1. Program Description. NAM shall provide free-standing inserts (each an “Insert”) containing advertising and/or promotional materials supplied by Client (together with all advertising copy, art, mechanicals and final film and other materials provided to NAM, collectively “Client Materials”), as well as the Program Fee, to all insertable Insert Media (as defined below) published by NAM in its then current FSI. NAM shall have the right to use all such Client Materials as contemplated herein. All changes requested by Client with respect to Client Materials must be approved in writing by both parties. All Client Materials submitted to NAM must conform to NAM’s specified formatting and printing guidelines. Failure by Client to timely deliver Client Materials on or prior to the Due Dates shall render the applicable Letter of Commitment subject to immediate cancellation by NAM in its sole discretion, including without limitation, the late delivery of Client Materials at time or location of publication or as specified in the applicable Letter of Commitment or the relevant market list, Client shall be liable for all applicable late delivery charges (collectively, the “Late Delivery Charges”). NAM reserves the right by notice to Client, to change the Due Dates to dates earlier than those set forth in the applicable Letter of Commitment.

2. Client Materials. (a) Client shall be responsible for the submission of all Client Materials (including any changes thereto), the signed Letter of Commitment and the relevant market list to NAM on or before the due dates (the “Due Dates”) specified in the applicable Letter of Commitment. Client hereby licenses NAM the right to use all such Client Materials as contemplated herein. All changes requested by Client with respect to Client Materials must be approved in writing by both parties. All Client Materials submitted to NAM must conform to NAM’s specified formatting and printing guidelines. Failure by Client to timely deliver Client Materials on or prior to the Due Dates shall render the applicable Letter of Commitment subject to immediate cancellation by NAM in its sole discretion, including without limitation, the late delivery of Client Materials at time or location of publication or as specified in the applicable Letter of Commitment or the relevant market list, Client shall be liable for all applicable late delivery charges (collectively, the “Late Delivery Charges”). NAM reserves the right by notice to Client, to change the Due Dates to dates earlier than those set forth in the applicable Letter of Commitment.

3. Price and Payment. (a) NAM shall have the right to adjust the Program Fee for each Letter of Commitment the Circulation Charges, the Production Charges and the Other Charges (each as defined below and, collectively, the “Program Fee”) in accordance with Sections 3(b) and 3(c). “Circulation Charge” equals the Market List Circulation (as defined below) multiplied by the applicable media rates (the “Media Rates”) set forth in the Letter of Commitment. “Market List Circulation” means, for each Letter of Commitment, the circulation of the distribution vehicle distributing the Insert containing Client Materials (or the insertable Insert Media whereby Client Materials are included in the applicable Letter of Commitment), multiplied by the applicable Media Rates. “Production Charges” means, collectively, (i) any surcharges imposed based on the content of Client Materials, (ii) all additional or special charges for oversize or special packaging which include, without limitation, additional charges for ink, paper, press time, and distribution and loss of revenue due to space configurations and/or to accommodate oversized inserts, (iii) any additional production and media work done by NAM (other than current rates), and (iv) any other reasonable fees not set forth in the Letter of Commitment. “Production Charges” other than those attributable to the applicable Letter of Commitment, in the event that the total Program Charges increase more than three percent (3%) from the initial three percent (3%) increase approved by NAM shall have the right to increase the Media Rates by one third (1/3) of one percent (1%) for each one percent (1%) increase above the initial three percent (3%). All amounts due for the Letter of Commitment are exclusive of all applicable taxes.

4. Cancellation. (a) A party’s default constitutes a binding commitment of Client to NAM. All reservations shall be subject to NAM’s specified formatting and printing guidelines. Failure by Client to timely deliver Client Materials on or prior to the Due Dates shall render the applicable Letter of Commitment subject to immediate cancellation by NAM in its sole discretion, including without limitation, the late delivery of Client Materials at time or location of publication or as specified in the applicable Letter of Commitment or the relevant market list, Client shall be liable for all applicable late delivery charges (collectively, the “Late Delivery Charges”). NAM reserves the right by notice to Client, to change the Due Dates to dates earlier than those set forth in the applicable Letter of Commitment.

