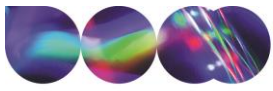


DIGITAL CINEMA MEDIA

**DCM Advertising Terms and Conditions**  
**Effective from 1 February 2016**



digital cinema media



**TABLE OF CONTENTS**

	<b><u>Page</u></b>
1. INTRODUCTION .....	2
2. DEFINITIONS AND INTERPRETATION .....	2
3. STATUS OF THE BUYER.....	8
4. CREDIT .....	8
5. COMMISSION .....	8
6. SPACE REQUESTS .....	8
7. COPY REQUIREMENTS .....	9
8. AUDIENCE GUARANTEE PACK.....	9
9. EARLY BOOKING INCENTIVE.....	10
10. FILM PACK.....	10
11. LOCAL SITES.....	11
12. PRODUCTION.....	11
13. BARTER .....	11
14. PRICE AND ADMISSIONS VERIFICATION.....	12
15. WARRANTIES AND INDEMNITIES.....	12
16. CANCELLATION AND POSTPONEMENT .....	12
17. SUSPENSION OR TERMINATION.....	13
18. LIABILITY .....	14
19. FINANCE .....	14
20. CLIENT PORTFOLIO.....	15
21. CALCULATION OF BUYER COMMITMENTS .....	15
22. REVENUE SHORTFALL COMPENSATION .....	16
23. AUDITING AND REPORTING .....	16
24. CONFIDENTIALITY .....	17
25. DATA PROTECTION .....	17
26. FORCE MAJEURE .....	17
27. ASSIGNMENT .....	18
28. NO PARTNERSHIP OR AGENCY RELATIONSHIP .....	18
29. ENTIRE AGREEMENT .....	18
30. NO WAIVER .....	18
31. SEVERABILITY AND WAIVER .....	18
32. RIGHTS CUMULATIVE .....	18
33. RIGHTS OF THIRD PARTIES .....	19
34. NOTICES.....	19
35. GOVERNING LAW .....	19



## **DCM Advertising Terms and Conditions – Effective from 1 February 2016**

### **ABOUT DCM**

- We represent the sale of Advertising Inventory for Cineworld, Odeon, Vue, Picture House, Curzon, Reel and a number of other independent cinemas.
- We play out advertising screentime at over 3,078 screens at around 481 sites.
- We seek to ensure that your advertising receives the prominence it deserves; most of our sites only include between 8-12 minutes of advertising in the Reel.
- Our Copy Requirements and technical specifications are designed to promote the highest possible quality of audiovisual content on screen.
- All audio materials supplied to us for cinema conversion are pre-checked by Dolby to ensure the highest quality standards and compliance with established guidelines for sound levels in cinemas.
- We have an in-house ad screening service.

### **1. INTRODUCTION**

The agreement between Digital Cinema Media Limited (“**DCM**”) and each Buyer relating to the purchase of Advertising Inventory is contained in these Terms and Conditions together with the corresponding Trading Agreement (“**Agreement**”).

These Terms and Conditions apply to the purchase of all Advertising Inventory after 1<sup>st</sup> February 2016.

The Buyer signifies that it accepts and agrees to be bound by the Agreement by placing a Space Request with DCM for Advertising Inventory and confirming that Space Request verbally, in writing, electronically or otherwise. Space Requests will be accepted by DCM pursuant to clause 5. No amendment to the Agreement will be binding or effective unless agreed in writing by DCM.

In the event of any conflict between these Terms and Conditions and the Trading Agreement, the Trading Agreement will prevail.

### **2. DEFINITIONS AND INTERPRETATION**

- 2.1 **Definitions:** In these Terms and Conditions and the Trading Agreement words and expressions shall have their ordinary meaning unless otherwise defined within these Terms and Conditions. In addition, the following words and expressions shall have the meanings set against them, whether they are used in the Terms and Conditions or any Trading Agreement:

**Admissions** means a cinema admission (one admission being one ticket sold in a DCM cinema);

**Admission Tolerance** means the percentage of Admissions by which a Campaign may fall below that agreed by DCM in a Space Request in relation to a specific period (and therefore the stated Admissions will be deemed to have been met notwithstanding the shortfall). Accordingly, no right to receive any Banked Admissions will be triggered;



**Advertiser** means a person, firm or company purchasing Advertising Inventory (either as a Direct Advertiser or through an Agency) with DCM under these Terms and Conditions;

**Advertising Inventory** means advertising screentime in cinemas;

**Affiliate** means in respect of a company, a company which is its subsidiary or holding company or a company which is a subsidiary of that holding company, and the terms 'subsidiary' and 'holding company' shall have the meaning given to them by section 1159 and Schedule 6 of the Companies Act 2006;

**AGP, Audience Guarantee Pack or Audience Guarantee Package** means an Admissions based pack that delivers an agreed number of Admissions over a specific period as stipulated in a Space Request. An AGP can be for a general audience or for a particular target audience as are offered by DCM (i.e. male, female, youth, culture or alcohol);

**Agency** means an advertising agency or Agency Buying Group buying Advertising Inventory from DCM on behalf of one or more Advertisers;

**Agency Buying Group** means, in relation to any Agency, its Buying Agencies, undertakings and any other undertaking which, at the relevant time, is its parent undertaking and subsidiary undertaking or a subsidiary of its parent undertaking and 'part' of an Agency Buying Group shall be construed accordingly;

**Agency Commission** has the meaning given in clause 5.1;

**Agreement** has the meaning given to it in the first paragraph of these Terms and Conditions;

**Applicable Laws** includes all Legislation, the UK Code of Non-Broadcast Advertising ("CAP Code") rules of common law, ASA adjudications, bulletins, codes, guidance notes, rules, regulations, requirements, rulings, restrictions, standards and, directions;

**ASA** means the Advertising Standards Authority;

**Auditors** has the meaning given in clause 24.2;

**Audit Report** has the meaning given in clause 24.2;

**BACS** means Bankers Automated Clearing Service;

**Banked Admissions** means screen time value granted to a Buyer in lieu of a shortfall in relation to the delivery of guaranteed Admissions by DCM (where such shortfall exceeds the Admission Tolerance) or where otherwise granted to a Buyer at DCM's discretion;

