



SUPPLEMENT

TO THE

NEW ZEALAND GAZETTE

OF

THURSDAY, AUGUST 15, 1935.

Published by Authority.

WELLINGTON, MONDAY, AUGUST 19, 1935.

Form of Standard Film-hiring Contract approved by the Minister under the Cinematograph Films Amendment Act, 1934.

Wellington, 16th August, 1935.

PURSUANT to the provisions of section 10 of the Cinematograph Films Amendment Act, 1934, I hereby approve of the terms and conditions of the standard form of film-hiring contract as set out hereunder. I also approve of the use in practice of a printed form in which Parts A, B, and C of the said standard form of contract are printed in full and the provisions of Part D are included by reference in Part C to the gazetted copy of the said standard form. This approval shall be effective for a period of twelve months from date hereof.

J. A. YOUNG, Minister of Internal Affairs.

STANDARD FILM-HIRING AGREEMENT.

AGREEMENT made this day of 19 , between , a company duly incorporated in , and carrying on business in the Dominion of New Zealand (hereinafter called "the renter"), of the one part, and , of , an exhibitor operating the theatre at (hereinafter called "the exhibitor"), of the other part, whereby it is agreed between the parties hereto as follows:—

PART A.—EXHIBITION PERIOD.

The renter agrees to hire and the exhibitor to take on hire for the purposes of exhibition the films contracted for herein on the dates specified or otherwise provided for in the Schedule hereto and in accordance with the provisions hereof. The period for the supply and the exhibition of the whole of the films contracted for shall extend from the day of , 19 , until the day of 19 , but shall not in any event extend beyond the period or periods limited by section 37 of the Cinematograph Films Act, 1928, as modified by section 3 of the Cinematograph Films Amendment Act, 1929.

PART B.—SCHEDULE.

This agreement refers to films released during the 19 -19 film-renting season.

(NOTE.—These blanks must be filled in.)

Number of Film(s).	Particulars.	Number of Screening Days.	Screening Dates.	Rental per Film.

Rider.—The above films are feature films and sufficient short subjects shall be supplied with each feature film to be supplied hereunder to make up a programme of approximately 11,000 ft.

(NOTE.—This rider may be deleted or varied to suit the circumstances.)

PART C.—SPECIAL CONDITIONS.

This agreement is made subject to the provisions of Part D hereof and the following special provisions [*Here insert special provisions, if any*]:—

PART D.—PROVISIONS OF GENERAL APPLICATION.

(1) *Supply and Classification of Films.*

- (a) The films to be supplied are those designated either specifically or generally in the Schedule hereto.
- (b) In so far as such films are not specified by title or other particulars then (subject to the provisions of paragraphs (f) and (i) of this clause) the renter shall, unless the parties by express stipulation otherwise agree, offer to the exhibitor for selection all the films which are required to be included in the statement required to be made by the renter pursuant to section 7 of the Cinematograph Films Amendment Act, 1934, with respect to the film-renting season in question.

- (c) (i) If no express provision be inserted either in the said Schedule or elsewhere in this agreement for the classification of the said films, the same may be classified by the renter.

(ii) Provided, however, that unless identical terms of hiring shall apply to all films the subject of this agreement any differentiation of such terms shall be deemed to be a classification within the meaning of this provision.

(iii) Provided also that the renter shall include in the notice of availability of every released film offered to the exhibitor pursuant to this agreement an intimation of the classification of such film.

(iv) Provided further that, if the renter shall offer to the exhibitor a lesser number of films than are provided for by this agreement the numbers of films stated in respect of each class shall be adjusted *pro rata*. If such adjustment should vary the classification of any picture already screened, and the hire paid, or to be paid in respect thereof, the variation in the amount of such hire shall be adjusted retrospectively, the average rentals from the different classes being the basis of such adjustment, and the renter shall debit or credit to the exhibitor in account any deficiency or excess of hire ascertained upon such adjustment. In the event of any dispute the matter shall be determined by arbitration.