5. Limitation of Liability. In the event of any error or omission by NAM in the performance of its obligations hereunder, including without limitation the failure to publish Client Materials in an Insert, NAM’s liability shall be limited to reimbursement of any such fees previously paid by Client to NAM, and the Other Charges applicable to the applicable insert in which the error or omission occurred and the denominator of which is the total Market List Circulation for all markets in which Client Materials were scheduled to be published. Any adjustment to the total Program Fee in accordance with this paragraph shall be the sole remedy in the event of any error or omission by NAM. No adjustment shall be made for immaterial errors or omissions.

6. Indemnification for Third Party Claims. (a) NAM shall indemnify, defend and hold Client and its affiliates and their respective directors, shareholders, officers, employees and other representatives harmless from and against any and all claims, losses, damages, costs and expenses (including without limitation reasonable attorneys’ fees) which Client, such indemnitees shall incur by reason of any claim, suit, proceeding, investigation or action by any governmental authority or other third party against or involving Client or such indemnitees based upon, or arising out of, any breach or alleged breach by NAM of any of its obligations under any Letter of Commitment or in an Insert containing Client Materials as contemplated by the applicable Letter of Commitment or as communicated in writing by Client which the error or omission occurred and the denominator of which is the total Market List Circulation for all markets in which Client Materials were scheduled to be published. Any adjustment to the total Program Fee in accordance with this paragraph shall be the sole remedy in the event of any error or omission by NAM. No adjustment shall be made for immaterial errors or omissions in cases where Client fails to provide Client Materials by the applicable Due Dates, even if NAM accepts Client Materials for publication.

7. Representations and Warranties. Client represents, warrants and covenants to NAM that: (i) Client owns or has the appropriate license to use any and all Client Materials provided to NAM, (ii) Client Materials are accurately and correctly labeled for the relevant market, (iii) Client Materials are in all respects in conformity with all applicable laws, regulations, orders, ordinances and rules of any court, government body or agency, and (iv) Client Materials are not defamatory, libelous, obscene or in breach of any other legal requirement. Client represents, warrants and covenants to NAM that Client shall be responsible for publishing in an Insert more than one version of Client Materials or for publishing any special features, except as indicated in the applicable Letter of Commitment or in an insert addendum thereto signed by both NAM and Client.

8. Delivery of Client Materials, including, without limitation, any product samples or other materials to be included in an Insert shall be furnished by Client to NAM, delivery duty paid to the extent such locations as NAM may designate from time to time.

18 Terms and Conditions - Version 5 - Updated 10/19
party claim which may give rise to indemnification by Client hereunder, NAM shall give prompt notice thereof to Client. Client shall have the right to defend, at Client's expense, any such claims, suits or actions and to manage and control all such claims, suits or actions with attorneys of its own selection, except that Client shall not settle any such claim, suit or action without the prior written consent of NAM, such consent not to be unreasonably withheld. At NAM's request, Client will supply acceptable evidence of insurance to reasonably cover the foregoing indemnification of NAM against liability.

(c) Client shall bear exclusive responsibility for the entire cost of all coupons redeemed, including, without limitation, the coupon value and all applicable handling fees, and for compliance with all applicable laws and regulations relating to couponing and advertising activities with respect to Client Materials, products and promotions. NAM makes no warranties or representations, either express or implied, as to fitness, merchantability, or any other matters of any kind or nature, except as expressly set forth herein. A waiver by either party hereto of any default or breach by the other of any provision hereof shall not be considered a waiver of any subsequent default or breach of the same or of any other provisions hereof. The failure of either party to object to or to take affirmative action with respect to any conduct of the other which is in violation of a Letter of Commitment shall not be construed as a waiver thereof, or of any future breach or subsequent wrongful conduct.