**Barter** means any Advertising Inventory that is traded and/or paid for (in full or in part) in a form other than cash or Contra and booked through recognised barter companies to the extent accepted as such by DCM;

**Barter Policy** means DCM's Barter policy as communicated and amended from time to time in DCM's sole discretion, with which any Barter Campaigns must comply;

**BBFC** means the British Board of Film Classification;



digital cinema media

**Bollywood Pack** means an Audience Guarantee Pack running against all films in an Indian language;

**Buyer** means the person identified in the Trading Agreement (or Space Request), being either an Agency or a Direct Advertiser. Where the person is not a distinct legal entity (for example, where the person named is a division) it shall be deemed to be the legal entity or entities which operates such person;

**Buyer Commitment(s)** means a minimum commitment(s) made by the Buyer in relation to share of Competitive Set Expenditure and/or Volume Expenditure or other Buyer commitment as set out in the Trading Agreement;

**Buying Agency** means a trading division or Affiliate of an Agency Buying Group which buys Advertising Inventory on behalf of a Client Portfolio;

**CAA** means the Cinema Advertising Association;

**Campaign** means an advertising campaign booked with DCM through a Space Request;

**CARIA** means the web based campaign approval communications vehicle of that name which is used by the advertising industry ;

**CHAPS** means Clearing House Automated Payments System;

**Client and Clients** shall mean the Advertisers and other clients, as appropriate, of an Agency;

**Client Portfolio** means all of the Clients on whose behalf the Buyer (or a Buying Agency) purchases Advertising Inventory;

**Competent Authority** means any national court, the European courts, any governmental authority, any other person exercising powers pursuant to any Legislation or any other official person (including the ASA, the CAA and the BBFC) and any relevant industry body;

**Competitive Set** means a competitive set as specified in a Trading Agreement including but not limited to a set of advertising sales houses or media publishers trading in any form of advertising inventory;

**Competitive Set Expenditure** means all Gross Expenditure with DCM under the Agreement in respect of the Term together with all Gross Expenditure incurred by the Agency with the Competitive Set during the same period in relation to advertising inventory specified in the Trading Agreement;

**Confidential Information** includes any information marked as such and any other information which might reasonably be assumed to be confidential in any form emanating from either Party at any time and shall include any compilation of otherwise public information in a form not publicly known and the existence and contents of any Agreement in respect of Advertising Inventory to which DCM is a Party and any information, materials or data in any form produced by, for or on behalf of either Party during the term of or pursuant to such an agreement but shall not include:



digital cinema media

(a) information which at the time of disclosure is publicly known or information which after disclosure becomes publicly known other than as a result of any breach of such agreement;

(b) information which can be shown to be known to the other Party, other than under a subsisting obligation of confidentiality, or restricted use, prior to the disclosure; and

(c) information made available to the other Party by a third party having a right to do so and who has not imposed on that Party any subsisting obligation of confidentiality or restricted use in respect thereof;

**Content Spot** means a premium advertisement spot which appear immediately before the DCM Closing Ident;

**Contra** means Advertising Inventory exchanged for equivalent media value rather than cash (for example where Advertising Inventory is exchanged for another form of advertising such as press, radio or outdoor);

**Copy** means the creative audiovisual advertising material;

**Copy Requirements** means DCM's technical specification requirements for Copy;

**Copy Rotation and Production** means the copy rotation and production instructions provided to DCM regarding Copy and set out as a Space Request;

**CPT or Cost Per Thousand** means the cost per 1000 (one thousand) Admissions;

**Creative Solutions** means non Spot Campaigns including but not limited to Sponsorship, posters and sampling;

**Credit Buyer** means a Buyer which at the relevant time has been granted credit by DCM;

**Data Protection Rules** means the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Electronic Communications Data Protection Directive 2002/58/EC, Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2011 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner's Office;

**DCM Closing Ident** means a 15 second DCM branded advert;

**Direct Advertiser** means a person buying Advertising Inventory from DCM other than through an Agency;

**EBI or Early Booking Incentive** means additional Admissions offered by DCM to Buyers (at DCM's discretion) if a Campaign is booked six weeks prior to the start of a month in which the Campaign is exhibited and no later than the EBI Deadlines indicated on DCM's website or which are available upon request;

**Family Films** means any film which DCM determines, in its, sole discretion, is predominantly aimed at a family audience;

**Family Focus Burst** means an Audience Guarantee Package against family film content that covers a specific date range covering the release of numerous Family Films;



digital cinema media

**Family Gold Spot** means any Spot appearing after the trailers and before the main feature film in respect of films which DCM has determined, in its sole discretion, are aimed at a family audience;

**Film Pack** means a booking through a Space Request for a specific film or films. The Admissions stated in the Space Request are targeted at specified films but are, pursuant to clause 10 for a non-guaranteed number of Admissions. The advert will only be scheduled with the specific film;

**Gold Spot** means the Spot appearing after the trailers and before the main feature film;

**Gross Expenditure** means gross expenditure, before any Agency Commission but net of VAT (and as may be further defined by DCM in any Trading Agreement);

**Legislation** includes all laws, Acts of Parliament, all provisions of the Treaties constituting the European Community, the European Union and the European Economic Area, all Data Protection Rules and all orders, regulations, directives, conventions and subordinate legislation made pursuant to such an Act or Treaty or otherwise having the force of law;

**Local End Frame Packages** means an AGP but with a bespoke targeted 5" end frame to target a regional audience to be exhibited in cinema sites which are specified in the Space Request or which are otherwise agreed between the Parties;

**Local Site** means a specific handpicked cinema site stipulated in a Space Request at which the advert will be exhibited (note that adverts will only be exhibited at the Local Sites stipulated);

**Loss** means all losses, claims, liabilities, costs, expenses and damages;

**Media Booking System** means any Buyer Media Booking System such as the Donovan Data Systems media booking system;

**Non Barter Films** means films selected at DCMs discretion, a list of which is available upon request, for which Advertising Inventory cannot be traded for Barter;

