractor shall be deemed to be an agent or employee of TFS. TFS will have no responsibility to provide transportation, insurance or other fringe benefits normally associated with employee status. Contractor shall observe and abide by all applicable laws and regulations, policies and procedures, including but not limited to those of TFS relative to conduct on its premises (if applicable).
10. **Previous Employment.** Contractor acknowledges and understands that Section 2252.901, *Texas Government Code*, prohibits TAMUS from using state appropriated funds to enter into any employment contract, consulting contract, or professional services contract with any individual who has been previously employed, as an employee, by TFS within the past twelve (12) months. Contractor certifies that no TAMUS member has previously designated the Contractor's employees or officers performing under the Agreement as Not Eligible for Rehire. If Contractor is an individual, by signing this Addendum, Contractor certifies that Section 2252.901, *Texas Government Code*, does not prohibit the use of state appropriated funds for satisfying the payment obligations in the Agreement.
11. **Representations and Warranties by Contractor.** If Contractor is a corporation or a limited liability company, Contractor warrants, represents, covenants, and agrees that: (i) it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization; (ii) it is duly authorized and in good standing to conduct business in the State of Texas; (iii) it has all necessary power and has received all necessary approvals to execute and deliver the Agreement; and (iv) the individual executing the Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor.
12. **Breach of Contract Claims.** To the extent that Chapter 2260, *Texas Government Code*, is applicable to the Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, will be used by the Parties to attempt to resolve any claim for breach of contract made by Contractor against TFS that cannot be resolved in the ordinary course of business. The Associate Director for Finance and Administration of TFS shall examine Contractor's claim and any counterclaim and negotiate with Contractor in an effort to resolve such claims. The Parties hereto specifically agree that (i) neither the execution of the Agreement and/or this Addendum by TFS nor any other conduct, action or inaction of any representative of TFS relating to the Agreement and/or this Addendum constitutes or is intended to constitute a waiver of TFS's or the State's sovereign immunity to suit; and (ii) TFS has not waived its right to seek redress in a court of law.
13. **Loss of Funding.** Performance by TFS under the Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature") and/or allocation of funds by the Board of Regents of The Texas A&M University System (the "Board"). If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then TFS will issue written notice to Contractor and TFS may terminate the Agreement without further duty or obligation hereunder. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond the control of TFS.
14. **Audit.** Contractor understands that acceptance of funds under the Agreement constitutes Contractor's acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor") to conduct an audit or investigation in connection with those funds pursuant to Section 51.9335(c), *Texas Education Code*. Contractor agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation, providing all records requested. Contractor will include this provision in all contracts with permitted subcontractors.
15. **Inapplicable Provisions.** None of the following provisions, if they appear in the Agreement, shall have any effect or be enforceable against TFS: (i) requiring TFS to maintain any type of insurance either for TFS's benefit or for Contractor's benefit; (ii) renewing or extending the initial Agreement term or automatically continuing or renewing the original Agreement term; (iii) binding TFS to any arbitration, to the decision of any arbitration board, commission, panel or other entity, or to any other alternative dispute resolution other than is provided herein; (iv) requiring TFS to indemnify Contractor from/against any claims, damages, suits, penalties, fines and/or costs resulting from the negligence or intentional acts of Contractor or Contractor's employees, representatives or agents; (v) limiting the time within which TFS may file a lawsuit based on a claim that the contractor/vendor has breached the contract's terms and conditions.
16. **Limitations.** As a state agency, TFS is subject to constitutional and statutory limitations on its ability to enter into certain contractual terms and conditions, including but not limited to: those related to TFS's indemnification of other parties; liability for other parties' acts or omissions; disclaimers and limitations on other parties' liability; earned money/deposits; liens on TFS property; liquidated damages; cancellation penalties, waivers, disclaimers, and limitations on legal rights and remedies; granting of control of litigation or settlement to other parties; payment of other parties' attorney fees or court costs; and those addressed elsewhere in this Addendum (collectively "Limitations"). Terms and conditions of the Agreement relating to the Limitations will only be binding on TFS to the extent permitted by the Constitution and the laws of the State of Texas.
17. **Force Majeure.** Neither Party is required to perform any term, condition, or covenant of the Agreement, if performance is prevented or delayed by a natural occurrence, a fire, an act of God, an act of terrorism, or other similar occurrence, the cause of which is not reasonably within the control of a Party and which by due diligence it is unable to prevent or overcome.
18. **Governing Law, Venue & Statute of Limitations.** The Agreement and the applicable statute of limitations for any cause of action brought by or against TFS pursuant to the Agreement will be governed by the laws of the State of Texas without regard to choice of law principles. Pursuant to Section 85.18, *Texas Education Code*, Brazos County is the mandatory place of venue for suit on or in respect of the Agreement.
19. **No Financial Interest.** Neither Party nor its employees, agents, representatives or consultants will assist or cause any TFS employee to violate TFS's Conflicts of Interest