- (d) If during the film-renting season the renter releases or offers for release more films than are included in the statement required to be made to the Minister pursuant to section 7 of the Cinematograph Films Amendment Act, 1934, and if this agreement provides for the supply wholly or in part of unnamed or undescribed films, the unnamed or undescribed films to be made available to the exhibitor shall be the films released or offered for release in New Zealand which were first generally released in the country of origin, and in the case of any dispute as to which of those unnamed or undescribed films are included in this agreement the matter shall be determined by arbitration.

- (e) If the renter shall fail during the period of supply designated herein to offer to the exhibitor any named or specifically described film required to be so offered, which film is released in the country of origin in the film-renting season corresponding to that to which this agreement has reference, the renter agrees that if he releases such film during the next succeeding film-renting season, he will offer such film to the exhibitor, in the same relative priority in relation to other exhibitors in the city, town, or locality in which the exhibitor's theatre or theatres is or are situated, and upon the same terms, *mutatis mutandis*, as would have applied had the film been duly tendered during the period of supply under this agreement. Upon written notice of the availability of such film the exhibitor may within twenty-one days of such notice elect to take such film, and if he shall not within such period so elect he shall be deemed to have waived his rights under this subclause. In the event of any dispute as to the season in which any such film was released in the country of origin the matter shall be determined by arbitration.

- (f) Nothing in this agreement shall prevent the parties (in the event of their so agreeing by express provision in the said Schedule or elsewhere in this agreement) from conferring on the renter a right to reserve or withhold from the films which would otherwise be offered to the exhibitor pursuant hereto such number of films as may be designated in that behalf: Provided, however, that if any of such films have been named or defined as in subclause (b) of this clause, then no reservation shall apply unless such film is adequately identified in the memorandum of reservation.

- (g) Unless any of the said films is specifically contracted for first- or second-run exhibition, the renter shall not be under any obligation to supply the same until it has had first- and second-run exhibitions in the chief city or town of the provincial district in which the said theatre is situated.

- (h) All films referred to in this agreement are to be of the standard size only (35 mm. width).

- (i) Should the renter for any of the reasons hereinafter named be unable to deliver on the due date any of the films specified by title or other particulars herein or otherwise intended to be supplied hereunder, the renter shall, upon notifying the exhibitor, have the

right either to select and supply some other film in lieu thereof or to reduce the number of films to be supplied to the extent that the renter is unable to deliver for any of the said reasons. In the event of the renter electing to supply a substitute film, it shall be optional on the part of the exhibitor whether he will accept the same by way of substitution, but he shall be deemed to have accepted if he fails within fourteen days after the receipt of notification to inform the renter of his rejection thereof; and in the event of his rejection the number of films to be supplied hereunder shall to that extent be reduced. The reasons for any of which the right conferred on the renter by this present paragraph (i) shall be deemed to arise are as follows:—

(i) Any cause beyond the control of the renter.

(ii) The loss or destruction of the film, or such damage thereto as to render it unfit for exhibition.

(iii) If in the opinion of the renter the delivery of the film would or might involve the renter or the exhibitor in a suit, action, or proceeding by any person claiming any interest in copyright or any other right or interest affecting the film.

(iv) If difficulties arise between the renter or its suppliers on the one hand and any person holding or claiming to hold any interest in copyright or any other right or interest affecting such film on the other hand, which in the opinion of the renter may render it unprofitable or inexpedient from the point of view of the renter to deliver such film.

- (j) Any change by the renter of the name or title of any film shall not by reason only thereof be deemed to constitute such film a substitute film.

- (k) Subject, however, to the provisions of subclause (e) hereof, if the renter releases during the said film-renting season a lesser number of films than he contracts to supply hereunder, the exhibitor shall not be entitled to require the renter to make good the deficiency or any part thereof out of films which are acquired by the renter *bona fide* for release by the renter in a subsequent season.

(2) Time and Place of Exhibition.

The exhibitor agrees to exhibit the said films, but only at the theatre or theatres hereinbefore specified on the exhibition date or dates fixed in the said Schedule or determined as herein provided, and save with the consent of the renter not to allow any print thereof to leave the exhibitor's possession during the period specified for the exhibition thereof by the exhibitor, nor to exhibit or permit the exhibition of any such print at any other time or place. Unless otherwise provided herein, the exhibitor will not, without the written consent of the renter, exhibit any of the said films on any Sunday or between the hours of 11.45 p.m. on any day and 6 a.m. on the following day.

