

AGREEMENT between BARRACUDA MUSIC INC., a New York corporation, having an office for the conduct of its business at 343 West 58th Street, New York, (hereinafter called BARRACUDA) and FIRM AMUSEMENT CORPORATION, a New York corporation, having an office for the conduct of its business at 1540 Broadway, New York (hereinafter called Exhibitor).

W I T N E S S E T H :

1. BARRACUDA will furnish for presentation a Variety Review, consisting of ALLEN FREED and other variety acts and an orchestra to appear at the Loew's State Theatre, 1540 Broadway, New York, New York (hereinafter called LOEW'S STATE THEATRE), during the period commencing December 25, 1958 through January 4, 1959, both dates inclusive. There shall be a minimum of four performances each and every day during said period, and each performance shall continue for not less than sixty (60) minutes. ALLEN FREED shall appear on stage during each and every performance of the Variety Review.

2. The net box office receipts after deduction of admission taxes will be shared as follows:

(a) For the period from December 25th to December 31st, 1958, both dates inclusive:

<u>PROCEEDS</u>	<u>EXHIBITOR'S SHARE</u>	<u>BARRACUDA'S SHARE</u>
First \$46,000.00	100%	None
Over \$46,000.00 to \$120,000.00	10%	90%
In excess of \$120,000.00	15%	85%

(b) For the period from January 1, 1959 to January 4, 1959, both dates inclusive:

<u>PROCEEDS</u>	<u>EXHIBITOR'S SHARE</u>	<u>BARRACUDA'S SHARE</u>
First \$26,285.00	100%	None
Over \$26,285.00 to \$60,000.00	10%	90%
In excess of \$60,000.00	15%	85%

3. The admission price shall at no time be less than \$2.00 per admission, including all admission taxes.

4. It is agreed that advertising expenditures are necessary for the financial success of the Variety Review, and that the minimum advertising budget of not less than FOUR THOUSAND and 00/100 (\$4,000.00) DOLLARS shall be expended by Exhibitor. Exhibitor shall determine the media and manner of advertising which may include newspaper, radio, television, outdoor advertising, theatre displays, posters, cards and hand bills. Advertising expenses shall include all sums paid for such advertising, printing, distribution and display costs therein involved. On or before November 25, 1958, BARRACUDA shall advise Exhibitor in writing of the names of the performers appearing in the Variety Review and generally the type of acts to be performed.

5. BARRACUDA agrees to provide and pay for:

- (a) The services of the entire cast of the Variety Review,
- (b) The orchestra personnel, its instruments and complete orchestrations, and
- (c) An ample supply of publicity material and photographs.

6. It is understood and agreed that BARRACUDA is and signs this agreement as an independent contractor and that it is not an employee of Exhibitor.

7. BARRACUDA represents, warrants, and agrees that it is the employer of each and every performer participating in the Variety Review, and the orchestra, or that such performers are independent contractors under contract with BARRACUDA; that each of said performers is employed by, or under contract with BARRACUDA for a period of not less than the period covered by this agreement; that BARRACUDA and each of said employees and performers is not under contract to any person, firm or corporation which will interfere in any way with the performances to be rendered hereunder by BARRACUDA and by each of its said employees and performers, and that it has advised each and every one of its performers of the terms and conditions of this agreement.

8. BARRACUDA agrees to pay any and all taxes and contributions required to be paid by an employer to Federal, State and City governments by reason of the employment by BARRACUDA of any and all persons in said Variety Review and orchestra, and further agrees to indemnify and hold Exhibitor harmless from any liability because of the failure of BARRACUDA so to do.

9. Exhibitor agrees to provide the premises and appurtenances of the Loew's State Theatre properly staffed with ushers, cleaners, ticket sellers and ticket takers, local stagehands and standbys if required by any union or guild, a minimum of two (2) spotlights with necessary operators, tickets, a stage or platform complete with bandstand, ASCAP and BMI licenses, to supply an

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adequate public address system and two pianos which shall be tuned to a 440 pitch. Exhibitor shall also furnish the motion picture film to be shown during the engagement, together with the union operators and all other personnel and the equipment for the showing of said film, which film inclusive and together with the motion picture feature, shall not be more than eighty (80) consecutive minutes in playing time.