Policy or applicable state ethics laws or rules. To the best of Contractor's knowledge, no member of the TAMUS Board of Regents has a direct or indirect financial interest in the transaction that is the subject of this Agreement.

20. **Public Information Act.** A.) Contractor acknowledges that TFS is obligated to strictly comply with the Public Information Act, Chapter 552, *Texas Government Code*, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law. B.) Upon TFS's written request, Contractor will provide specified public information exchanged or created under this Agreement that is not otherwise excepted from disclosure under Chapter 552, *Texas Government Code*, to TFS in a non-proprietary format acceptable to TFS. As used in this provision, "public information" has the meaning assigned Section 552.002, *Texas Government Code*, but only includes information to which TFS has a right of access. C.) Contractor acknowledges that TFS may be required to post a copy of the fully executed Agreement on its Internet website in compliance with Section 2261.253(a)(1), *Texas Government Code*.
21. **Records Retention.** Contractor will preserve all contracting information, as defined under Texas Government Code, Section 552.003 (7), related to the Agreement for the duration of the Agreement and for seven years after the conclusion of the Agreement.
22. **Conflict of Interest.** By executing this Agreement, Contractor and each person signing on behalf of Contractor certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, that to the best of their knowledge and belief, no member of The A&M System or The A&M System Board of Regents, nor any employee, or person, whose salary is payable in whole or in part by The A&M System, has direct or indirect financial interest in the award of this Agreement, or in the services to which this Agreement relates, or in any of the profits, real or potential, thereof.

23. **Prohibition on Contracts with Companies Boycotting Israel.** Prohibition on Contracts with Companies Boycotting Israel. To the extent that Texas Government Code, Chapter 2270 applies to this Agreement, PROVIDER certifies that (a) it does not currently boycott Israel; and (b) it will not boycott Israel during the term of this Agreement. PROVIDER acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
24. **Certification Regarding Business with Certain Countries and Organizations.** Pursuant to Subchapter F, Chapter 2252, Texas Government Code, Contractor certifies it is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Contractor acknowledges this Agreement may be terminated if this certification is inaccurate.
25. **Prohibition on Contracts Related to Persons Involved in Human Trafficking.** Under Section 2155.0061, Government Code, the Contractor certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
26. **Work Made for Hire.** Any work performed by Contractor shall be considered a "Work Made for Hire" as defined in the Copyright Law of the United States, and shall be owned by and for the express benefit of TFS, including but not limited to, the right to make changes to the work as TFS deems necessary. In the event it should be established that such work does not qualify as a Work Made for Hire, Contractor agrees to and does hereby assign to TFS all of Contractor's right, title, and interest in such work product including, but not limited to, all copyrights and other proprietary rights.
27. **Counterparts/Electronic Signatures.** The Agreement and this Addendum may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. For purposes of the Agreement and this Addendum, use of a facsimile, e-mail, or other electronic medium shall have the same force and effect as an original signature.

AGREED AND ACCEPTED this 16th day of June, 2020.

National Cinemedia, LLC
By: 
Printed Name: <u>Mark Chandler</u>
Title: <u>Manager, Advertising Operations</u>