(3) Designation of Play Dates.

Unless the Schedule hereto designates the screening dates then, on the execution of this agreement or thirty days before the commencement of the exhibition period, the exhibitor may give written notice to the renter designating the dates during the first three months of such period on which he can take and exhibit a proportionate number of the films the subject of the contract, and he may give the like notice thirty days before each succeeding three months of such period. If the exhibitor fails to give any such notice the renter may designate the dates for exhibition of the said films during the relative three-monthly period, and in either case such designation shall be binding on both parties. No such designation of dates by the exhibitor shall entitle him to appropriate particular films to particular dates, the intention being that the renter shall determine the allocation of films to the dates so designated.

(4) Payment Clause.

- (a) Flat Rentals: Subject in the case of percentage bookings to the special provisions specified in paragraph (b) hereof (which shall be deemed to apply only to the percentage portion of the hire), the hire payable for each film, together with all advertising, freight, and other charges, shall be paid free of exchange to the renter not less than three days in advance of the date of despatch from renter's exchange or from the last previous exhibitor.

- (b) Percentage Bookings: In any case where the hiring fee is to be computed entirely or in part upon the gross admission receipts of the said theatre, the exhibitor shall pay to the renter within seven days of the first authorized exhibition date, or if the exhibition

period exceeds one week, then within seven days of the first authorized exhibition date in each respective week or part of a week, a sum equal to the proportion of the gross admission receipts aforesaid due to the renter, as well as all moneys which may be due and owing to the renter for freight, cartage, and other charges: Provided that, in any case where the hiring fee is to be so computed, the exhibitor shall, prior to the exhibition period of the film, or at any time during such period, if so requested by the renter, deposit with the renter in cash or otherwise to the satisfaction of the renter a sum of money based upon the estimated hiring fee or balance thereof, as the case may be, such estimated hiring fee or balance thereof to be determined by the renter. All moneys so deposited by the exhibitor may, at the option of the renter, be applied by the renter in or towards satisfaction of the hiring fee and other moneys due and payable to the renter for the film, and any surplus remaining shall be refunded to the exhibitor without unreasonable delay. The exhibitor hereby undertakes to supply to the renter immediately after the authorized exhibition period, and in a form satisfactory to the renter, a certified itemized statement of the daily gross admission receipts for the exhibition date or dates of each film for which payment is so required to be made. Upon such date or dates an authorized representative of the renter is hereby given the right to verify the sale of all tickets of admission to said theatre and receipts therefrom, and for such purpose shall have access to the theatre including the box-office and also access to and the right to examine at all reasonable times the exhibitor's books and records in so far as they relate to such gross receipts, including copies of returns furnished to taxation authorities for purposes of entertainment-tax for the purpose of verifying such box-office statement. The renter agrees that any information obtained by it pursuant to the provisions of this clause will be treated as confidential except in any arbitration proceedings or litigation in respect of this agreement. The words "gross receipts" used in this or any other part of this agreement mean gross receipts exclusive of entertainment-tax.

- (c) Nothing herein contained shall impose any obligation on the exhibitor to make payment for any film which is not delivered in reasonable physical condition for projection and exhibition, and which for that cause he does not screen.

(5) *Unplayed Dates: Flat Rentals.*

If in the case of any of the said films in respect of which a flat hiring fee alone is payable the exhibitor fails to exhibit the same on the date or dates specified in the said Schedule and/or determined in accordance with the provisions hereof for any reason other than specifically mentioned in clause (25), the exhibitor agrees to pay the renter free of exchange the hire payable for such film, together with all advertising, freight, and other charges on the due date. On receipt of such payment the renter undertakes to grant the exhibitor a substitute exhibition date as shall be mutually agreed upon, but the exhibitor shall not be entitled in the case of such film to any priority of exhibition over other exhibitors that may be conferred upon him by this agreement.