**Parties** means DCM and the Buyer and **Party** means one of them;

**Payment Date** means the date by which payment is required to be met pursuant to clauses 20.1 and 20.2;

**Platinum Spot** means Gold Spots, selected at DCMs discretion, which will be subject to special pricing terms;

**Production** means the process by which audiovisual adverts are converted into a cinema ready adverts and distributed to DCM's cinemas;

**Pricing Terms** means the pricing terms available to a Buyer as set out in the Rate Card and the Trading Agreement;

**Principal** means the Buyer identified as such in the Trading Agreement;

**Pro-Forma Buyer** means a Buyer which at the relevant time has not been granted credit by DCM and which is therefore required to pay for Campaign bookings in accordance with clause 20.2;;

**Rate Card** means DCM's prices for Advertising Inventory available on its website or upon request;



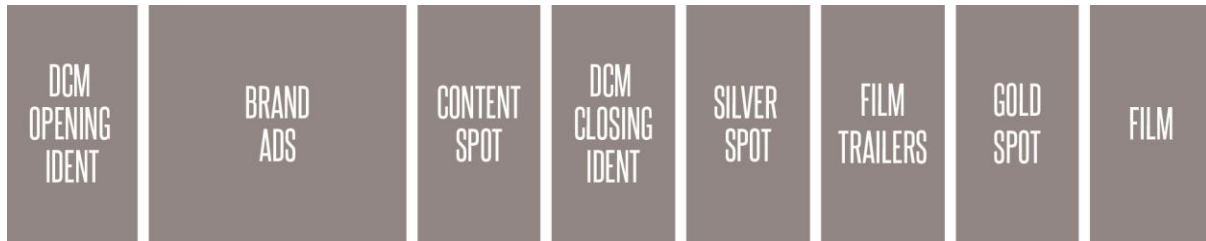


digital cinema media

**Records** has the meaning given in clause 24.1;

**Reel** means the audiovisual content played out digitally in cinemas;

**Reel Order** means the order in which the different types of audiovisual content is played out digitally in DCM cinemas. The following is a graphic example of the Reel Order:



**Regional Macros** means the regional advertising macros sold by DCM currently being Yorkshire, Midlands, South West, North East, Northern Ireland, Central Scotland, Borders, London, Wales & West, Southern, Northern Scotland, East of England and North West;

**Revenue Shortfall** means the Gross Expenditure money value calculated by the Auditors as being the amount by which the share of Competitive Set Expenditure, Volume Expenditure or other Buyer Commitment(s) actually delivered to DCM is less than the share of Competitive Set Expenditure, Volume Expenditure or other Buyer Commitment(s) expressly set out in the Trading Agreement;

**Revenue Shortfall Compensation** has the meaning given in clause 23.1;

**Silver Spot** means the last Spot in the Reel after the DCM Closing Ident but before the trailers;

**Space Request** means a request by a Buyer to book Advertising Inventory and other services from DCM;

**Sponsorship** means a package of advertising comprising on-screen and off-screen inventory;

**Spot** means a slot for an advertisement within the Reel;

**Trading Agreement** means any agreement entered into by a Buyer with DCM setting out the pricing terms, qualitative terms and other terms for the purchase of Advertising Inventory during the Term;

**Trading Agreement Period** or **Trading Term** means the specific trading period specified in any Trading Agreement;

**UK** means the United Kingdom of Great Britain and Northern Ireland, the Isle of Man and the Bailiwicks of Jersey and Guernsey;

**Volume Expenditure** means the volume of revenue set out in the Trading Agreement and which the Buyer guarantees to DCM will be the minimum revenue actually payable to DCM during the Trading Term; and

**Working Day** means a day, except a Saturday or Sunday, which is not a public holiday, religious holiday, or bank holiday in the UK.





2.2 **Interpretation:** In these Terms and Conditions and the Trading Agreement, unless the context otherwise requires:

2.2.1 a reference to a clause is a reference to a clause of these Terms and Conditions unless in the context the reference is clearly to a clause of the Trading Agreement;

2.2.2 a reference to a person includes an individual, firm, partnership, business division, joint venture, agency, trust, association, body corporate, corporation, company, committee, organisation and any other entity whether or not having a separate legal personality;

2.2.3 the headings are for convenience only and will not affect its interpretation; and

2.2.4 the terms “**include**”, “**including**” and “**in particular**” are to be construed without limiting the generality of the words that precede them.

### 3. STATUS OF THE BUYER

3.1 It is acknowledged that the Buyer may be an Agency or a Direct Advertiser. Where the Buyer is an Agency, it is deemed for all purposes of the Agreement to contract with DCM as principal in all respects and not in any circumstances as an agent in law on behalf of its Clients. Accordingly, all rights and responsibilities under the Agreement shall exist solely between DCM and the Agency and the Agency will be responsible for the payment of all amounts due to DCM and the performance of all other obligations of the Buyer under the Agreement.

3.2 **If any Affiliate of an Agency is entitled to the benefit of the Agreement under a relevant Trading Agreement: (a) the Agency shall be responsible for the acts and/or omissions of its Affiliate in connection with the Agreement; and (b) the Agency will be liable to DCM for the acts or omissions of the Affiliate as if they were acts or omissions of the Agency to the extent they breach the Agency’s obligations under the Agreement or are otherwise stated in the Agreement to apply to such Affiliates.**

### 4. CREDIT

4.1 DCM may in its absolute discretion at any time grant credit (with or without conditions and/or limits) to a Buyer and withdraw credit previously granted to the Buyer and/or vary any conditions and/or limits applying to any credit. In this regard, DCM shall be entitled to require a Buyer to provide it with credit information to support a case for credit.

4.2 Where a Buyer is not granted credit, it will be required to trade with DCM as a Pro Forma Buyer.

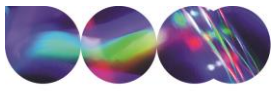
### 5. COMMISSION

5.1 DCM may in its sole and absolute discretion pay commission to an Agency in respect of the purchase of Advertising Inventory by that Agency and for the avoidance of doubt this will not exceed 15% of the gross cash value (actually received) of any Campaign. For the avoidance of doubt, a Direct Advertiser shall not be entitled to Agency Commission.