10. Confidentiality. Each party shall keep the terms of the Letter of Commitment confidential and shall not disclose any of such terms other than to such party's respective officers, directors, employees, affiliates, contractors or advisors with a need to know such terms in order for such party to perform its obligations hereunder and who represent personally that they agree to keep such terms confidential, except as required to be disclosed by law, regulation, order or investigation of any court or governmental agency or any agency authorized to make such disclosure. Except as specifically provided herein, the terms, conditions or provisions of any purchase or insertion order or other documents or instructions submitted by or on behalf of Client, whether or not such purchase or insertion order or other document or instruction is signed or acknowledged by NAM. No Letter of Commitment may be changed or modified or any provisions therein waived except in a writing signed by both parties that states the specific provisions of the Letter of Commitment to be so changed, modified or waived.

(e) If any term or provision of any Letter of Commitment shall, to any extent, be held to be invalid or unenforceable, the remaining terms and provisions of the Letter of Commitment shall not be affected thereby and each term and provision thereof shall be valid and enforced to the fullest extent permitted by law provided that any such invalidity or unenforceability does not negatively impact the nature of the relationship contemplated by the Letter of Commitment. Subject to the foregoing, if a court of competent jurisdiction finds that any provision of a Letter of Commitment is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed written, construed, and enforced as limited. Each Letter of Commitment shall be construed without regard to any presumption or other rule requiring construction against the party causing such documents to be drafted.

(f) No action of any kind arising out of or related to the performance of any Letter of Commitment or otherwise may be brought by either party more than twelve (12) months after the same has accrued except an action for non-payment of any amounts for which Client is responsible for under each Letter of Commitment or indemnification which may be commenced within the period provided by statute. In addition, all disputes which include claims for credit must be made known by Client to NAM in writing within one hundred twenty (120) days of the invoice date. Such disputes shall not be reason to withhold payment when due, except that the specific and reasonable amount disputed may be withheld in good faith until such time as the dispute has been reviewed and resolved. Any such dispute not disclosed to NAM in writing within one hundred twenty (120) days from the invoice date shall be deemed waived by Client and such invoice shall be deemed an account stated.

(g) Any provision of a Letter of Commitment which contemplates performance or observance subsequent to the expiration or termination of such Letter of Commitment (including without limitation confidentiality, warranty and indemnification provisions) shall survive the expiration or any termination of such Letter of Commitment and shall remain subject to these terms and conditions.

(h) Client acknowledges and agrees that monetary damages would not be an adequate remedy for the damage suffered by NAM as a result of a breach of any of the provisions of a Letter of Commitment by Client and, accordingly, Client agrees that in addition to any other remedy which is available to NAM, NAM shall be entitled, without bond and without the necessity of showing actual monetary damages, to equitable relief, including without limitation, relief by way of temporary or permanent injunction and to such other relief that any court of competent jurisdiction may deem just and proper to enforce the terms and provisions of the Letter of Commitment.

(i) Except as specifically provided herein, the rights and remedies herein provided are cumulative and are not exclusive of any other rights or remedies which the parties may otherwise have at law or in equity. NAM shall have no duty to mitigate any damages.

(j) Headings of sections or paragraphs are for convenience only.

(k) Neither the Letters of Commitment nor the transactions contemplated thereby are to be construed as creating a partnership, joint venture, master-servant, principal-agent, or other relationship for any purpose whatsoever. Neither party may be held responsible for the acts either of omission or commission of the other party, and neither party is authorized to or has the power to obligate or bind the other party by contract, agreement, warranty, representation or otherwise in any manner whatsoever.

(l) All notices required or permitted to be given pursuant hereto shall be given to the parties by hand delivery, reputable overnight courier, or by certified mail, return receipt requested, postage prepaid, to the addresses of NAM and the Client and/or Agency set forth in the Letter of Commitment. - END -