(6) *Liquidated Damages: Percentage Hiring.*

If this agreement calls for payment computed either in whole or in part upon a percentage of the exhibitor's gross admission receipts, and if the exhibitor fails or refuses to exhibit such film as provided in this agreement, the exhibitor shall pay to the renter as liquidated damages for each day that the exhibitor fails or refuses to exhibit such film (in addition to any fixed sums payable hereunder in respect thereof) a sum equal to such percentage of the average daily gross admission receipts of such theatre on the corresponding days of the twelve weeks prior to the date or dates when such film should have been so exhibited: Provided, however, that if the exhibitor shall exhibit such film for less than the full number of days provided for in this agreement, such sum equal to such percentage shall for each day on which the exhibitor fails to exhibit the film be computed upon a sum equal to seventy-five (75) per cent. of the gross receipts of the said theatre for the last day of the exhibition thereof of such film. An itemized statement of the said daily gross receipts shall be delivered by the exhibitor to the renter upon demand therefor, and the renter shall have the same right of access and inspection as aforesaid.

(7) *Admission Prices.*

- (a) The exhibitor agrees that he will charge a price for admission to the theatre of not less than 1s. for adults and 6d. for children, except at matinees, when the minimum charge may be 3d. for children, and also except in the case of films designated in a list approved by the Minister for the purposes of this clause, in which case the minimum charge shall be 6d. for adults and 3d. for children; or

The exhibitor agrees that he will charge a price for admission to the theatre of not less than 6d. for adults and 3d. for children.

(NOTE.—Either of these alternative forms may be used at the discretion of the renter.)

- (b) For the purposes of this clause a child shall be deemed to be a person under the age of fifteen years.
- (c) The exhibitor further agrees with the renter that he will not do or offer to do any act, matter, or thing, or give or offer to give any benefit, inducement, advantage, gratuity, or other property to patrons of the said theatre which will have the effect, directly or indirectly, of reducing the charge for admission of any person below such minimum as aforesaid or of reducing the net result to the exhibitor in respect of the admission of such person below the minimum.
- (d) In the event of any breach by the exhibitor of this clause the exhibitor shall pay to the renter by way of liquidated damages the sum of five pounds (£5) in respect of each exhibition in respect of which such breach is committed, but this provision shall be without prejudice to the exercise by the renter of any other remedy to which he may be entitled under these presents by reason of such breach.

(8) *Exhibition and Advertising.*

- (a) The exhibitor agrees in any advertising to announce each film as "A [mentioning the name of the producer] picture," and to give full prominence to the trademark of the renter.
- (b) The exhibitor shall not use any advertisement or publicity of which the renter has notified his disapproval in writing and shall indemnify the renter against any loss or damage suffered by the renter by reason of any breach of this obligation.
- (c) No lithographic posters, photographs, slides, lobby displays, or other advertising accessories purchased, leased, or otherwise acquired by the exhibitor from or through the renter shall be sold, leased, lent, or given away by the exhibitor to any other person. Upon the breach or attempted breach of this provision by the exhibitor the right to the immediate possession of such advertising matter shall revert to the renter which may take possession of the same wherever found.
- (d) The exhibitor agrees that not more than one other feature-length film is to be presented at the same performance with any feature-length film supplied hereunder.
- (e) Nothing in this agreement shall preclude any special written agreement relating to advertising in any particular case.

(9) *Delivery and return of Films.*

- (a) *Delivery:* The renter shall make deliveries hereunder to the exhibitor by delivery at the renter's exchange or by forwarding or consigning to the exhibitor either by the renter or by some other person at the renter's direction, and either by rail, steamer, post, or other means of transport, not being by air, as the renter may decide, and shall use its best efforts to have each and every film delivered to the exhibitor in time for the authorized exhibition on the exhibition date in said theatre: Provided that the renter shall not be liable in any way whatever for failure or delay in making delivery by reason of the elements, accidents, labour troubles, fires, Government Proclamations, ruling of censors, or by reason of any other delay, accident, or hindrance of whatever kind soever beyond the control of the renter.
- (b) *Possession:* For the purposes of this agreement all films and accessories shall be deemed to be in the possession of the exhibitor from the time the exhibitor takes delivery from the premises of the renter or from the time the film is forwarded or consigned to the exhibitor as aforesaid until delivery by the exhibitor to the renter at the renter's exchange, or consignment by any of the means of transport as aforesaid to another exhibitor notified to the exhibitor in writing by the renter.