5.2 Agency Commission is only applied to the actual cost of the Advertising Inventory and is not applied to any other fees, charges or costs such as costs in relation to Production.

### 6. SPACE REQUESTS

6.1 DCM shall have no obligation to accept any Space Request submitted by the Buyer. Accordingly, all such Space Requests are subject to acceptance by DCM. If DCM wishes to accept any Space Request, DCM may do so either in writing, by the provision of



digital cinema media

Advertising Inventory to the Buyer or by the use of an electronic approval system such as, but not limited to, CARIA.

## 7. COPY REQUIREMENTS

- 7.1 Copy will only be exhibited by DCM if it is approved by DCM in its absolute discretion, satisfies DCM's Copy Requirements, complies with Applicable Laws, the CAP Code and has been cleared by the CAA and submitted to the BBFC for age rating. Any costs incurred to meet the Copy Requirements (including in relation to Dolby mix) must be met by the Buyer.
- 7.2 Where any advert is not given a BBFC 'U' age rating, the Buyer must notify DCM of this prior to scheduling a Campaign and in any event no less than 5 (five) Working Days prior to the date of first exhibition. Any failure to notify DCM of this may impact on DCM's ability to deliver on any agreed Admissions and DCM shall have no liability to fulfil the Admissions target in these circumstances.
- 7.3 Copy must be delivered to DCM not less than 10 (ten) Working Days before the Campaign start date (save for where a Campaign starts on a Friday in which case Copy must be delivered no less than 5 (five) Working Days before the Campaign start date). If Copy is not delivered within these deadlines, DCM has the right to postpone the Campaign and charge the Buyer the postponement fee in accordance with clause 17.2 below.
- 7.4 DCM reserves the right in its absolute discretion and without incurring any liability, to decline to exhibit any Copy without giving any reason in writing for so declining, but the Buyer shall not be liable to pay for any such Advertising Inventory which DCM so declines to exhibit in accordance with this clause.
- 7.5 The Buyer grants DCM the right to use any Copy (including extracts or stills thereof) in any manner for all purposes relating to both the exhibition of the same and for any marketing or publicity purposes (including but not limited to publication on DCM's website).
- 7.6 DCM may delete source files in relation to Copy supplied by a Buyer or anyone acting on the Buyer's behalf once the final cinema conversion has been approved prior to distribution. DCM shall have no liability whatsoever in relation to the Copy supplied and shall be entitled to delete any digital files of the final Copy following the last planned exhibition pursuant to the booked Campaign.
- 7.7 DCM shall have no liability for any error in the manner in which Copy is exhibited.

## 8. AUDIENCE GUARANTEE PACK

- 8.1 An AGP does not guarantee that the Campaign will appear in every DCM cinema. Furthermore, an AGP Campaign does not guarantee access to a Reel for a particular feature film.
- 8.2 An AGP Campaign may need to be excluded from some Reels on the basis of its BBFC certification.
- 8.3 Reels including certain feature films may be sold out as Film Packs, accordingly, in these circumstances DCM has the right to either down weight an AGP Campaign accordingly or to revise the Campaign dates but will seek to do so in collaboration with the Buyer where practicable.
- 8.4 If the Buyer fails to notify DCM when booking a Space Request of any legal restrictions or certification issues in relation to the Copy that might have a bearing on the delivery of a Campaign, DCM will seek to deliver the Campaign utilising the available Advertising



Inventory, however if there is any Admissions shortfall, such screen value shall be forfeited.

- 8.5 AGP Campaigns operate within a 5% Admission Tolerance.
- 8.6 Where AGP Campaigns fail to meet the agreed number of Admissions within the Campaign dates, DCM shall use reasonable endeavours to facilitate, alternative delivery options. If the Campaign is extended due to under delivery of Admissions and the Buyer wishes to change the Copy, the Client will incur the cost related to a Copy change.
- 8.7 If the Buyer is entitled to Banked Admissions for a future Campaign this will be subject to the following:
- 8.7.1 **Admissions will be converted back to screen time value with such screen value to be reasonably determined by DCM in its sole discretion (and not simply transferable Admissions, i.e. 200,000 AGP Admissions will not be exchanged like for like with 200,000 Film Pack Admissions).**
  - 8.7.2 **Banked Admissions must be used within 6 months and used with another booked Campaign, and not in isolation. If Admissions are not utilised within 6 months then all such Banked Admission value will be forfeited.**

## 9. EARLY BOOKING INCENTIVE

- 9.1 EBI is offered at DCM's discretion for AGP Campaigns. Value given pursuant to EBI may not to be utilised as an additional discount off the Rate Card price, but as incremental Admissions for that Campaign.
- 9.2 EBI dates shall be made available on DCM's website or upon request.
- 9.3 The grant of EBI value may mean that a Campaign requires an extra week to deliver the incremental Admissions, in which case DCM reserves the right to alter Campaign dates accordingly.

## 10. FILM PACK

- 10.1 Film Pack Admissions do not guarantee the delivery of the Admissions specified in a Space Request or exposure with every screening of the relevant feature film.
- 10.2 Whilst DCM does not guarantee the target Admissions in relation to Film Pack bookings, it will use reasonable endeavours to achieve the target Admissions. Furthermore, DCM operates a discretionary Admission Tolerance of 10% for Film Pack Campaigns. If there is an Admissions shortfall exceeding the 10% Admissions Tolerance, then, at DCM's discretion, the Buyer will be entitled to Banked Admissions.
- 10.3 In the event that the Admissions target is not met within the Campaign dates, DCM will use reasonable endeavours to offer an additional alternative film release of the same value to deliver the Admissions shortfall. If any proposal made by DCM in this regard is not accepted by the Buyer then where any shortfall is less than the 10% Admission Tolerance, any remaining value will be lost and in these circumstances cannot be banked.
- 10.4 If a Film Pack Campaign outperforms expectations at the outset of a Campaign period, then the remainder of the Campaign will be down weighted in order to ensure that the total delivery reflects the target Admissions. At the time of making a Space Request a Buyer may be asked to specify whether national coverage or full Campaign dates are the Buyer's priority and DCM will use reasonable endeavours to ensure that any down weighting reflects this stated preference.



digital cinema media

- 10.5 As regards Space Requests for a Film Pack with an expected box office of £5m or less, unless a Client is able to agree to alternative film releases (as offered by DCM) being used to supplement Admissions, due to the changeable nature of these smaller releases, the above discretionary policy in relation to Film Pack Admissions Tolerance will not be applied.
- 10.6 If there is a change to the release date, DCM has the right to move a Campaign start date accordingly. If the new release date does not meet a Buyer's Campaign requirements, then DCM may (without any obligation) work with the Buyer to find a suitable replacement Campaign.

