

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. In the event of the exhibitor in breach of this clause exhibiting or permitting the exhibition of the said films or any of them either at the said theatre or theatres or at any other theatre at a time or times other than as authorized in terms of this clause, the exhibitor shall pay to the renter by way of liquidated damages a sum equal to five times the additional film hire that would have been payable to the renter had such unauthorized exhibition been part of and included in the exhibition period contracted for hereunder. 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: Provided, however, that the exhibitor shall not be liable for damages where he is able to prove that the exhibition of any such film was occasioned through emergency caused other than by his act or default and provided that before exhibiting and/or permitting the exhibition of such film he shall forward notice of his intention so to do to the renter.

(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 reasonable sum of money based upon the estimated hiring fee or balance thereof, as the case may be. 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 an itemized statement duly certified by the ticket seller or sellers and the theatre manager of the daily gross admission receipts for the exhibition date or dates of each film for which payment is so required to be made. 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 extension of priority of exhibition over other exhibitors.

(6) Liquidated Damages: Percentage Hiring.

If this agreement calls for payment computed either in whole or in part upon a percentage or varying percentages of the exhibitors 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 or percentages 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. An itemized statement of the said daily gross admission receipts certified in manner aforesaid 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: Provided, however, that if the exhibitor is able to prove to the satisfaction of the renter that his failure to exhibit such film as provided in this agreement was for any cause beyond his control, the renter undertakes upon receipt of payment of the liquidated damages as aforesaid (in addition to any fixed sums payable hereunder in respect thereof) 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 extension of priority of exhibition over other exhibitors that may be conferred upon him by this agreement. In the event of any dispute under this clause the matter shall be determined by arbitration.