- (c) **Return:** The exhibitor shall promptly return all films, together with spools and straps, in the same condition as same were received (reasonable wear and tear excepted), and properly packed in containers and properly addressed to the renter's exchange or to any other place named by the renter in writing to the exhibitor by delivery or consignment as aforesaid. The exhibitor shall consign by such means of transport, other than by air, as may be specified in writing by the renter.
- (d) **Freight:** The exhibitor will pay all costs of transportation of the said films and/or accessories from the renter's exchange, and return to renter's exchange, or to another exhibitor, as the case may be.
- (e) **Damages:** The exhibitor agrees that if for any reason not beyond his control despatch instructions are not carried out by him, with the result that loss is thereby caused to the renter and/or the exhibitor to whom the films should have been despatched in accordance with the despatch instructions of the renter, he will pay to the renter by way of liquidated damages a sum equivalent to the amount of the loss thereby suffered by the renter and/or such other exhibitor, and will indemnify the renter against any claim preferred by such other exhibitor against the renter in respect of such loss.

(10) *Sound and Projection Equipment.*

The exhibitor undertakes that the reproducing equipment used in connection with any films supplied hereunder will operate properly, reliably, and efficiently to reproduce such recorded sound with adequate volume and high quality, and that he will maintain and keep the projection machine and all other apparatus used by him in a good, proper, and substantial state of repair, order, and condition, and will at all times allow free access for a representative of the renter appointed in writing by the renter for that purpose to enter into every part of the said theatre or theatres for the purpose of inspecting and/or testing such sound and/or projecting equipment and apparatus. If, after any such inspection or test, the representative (being a person approved by writing in that behalf by the Chief Inspector for the time being under the Cinematograph Films Act, 1928) serve upon the exhibitor or leave for him at the said theatre notice in writing requiring the exhibitor, within a time specified in such notice, to do or to refrain from doing anything in connection with the said equipment or the use thereof which in the opinion of the representative is necessary for the more satisfactory exhibition of the said films, the exhibitor shall observe and/or perform the requirements of such notice within the time specified therein, and in the event of the exhibitor failing to observe or perform the requirements of such notice, and so long as such failure continues, the renter shall be entitled to refuse to supply or allow the said films or any of them to be exhibited, but nevertheless without prejudice to any other right or remedy the renter may have under this agreement.

(11) *Copyright.*

- (a) The right to exhibit the said films shall include a right under all copyrights in respect of such films and of the recorded sound in synchronism therewith, but not the right to perform in public any musical work included in such recorded sound.
- (b) The exhibitor warrants that he will have at the date or dates of the exhibition of each of such films an effective license from the Australasian Performing Rights Association, Limited, or other person or association of persons designated in writing by the renter upon inquiry by the exhibitor who or which may control the right of public performance of such copyrighted musical or other composition to perform publicly such composition.
- (c) Each party will indemnify the other against any claim in respect of infringement of copyright or infringement of the right of public performance, as the case may be, where the same arises by reason of a breach by such first-named party of his obligations under this clause.

(12) *Slander or Libel.*

The renter will indemnify the exhibitor against any claim in respect of any slander or libel which arises exclusively from the contents of any film exhibited pursuant hereto and/or the use of advertising matter in relation thereto supplied by the renter.

(13) *Cutting and Alteration of Films.*

The exhibitor shall exhibit each film in its entirety, and shall not copy, duplicate, cut, or alter any film excepting with the written or telegraphic consent of the renter.