## 11. LOCAL SITES

- 11.1 If any specified Local Site listed in a Space Request is unavailable for any reason during the Campaign period, a substitute site will be offered to the Buyer. If such substitute site is not agreed by the Buyer, the Buyer's sole remedy will be the offer of screen value in lieu, with such screen value to be reasonably determined by DCM in its sole discretion, which may be used in a future Campaign.
- 11.2 If DCM ceases to have the right to exhibit advertising in any Local Site during a Local Site Campaign, DCM shall use its reasonable endeavours to agree with any new owner or contractor of such Local Site the continued exhibition of the Campaign. If the owner or contractor does not agree to the continued exhibition of the Campaign, the Buyer's sole remedy will be the offer by DCM of screen value in lieu, with such amount to be reasonably determined by DCM in its sole discretion, to be used in a future Campaign.
- 11.3 The Buyer acknowledges that Local Sites may be used for special events (including but not limited to premiers or charity events) at which the Buyer's Campaign will not be exhibited.
- 11.4 DCM has the right to remove a Campaign from any Local Site for any reason and offer a substitute site to the Buyer. If such substitute site is not agreed by the Buyer, the Buyer's sole remedy will be the offer of screen value in lieu, with such screen value to be reasonably determined by DCM in its sole discretion, which may be used in a future Campaign.

## 12. PRODUCTION

- 12.1 Source materials in relation to the Copy must supplied by the Buyer in the format required by DCM (as advised from time to time).
- 12.2 The Buyer acknowledges that failure to comply with Production deadlines required by DCM (and as notified by DCM to the Buyer) may impact on the start date of the Campaign and DCM shall have no liability for any Campaign delays in the event of such non compliance.

## 13. BARTER

- 13.1 Barter Campaigns may only be agreed at the sole discretion of DCM and are subject to DCM's Barter Policy. Furthermore, Advertising Inventory may only be traded as Barter if agreed by DCM in a Space Request at the outset of a Campaign.
- 13.2 Advertising Inventory may only be traded as Barter by Buyers approved by DCM.
- 13.3 DCM will not agree Barter Campaigns in respect of Clients on behalf of which the Buyer has not traded Barter in the previous 24 months (or such other period as notified by DCM to the Buyer).
- 13.4 Barter rates will be agreed between DCM and the relevant Barter agency (and where relevant, the Buyer).



digital cinema media

- 13.5 None of the following can be traded for Barter: Platinum Spots, Gold Spots, Silver Spots, Content Spots, Local End Frame Campaigns, Creative Solutions, Advertising Inventory available against films selected by DCM in its sole discretion and Production.

#### 14. PRICE AND ADMISSIONS VERIFICATION

- 14.1 Pricing for any Campaigns shall, unless otherwise agreed, be subject to DCM's Rate Card as amended from time to time (in DCM's sole discretion) and any Trading Agreement. The Rate Card will be made available on DCM's website or shall be available upon request.
- 14.2 Special rates and conditions may be announced by DCM from time to time for Content Spots, Silver Spots, Gold Spots and Platinum Spots.
- 14.3 Admissions are calculated by way of ticket data taken from DCM cinemas' theatre management system (or such other reasonably verifiable method) and shall be accepted by the Buyer as conclusive evidence of the Admissions delivered.

#### 15. WARRANTIES AND INDEMNITIES

- 15.1 The Buyer represents, warrants and undertakes to DCM (as appropriate) that:
- 15.1.1 it will be responsible for obtaining, maintaining and paying for all necessary authorisations and any other consents required to perform its obligations under the Agreement, including in relation to copyright material contained in, or the appearances of any person in, the Copy including any music rights or performing rights in relation to all relevant uses required for exhibiting the adverts in DCM cinemas;
  - 15.1.2 All Copy will comply with all Applicable Laws and will not otherwise be in any way misleading, defamatory, obscene, indecent or otherwise offensive;
  - 15.1.3 The Buyer will not, and nor will any of their officers, employees, shareholders, representatives or agents, directly or indirectly offer, promise or give or request, agree to or receive any financial or other advantage with respect to any matters which are the subject of the Agreement which would violate any anti-corruption laws or regulations including the UK Bribery Act 2010; and
  - 15.1.4 The Parties are committed to full transparency across all fee, commission, rebates, service agreements and volume discount arrangements. Therefore, where the Buyer is an Agency, it warrants and undertakes that it has made its Clients generally aware of the existence of the same and shall disclose to its Clients any specific information for the purposes of compliance with clause 15.1.3 above.
- 15.2 Notwithstanding anything to the contrary contained herein, the Buyer will indemnify and hold harmless and keep DCM and its Affiliates indemnified against all Loss arising from any breach or threatened or purported breach of the above warranties.

#### 16. CANCELLATION AND POSTPONEMENT

- 16.1 The Buyer shall be liable to pay the full amount of Gross Expenditure where a Space Request is cancelled after a Space Request has been agreed. Notwithstanding DCM's right set out in this clause to request the full amount of Gross Expenditure for a cancelled Space Request, DCM may, in its absolute discretion, agree to the following:
- 16.1.1.1 a cancellation fee of up to 50% of the Advertising Inventory value of the Campaign and 100% of the Production costs incurred when the Buyer cancels the agreed Space Request not less than 4 weeks prior to the Campaign start date;

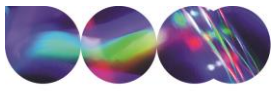




- 16.1.1.2 a cancellation of up to 75% of the Advertising Inventory value of the Campaign, and 100% of Production costs incurred, when the Buyer cancels the agreed Space Request between 4 weeks and 2 weeks prior to the Campaign start date; and
- 16.1.1.3 a cancellation fee of up to 100% of the Advertising Inventory value of the Campaign, and 100% of Production costs incurred, when the Buyer cancels the agreed Space Request with less than two weeks to go prior to the Campaign start date.
- 16.2 DCM may, in its absolute discretion, agree to allow a Buyer to defer a Campaign after the Space Request has been agreed subject to: (a) the payment of a deferment fee of 15% of the relevant agreed and approved Gross Expenditure for such Campaign and (b) confirmation of a deferment date for the Campaign commencement which must not be more than three months (or as otherwise agreed between the Parties) after the first intended exhibition date.
- 16.3 For the avoidance of doubt, the arrangements set out in clauses 16.1 and 16.2 will be agreed by DCM in its absolute discretion and DCM shall not be obliged to give reasons for accepting or declining to accept an application for cancellation or deferment made by the Buyer. The Buyer acknowledges and agrees that the fees referred to in clauses 16.1 and 16.2 are a genuine pre-estimate of DCM's Loss.

## 17. SUSPENSION OR TERMINATION

- 17.1 The Agreement will continue throughout the Term unless terminated earlier in accordance with the provisions in this clause.
- 17.2 DCM may, by notice in writing to the Buyer, suspend or terminate any accepted Space Request or this Agreement (as applicable) at any time if any of the following takes place:
  - 17.2.1 if the Buyer commits any material breach of any provision of the Agreement (and in the case of a remediable breach, fails to remedy such breach within 10 (ten) Working Days from receipt of written notice from DCM specifying the breach); or
  - 17.2.2 any changes in any Applicable Laws prevent it from continuing or, in DCM's reasonable opinion, make it more onerous for DCM to exhibit the Copy or otherwise fulfil its obligations under the Agreement; or
  - 17.2.3 the activities or conduct of the Buyer or activities relating to its business are such that DCM reasonably considers them to be detrimental to the reputation and/or goodwill of DCM or any of its Affiliates; or
  - 17.2.4 if the Buyer ceases to carry on business, becomes insolvent, has a receiver, administrative receiver or manager appointed over the whole or any part of its assets, enters into any composition with creditors generally, or has an order made or resolution passed for it to be wound up; or
  - 17.2.5 if there is a material change in the ownership of or a change of control of the Buyer or if the Buyer disposes of all or a substantial part of its assets or undertaking; or
  - 17.2.6 in accordance with the provisions of clause 26 (Force Majeure).
- 17.3 The Buyer may, by notice in writing to DCM, suspend or terminate any accepted Space Request or the Agreement (as applicable) at any time if any of the following takes place:
  - 17.3.1 if DCM commits any material breach of any provision of the Agreement (and in the case of a remediable breach, fails to remedy such breach within 10



- (ten) Working Days' from receipt of written notice from the Buyer specifying the breach); or
- 17.3.2 if DCM ceases to carry on business, becomes insolvent, has a receiver, administrative receiver or manager appointed over the whole or any part of its assets, enters into any composition with creditors generally, or has an order made or resolution passed for it to be wound up; or
- 17.3.3 in accordance with the provisions of clause 26 (Force Majeure).
- 17.4 Upon termination, the rights and obligations of the Parties under these Terms and Conditions shall terminate and be of no future effect, except that:
- 17.4.1 any rights or obligations to which either of the Parties may be entitled (including DCM's right to be paid any Gross Expenditure due and owing by the Buyer) or be subject before such termination shall remain in full force and effect; and
- 17.4.2 clauses 1, 2, 3, 8, 14, 19, 20, 21, 30 and 31 and any other provisions intended to have effect following the expiry of this Agreement shall remain in full force and effect.

## 18. LIABILITY

- 18.1 In no event will DCM be liable for:
- 18.1.1 any indirect or consequential loss, claim or damage; nor
- 18.1.2 any direct or indirect loss of profits, loss of reputation or other economic loss, data, business or opportunity, in each case whether such claim is based on breach of contract, tort (including negligence) or otherwise, and whether or not the Buyer has been advised of the possibility of such damage.
- 18.2 To the fullest extent permitted by law, all warranties, conditions, terms or other provisions, express or implied and whether imposed by statute or otherwise are excluded.
- 18.3 Neither Party limits its liability for:
- 18.3.1 Death or personal injury resulting from its own negligence or that of its employees or agents where acting in the course of their employment under this Agreement;
- 18.3.2 fraudulent misrepresentation; or
- any other liability the exclusion of which is not permitted by law.
- 18.4 Subject to clause 18.1 above the maximum liability that DCM shall have towards the Buyer in respect of any Loss arising out of or in connection with the Agreement in the event that DCM is held liable for damages or losses suffered by the Buyer shall not exceed the amount paid by the Buyer (less applicable VAT) to DCM in respect of the relevant Spots in connection with which the liability arises.

## 19. FINANCE

- 19.1 Invoices payable by Credit Buyers shall be rendered by DCM to the Buyer (electronically or otherwise) on the last day of the month of exhibition and shall be paid by Credit Buyers no later than the last day of the following month.





digital cinema media

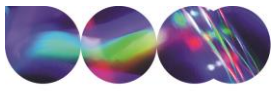
- 19.2 Charges payable by a Pro-Forma Buyer will be paid not later than 10 Working Days before the Campaign start date. If the Pro-Forma Buyer fails to comply with the provisions of this clause, without prejudice to its other rights and remedies, DCM may at any time thereafter, without any liability to the Buyer, refuse to exhibit the Campaigns.
- 19.3 Any charges not paid by the date which they are due will be subject to an immediate surcharge of 2% of such amount payable immediately. A further surcharge of 1% payable immediately will apply in respect of the principal amount which is still outstanding on the 10th day of each subsequent month.
- 19.4 For the purposes of this clause 19.4, payment will be deemed to have been made prior to the Payment Date if DCM has received the full amount by BACS or CHAPS and e-payment, in each case prior to 12:30 p.m. on the Payment Date (provided that where the last day of the relevant month falls on a on a day which is not a Working Day the next Working Day will be regarded as the Payment Date) or such other date as DCM may notify in writing to the Buyer. Payment by cheque will only be accepted with prior consent of DCM and must be received in time such that cleared funds are received by the Payment Date.
- 19.5 Failure by DCM to render or dispatch an invoice at the times referred to above will not affect the obligation of the Buyer to make payment by the Payment Date and as required in accordance with these Terms and Conditions.
- 19.6 All amounts due to DCM under this Agreement shall be made in full and the Buyer shall have no right to claim any set off or to make any counterclaim in any proceedings brought by DCM in respect of any such payment. DCM is entitled to set off any monies due to it by the Buyer, against any monies due by DCM to the Buyer (or any of such Buyer's Affiliates).
- 19.7 All payments are subject to VAT at the applicable rate.