(14) *Loss and Damage to Films.*

- (a) The exhibitor shall forthwith on the receipt of any film hereunder report to the renter on a form to be supplied by the renter upon application by the exhibitor the condition of such film.
- (b) The exhibitor shall immediately notify the renter's exchange by prepaid telegram of the loss, theft, or destruction of or damage or injury to any print. If any film shall be received from the exhibitor by the renter or any subsequent exhibitor in a damaged or partially destroyed condition it shall be deemed to have been so damaged or destroyed while in possession of the exhibitor, unless the latter before or immediately after the first public exhibition thereof shall have telegraphed the renter that such print was received by the exhibitor in a damaged or partially or wholly destroyed condition, and setting forth fully the nature of such damage and the amount of footage so damaged or destroyed.
- (c) The exhibitor shall pay to the renter a sum equal to the cost of replacement at the renter's exchange for each linear foot of film which may be lost, stolen, destroyed, or so damaged as to be unfit for further exhibition while in the possession of the exhibitor.
- (d) If damage occurs to any film while in the possession of the exhibitor, but such damage is not of such nature as to preclude further exhibition, the exhibitor shall pay to the renter a sum in proportion to the nature and extent of such damage. The amount of such damage shall be determined by mutual agreement or by arbitration, but in no case shall it exceed the value of the film as set out in subclause (c) hereof.
- (e) The exhibitor shall not be relieved of his obligation to return all discs and other accessories by reason of the same having been broken, worn out, or damaged.

(15) *Insurance.*

The exhibitor shall insure and keep insured all films to be supplied hereunder while in his possession under a block risk policy effected and operated from time to time by a Board constituted of an equal number of representatives of the Film Exchanges Association of New Zealand (Incorporated) and the New Zealand Motion Picture Exhibitors' Association (Incorporated), and constituted pursuant to an agreement between the said associations, dated the 6th day of August, 1935, or to any agreement in substitution or renewal thereof, and shall punctually pay to the said Board all contributions or levies required of or made upon him by the said Board to enable such insurance to be effected and maintained; and, in the event of default by the exhibitor in payment of any such contribution or levy, the renter may if it thinks fit pay the same and recover the amount thereof from the exhibitor: Provided, however, that in the event of such Board for any reason ceasing to exist or to function, the exhibitor shall insure and keep insured the said films whilst the same are deemed to be in his possession hereunder against the same risks as specified in the said block policy in some insurance office approved by the renter, the total insurance cover in respect of any one programme to be not less than £300 (or such other sum as may be agreed upon from time to time or in default of agreement fixed by arbitration), and shall punctually pay all premiums in respect thereof, the renter having the right in the event of default by the exhibitor to pay the same and recover the amount from the exhibitor.

(16) *Broadcasting prohibited.*

The broadcasting of or from any films supplied under this agreement is expressly prohibited.

(17) *Switching.*

The renter reserves the right to switch each and every film supplied hereunder to any other exhibitor or exhibitors for return in due course: Provided that such switching shall not affect the normal screening of the programme of which such film is a part. No costs or expense in effecting such switching shall be borne by the exhibitor unless the switching be at his request.

(18) *Observance of Acts and By-laws.*

The exhibitor and the renter shall as the same are applicable to motion-picture theatres and/or the control, care, and use of film at all times fully and effectually comply with all Acts of Parliament and rules and regulations thereunder, as well as with all by-laws of any local government or other authority having power in that behalf for the locality or district wherein the said films are to be used.

(19) Assignment.

This agreement shall not be assigned, transferred, or otherwise disposed of by the exhibitor to any other person without the written consent of the renter, which consent shall not be arbitrarily withheld, and shall not in any case be effective until such other person has agreed with the renter to carry out the terms and provisions hereof. Notwithstanding such consent, the exhibitor shall remain responsible to the renter hereunder unless a release from liability is given to him in writing.

(20) Waiver.

The waiver by either party of any breach or default by the other party shall not be construed as a waiver of any other or subsequent breach or default by such other party whether similar or otherwise.

(21) Notices.

- (a) All notices to be given to either party hereunder shall be sufficiently served if sent by prepaid post to the address of the party to whom notice is given last known to the other party, and any notice so sent shall be deemed to have been received on the day when it would have ordinarily been received in the course of post: Provided that any notice of the despatch of film or accessories shall be addressed to the theatre to which the film is booked.
- (b) Any notice of availability given to the exhibitor under the provisions of section 9 of the Cinematograph Films Amendment Act, 1934, shall expressly intimate that it is an availability notice under the Act.