## 20. CLIENT PORTFOLIO

- 20.1 Where the Buyer Commitment is a percentage share of Competitive Set Expenditure, the Buyer: (a) shall supply to DCM (and, if requested by DCM, shall supply the same to the Auditors), a full Client Portfolio list on or before the Trading Term commencement date; and (b) during the Trading Term, shall notify DCM (and if requested by DCM, shall notify the Auditors), promptly of any new Clients which should be added to the Client Portfolio list or Clients which should be removed from such list.
- 20.2 Where the Buyer Commitment is a Volume Commitment or where DCM offers any volume discounts or other incentives based on the volume of Gross Expenditure spent with DCM during an Trading Term, and where the Buyer acquires new business during such Trading Term, the Parties shall, in good faith consider whether any deal parameters agreed in a Trading Agreement should be changed to reflect such new business taking into account, in particular, whether any new Clients acquired typically purchase Advertising Inventory.

## 21. CALCULATION OF BUYER COMMITMENTS

- 21.1 The Buyer warrants and undertakes that, where relevant, the amount of Gross Expenditure committed under the Agreement with DCM during the Trading Term is not less than either:
- 21.1.1 any percentage share of Competitive Set Expenditure set out in the Trading Agreement. For the avoidance of doubt, this includes Gross Expenditure in relation to any Clients which is controlled by a Buyer but contracted via a Barter company; or
- 21.1.2 any Volume Expenditure specified in the Trading Agreement; or



21.1.3 any other Buyer Commitment(s) set out in the Trading Agreement.

Unless otherwise agreed in a Trading Agreement, a Competitive Set Expenditure commitment is based on the arms length value of advertising inventory, whereas Volume Expenditure is based on the gross cash value actually received by DCM.

21.2 Where the Buyer and DCM agree to a Buyer Commitment which is a percentage share of Competitive Set Expenditure:

21.2.1 This is agreed to by DCM on the Buyer's undertaking, representation and warranty that it is the sole and exclusive representative for purchasing Advertising Inventory for all of its Clients in respect of all such Clients' Gross Expenditure.

21.2.2 The amount of Gross Expenditure with DCM under the Agreement in respect of the Trading Term and in relation to a Competitive Set Expenditure commitment will not include any Gross Expenditure reasonably declined by DCM.

21.2.3 This is agreed on the basis of the existing status of the Client Portfolio of the Buyer as at the beginning of the Trading Term. To the extent that during the course of the Trading Term the Buyer acquires new business, DCM shall have the right but not the obligation to include such new Client's or Clients' Gross Expenditure in the Competitive Set Expenditure commitment.

## 22. REVENUE SHORTFALL COMPENSATION

22.1 In the event that the Buyer fails to comply with any relevant Buyer Commitment obligations and such failure is evidenced in the Audit Report, DCM reserves its right to require the Buyer to pay to DCM (together with any applicable VAT) the amount of any Revenue Shortfall (as identified in the Audit Report) (the "**Revenue Shortfall Compensation**"). The Parties acknowledge that such Revenue Shortfall Compensation is a commercially justifiable and genuine pre-estimate of DCM's Loss.

22.2 In its sole discretion, and without any obligations in this regard, DCM may agree with the Buyer an enhanced Buyer Commitment in a subsequent Trading Term (for example without limitation an increased share of Competitive Set Expenditure commitment) in lieu of requiring payment of any Revenue Shortfall as stipulated in clause 22.1 above. For the avoidance of doubt, if the Parties fail to reach agreement on any enhanced Buyer Commitment (for a subsequent Term) within 90 days of the filing of the Audit Report, DCM reserves the right to require payment of the Revenue Shortfall Compensation in accordance with clause 22.1.

22.3 Where any Revenue Shortfall Compensation is due in accordance with clause 22.1 the Buyer shall also be liable to reimburse DCM on demand the cost of the Audit Report.

## 23. AUDITING AND REPORTING

23.1 The Buyer will, and will procure that all of its Buying Agencies, relevant Affiliates, third party representatives (to include Barter/Contra companies acting for the Buyer or on behalf of the Buyer's Clients) will, on its behalf, maintain accurate financial, accounting and media records of all relevant Gross Expenditure and any other expenditure to the extent such expenditure will assist in establishing whether or not the Buyer has complied or will comply with any Buyer Commitment (and any obligation in relation to Revenue Shortfall Compensation) ("**Records**"). For the avoidance of doubt, such accurate financial, accounting and media records include:

23.1.1 all information (including all media codes and media streams) contained within the Media Booking System (e.g. DDS and/or other media booking system) of the Buyer, its Buying Agencies, Affiliates, third party representatives and any other relevant third parties; and



- 23.1.2 all information, without any limitation, held within the financial, accounts or media departments of the Buyer, its divisions, Affiliates, third party representatives, Clients and any other relevant third parties.
- 23.2 DCM has the right to appoint a firm of auditors (the “**Auditors**”) to audit the Records and produce a report (the “**Audit Report**”) in order to establish whether or not the Buyer has complied or will comply with the Agreement and, in particular, a Buyer Commitment (and any obligation in relation to Revenue Shortfall Compensation) at any time during the course of the Agreement and after the Agreement has expired. The Buyer will and will procure that the Auditors will have unrestricted access to: (a) all Records; and (b) all other information which the Auditors consider (in their sole discretion) to be relevant to establishing whether or not the Buyer has complied or will comply with any Buyer Commitment (and any obligation in relation to Revenue Shortfall Compensation).
- 23.3 In addition to procuring unrestricted access to the Records and all other information that the Auditors consider (in their sole discretion) to be relevant for the purpose of this Audit clause, the Buyer will provide all such assistance to the Auditors as required by the Auditors including but not limited to supplying the Auditors with any information to support the information extrapolated from the Media Booking Systems or to support any calculations provided by the Buyer as being an accurate representation of the position in respect of its compliance with a Buyer Commitment.

## 24. CONFIDENTIALITY

- 24.1 Each Party shall keep confidential all Confidential Information relating to the other Party and/or any third party, which is obtained by it as a result of it entering into or performing its obligations under the Agreement. Each Party will only disclose Confidential Information to those of its employees, officers, approved sub-contractors and agents who:
- 24.1.1 need to know it for the purpose of exercising or performing its rights and obligations under the Agreement;
- 24.1.2 are informed of the confidential nature of the information divulged; and
- 24.1.3 agree to act in compliance with the Agreement.

## 25. DATA PROTECTION

The Buyer warrants, undertakes and represents that it will comply with all applicable Data Protection Rules and will procure that any third party to whom the Buyer discloses Personal Data collected pursuant to the Agreement shall so comply.

## 26. FORCE MAJEURE

- 26.1 Notwithstanding the provisions of clause 26.2, if DCM’s advertising related activities are restricted, curtailed or prevented by any law, act, matter or thing beyond its reasonable control (“**Force Majeure Event**”), DCM may, notwithstanding any other provision of the Agreement terminate any contract between DCM and the Buyer without prejudice to DCM’s right to be paid by the Buyer any monies due and owing by the Buyer to DCM at the time of such termination.
- 26.2 Without affecting the scope or effect of clause 26.1, if either Party (the “**Affected Party**”) is prevented or delayed in whole or in part from complying with its obligations under the Agreement by reason of a Force Majeure Event, it will notify the other Party, giving details thereof. The Affected Party will be relieved of its obligations under these Terms and Conditions to the extent that its performance is hindered or delayed by such Force



digital cinema media

Majeure Event, although the Affected Party shall be required to use all reasonable endeavours to minimise the effect of the Force Majeure Event on the performance of its obligations. If the Force Majeure Event continues for a period of more than three (3) months, the other Party shall be entitled to terminate the affected Space Request or Trading Agreement by notice in writing to the Affected Party.

**27. ASSIGNMENT**

- 27.1 The Buyer may not assign, dispose of, hold on trust or part with the benefit or burden of any part of the agreement formed by the Agreement without prior written consent of DCM. For the avoidance of doubt, if DCM grants such consent the Buyer shall nonetheless remain responsible for the performance of its obligations under the Agreement.
- 27.2 DCM shall be free to assign, sub-contract and otherwise deal freely with the Agreement including all or part of its rights and/or obligations under the Agreement to any third party without the Buyer's consent by providing written notice to the Buyer.

**28. NO PARTNERSHIP OR AGENCY RELATIONSHIP**

Nothing in this Agreement will create, or be deemed to create, a partnership, or the relationship of principal and agent, between the Parties. For the avoidance of doubt this Agreement does not impose any obligations on any Affiliate of DCM.

**29. ENTIRE AGREEMENT**

This Agreement together with any documents referred to in it contains to the fullest extent permitted by law the entire agreement between the Parties with respect to its subject matter and supersedes all previous statements made by either Party and all previous agreements in relation thereto.

**30. NO WAIVER**

No failure or delay by any Party in exercising any of its rights under this Agreement will be deemed to be a waiver of those rights and no waiver of a breach of any provision of this Agreement will be deemed to be a waiver of any subsequent breach of the same or any other provision.

**31. SEVERABILITY AND WAIVER**

If any provision of the Agreement is held to be illegal, invalid, or otherwise unenforceable, such provision will be enforced to the extent possible consistent with the stated intention of the Parties, or, if incapable of such enforcement, will be deemed to be severed and deleted from the Agreement, while the remainder of the Agreement will continue in full force and effect. The waiver by either Party of any default or breach of the Agreement will not constitute a waiver of any other or subsequent default or breach.

**32. RIGHTS CUMULATIVE**

The rights, powers, privileges and remedies provided in the Agreement are cumulative and are not exclusive of any rights, powers, privileges or remedies provided under other provisions of the Agreement, by law or otherwise. No failure to exercise nor any delay in exercising by any Party of any right, power, privilege or remedy under the Agreement shall impair or operate as



digital cinema media

a waiver thereof in whole or in part. No single or partial exercise of any right, power privilege or remedy under the Agreement shall prevent any further or other exercise thereof or the exercise of any other right, powers, privilege or remedy.

**33. RIGHTS OF THIRD PARTIES**

Except as otherwise provided in the Agreement, a person who is not a Party to these Terms and Conditions may not enforce any of their provisions under the Contracts (Rights of Third Parties) Act 1999, except that any Affiliate of DCM shall be entitled to enforce any provision of these Terms and Conditions as if the Affiliate was DCM under the Agreement.

**34. NOTICES**

- 34.1 Any notice or other communication required to be given to DCM under or in connection with this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or other next Working Day delivery service providing proof of postage or proof of delivery, at its registered office or (in any other case) its principal place of business and marked for the attention of the DCM Head of Agency Sales with a copy to the Finance Director. Any notice or other communication required to be given to the Buyer under or in connection with this Agreement shall be in writing and shall be by email to a senior executive or executives responsible for the trading relationship or delivered by hand or sent by pre-paid first-class post or other next Working Day delivery service providing proof of postage or proof of delivery, at its registered office or (in any other case) its principal place of business.
- 34.2 Any notice or communication shall be deemed to have been received if delivered by hand, on signature of a delivery receipt or otherwise at 9.00 am on the second Working Day after posting or at the time recorded by the delivery service or if by email, on the date such email was sent if sent before 16.00 or if after such time, the following Working Day.
- 34.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**35. GOVERNING LAW**

These Terms and Conditions shall be construed in accordance with the laws of England and Wales and any dispute arising hereunder shall be submitted to the exclusive jurisdiction of the courts of England.