(22) No Partnership.

It is expressly agreed that this agreement in no way constitutes a partnership between the parties hereto.

(23) Oral Promises.

No oral promise, representation, understanding, or agreement in reference hereto shall be of any force or effect.

(24) Stamp Duty.

The renter has the right to stamp his copy of this agreement and to charge the exhibitor with the amount of stamp duty paid thereon.

(25) Theatre closed.

In the event of the said theatre being closed by Government Proclamation or by Parliamentary, Ministerial, departmental, or local authority (statutory or otherwise) under any real or assumed authority or power not being due to any withdrawal or suspension of the exhibitor's license in respect of such theatre for any cause within the power of the exhibitor to remedy, or in the event of such theatre being destroyed or damaged to such an extent as to be unfit for use or occupation so that any film to be exhibited hereunder cannot be exhibited on the day or days when it should be so exhibited, then this contract shall terminate in respect of such number of films as would have been exhibited in the theatre in terms of this contract: Provided that in the event of screening not being resumed by the exhibitor in the said theatre or a substitute theatre in or near the same locality within forty days next after the day when a film was last screened therein, the renter shall have the right of terminating this agreement, in which case the agreement shall be deemed to have terminated at the date when the theatre closed owing to one or either or all of the causes aforesaid. Such determination of the agreement shall be without prejudice to the rights of either party in respect of any matter then outstanding between them under this agreement up to the time of such determination.

(26) Breach.

- (a) If during the term hereof the renter fails or refuses to deliver and/or the exhibitor fails or refuses to exhibit any of the said films (save and except such as may be rejected under section 8 of the Cinematograph Films Amendment Act, 1934, or where elimination of any film or delay or failure is due to any of the permissible reasons provided herein), or if either party violate or breach the provisions contained herein, the renter or the exhibitor, as the case may be, shall pay to the other party the damage so caused.
- (b) If the exhibitor—
- (i) Shall fail or refuse to pay the rental of any such film as provided in this agreement or to furnish statements of the receipts of such theatre if any are required hereunder, or to give the renter's representative access to the said theatre or its box-office and/or to the exhibitor's books and records relative to films

the rentals of which are based upon the said theatre's admission receipts as herein provided; or

(ii) Makes default in the due observance and performance of the obligations on his part under clauses numbered 2 (Time and Place of Exhibition), 7 (Admission Prices), 11 (Copyright), 15 (Insurance), 16 (Broadcasting), and 18 (Observance of Acts and By-laws), or any of them; or

(iii) Commits any other breach going to the root of the contract; or

(iv) Becomes insolvent or is adjudicated a bankrupt, or in the case of a company goes into liquidation except for reconstruction, or executes an assignment for the benefit of his creditors; or if a receiver is appointed for any of the property of the exhibitor; or

(v) Voluntarily or by operation of law should lose control of the said theatre or of his said interests therein, making it impossible for the exhibitor to exhibit the said films at the said theatre;

then, upon the happening of any one or more of said events, the renter may at his option (1) terminate this agreement, or (2) suspend the delivery of films hereunder until such default or defaults should cease and be remedied: Provided that the renter may not suspend delivery of films as provided herein on account of any payment arising out of this agreement which may be *bona fide* in dispute and in respect of which arbitration as provided for in this agreement is applied for. The lodgment of the amount in dispute with the Secretary of the New Zealand Motion Picture Exhibitors' Association to abide the result of the dispute shall be a sufficient warranty of the exhibitor's *bona fides*.

- (c) In the event of suspension of delivery by the renter in exercise of the foregoing power in that behalf, the renter shall have the right to reduce the number of films by the number the delivery of which is suspended pending rectification of the breach, and to deal with such suspended films in all respects as the renter thinks fit.

(d) If the renter shall—

- (i) Persistently fail to supply film on due dates; or
 (ii) Give prior exhibition to a competitive theatre in breach of this agreement; or
 (iii) Commit any other breach going to the root of the contract

then, upon the happening of any of such events, the exhibitor may at his option—

- (1) Terminate this agreement; or
 (2) Suspend payments herein until such default or defaults shall cease and be remedied, and in the event of such suspension may reject such number of films as would otherwise have been screened by him during such period of default in addition to any other rights of rejection he may have hereunder.

- (e) It is agreed that the exercise of any of the said remedies by the renter or the exhibitor shall be in addition to and without prejudice to any right or remedy of either against the other at law or in equity and/or otherwise provided for in this agreement.

(27) Tender of Film.

In any circumstances arising in connection with the exercise by the renter of its remedies under this agreement where the formal tender to the exhibitor of any film may be necessary to the proper exercise of any such remedy a written offer to supply such individual film on the due date shall for that purpose be deemed a sufficient tender to the exhibitor of the film therein named. No such offer shall be effective unless it contains an intimation that it is intended as a formal tender of film for the purposes of this clause.

(28) Arbitration.

If any question or difference whatsoever shall arise between the parties hereto touching these presents, or any clause or thing herein contained, or the construction of this agreement, or as to any matter in any way connected with or arising thereout or the operation thereof, or the rights, duties, or liabilities of either party in connection with the premises, then, and in every such case, unless the parties concur in the appointment of a single arbitrator, the matter in difference shall be referred to two arbitrators, one to be appointed by each party to the difference, or to an umpire to be appointed by the arbitrators pursuant to and so as with regard to the mode and consequence of the reference, and in all other respects to conform to the provisions in that behalf contained in the Arbitration Act, 1908, or any then subsisting statutory modification thereof: Provided, however, that in the case of any such question or difference (excepting where in any particular previous clause of this agreement an express

reference to arbitration is made) where the matter in dispute involves a sum of money exceeding £100, or where the determination of the matter in dispute is likely to or may result in the payment by one party to the other of a sum exceeding that amount, or in a loss falling on either party equivalent in terms of money to a sum in excess of that amount, it shall not be obligatory on the parties to have such question of difference submitted to arbitration as aforesaid, but either of them shall be at liberty as to proceed as though this clause relating to arbitration were not embodied herein, and in that event the other party shall not be entitled to plead this clause in bar of such proceedings.

(29) *Venue.*

This agreement shall be deemed to have been made at the office of the renter in the City of Wellington, New Zealand, and shall be governed by the laws of New Zealand.

(30) *Acceptance by Renter.*

Until accepted in writing by the renter, its managing director, or manager, or other authorized agent on behalf of the renter, and notice of acceptance sent to the exhibitor, this agreement shall be deemed an application for a contract only and may be withdrawn by the exhibitor any time before such acceptance. Unless such notice is sent to the exhibitor within twenty-eight days after the date of the exhibitor making such application, the said application shall be deemed to have been withdrawn. A copy of this application signed by the exhibitor shall be left with the exhibitor at the time of signing, and in the event of the acceptance thereof as above provided, a duplicate copy signed by the renter in manner aforesaid shall be forwarded to the exhibitor.

(31) *Interpretation of Terms.*

The word "film" means a motion-picture film with all disks, records, and/or other devices other than sound reproducing equipment, which may be necessary to reproduce sound (including music and/or words) in synchronization with such film. The reference in this agreement to "the said theatre" shall, unless the context otherwise requires, mean the theatre of which the name is set out in the introductory part of these presents or the Schedule hereto, and where the names of two or more theatres are set out reference in this agreement to "the said theatre" shall, unless the context otherwise requires, mean such of the theatres so set out at which any film in question was or is to be or ought to be or ought to have been exhibited as the case may require. In this agreement, except where the context otherwise requires, words importing the singular number shall be deemed to include the plural number and *vice versa*, and words importing the masculine gender shall be deemed to include the feminine and neuter genders. This agreement has for convenience of reference been set out in paragraphs with suitable captions but such captions shall not be read so as to indicate that all the provisions relating to any one subject are necessarily contained under the caption suggesting that subject.

(32) *Standard Form.*

This standard form may not be varied so as to provide for any right of cancellation at the option of the renter other than for a breach coming within clause 26 hereof.

Any addition hereto not inconsistent herewith shall be written or printed in Part C hereof, or in some separate document.