10. BARRACUDA agrees that if any performer in the Variety Review is guilty of conduct which in the opinion of the Exhibitor is likely to bring discredit upon Exhibitor, members of the Variety Review or the vaudeville profession, (which opinion shall not be unreasonable and capricious) the Exhibitor may forthwith cancel the appearance of such performer at the Variety Review. Exhibitor will confer with ALLEN FREED, prior to exercising its rights hereunder.

11. If the operation of Loew's State Theatre is prevented by an Act of God, War, Epidemic, Fire, Casualty, Public Authority, Strikes or by any cause similar or dissimilar to the foregoing, this agreement shall be deemed cancelled and terminated forthwith. In the event the operation of the Loew's State Theatre is prevented by strike, then Exhibitor will make available to BARRACUDA another Loew Theatre operating in metropolitan New York, substantially similar in size to the Loew's State Theatre.

12. The selling of souvenir programs shall be the sole right of BARRACUDA, provided that it enters into suitable financial and other arrangements with Exhibitor

for such sale. BARRACUDA shall have no claim to any other concession.

13. BARRACUDA agrees to obtain a policy of Workmen's Compensation as an independent contractor in an insurance company licensed to do business in the State of New York covering each and every one of its employees under this agreement, and shall on or before November 25, 1958, submit a certificate of such Workmen's Compensation to the Exhibitor naming the Exhibitor as an insured therein.

14. Exhibitor will obtain and procure liability insurance in the amounts of \$10/\$10,000, indemnifying it and BARRACUDA against personal injury. BARRACUDA shall pay to Exhibitor a sum not exceeding ONE THOUSAND (\$1,000.00) DOLLARS, for procuring such insurance, which sum may be withheld from BARRACUDA's share of the proceeds set forth in Paragraph "2" hereof. BARRACUDA will nevertheless indemnify and save the Exhibitor harmless from any and all liability, damages, expenses, costs of action, suits, claims or judgments resulting from injury to persons or property.

15. BARRACUDA warrants and represents that it has full right, power, and authority to present the Variety Review as herein provided, and that each and every part thereof is free from common law rights, property rights, copyrights, patents or rights of others. BARRACUDA agrees to save and hold Exhibitor harmless from any claim, demands, damages, losses, costs, counsel fees, or other losses which Exhibitor may sustain by reason of permitting the presentation of the Variety Review as herein provided.

Exhibitor may withhold a reasonable amount from BARRACUDA upon receipt of notice of infringement in order to protect Exhibitor. Upon BARRACUDA furnishing Exhibitor with indemnification from person or persons reasonably satisfactory to Exhibitor, or in lieu thereof a surety company bond, ^{both} satisfactory to Exhibitor, indemnifying Exhibitor from any claims, demands, damages, losses, costs, counsel fees or other losses which may arise by reason of such notice, or upon BARRACUDA furnishing Exhibitor with evidence satisfactory to it, that the claims set forth in the notice of infringement are groundless, then Exhibitor agrees to release the monies withheld pursuant to this Paragraph. Upon receiving notice of any claimed infringement of the Variety Review or any part thereof, Exhibitor shall have the right forthwith to cancel the act or performers involved.

16. BARRACUDA hereby agrees to indemnify and save Exhibitor harmless from damage, loss, theft or destruction of property of BARRACUDA, and that of its employees or independent contractors performing in said Variety Review including counsel fees or expenses incurred in the defense of any suit brought against Exhibitor on any such claim.

17. During the period from December 4, 1958 to January 25, 1959, both dates inclusive, Exhibitor will not contract with any person, firm or corporation for the presentation of a variety review at the Loew's State Theatre similar to that presented under this agreement. During the period from December 4, 1958 to January 25, 1959, both dates inclusive, ALLEN FREED or any other acts

intended to be presented in the Variety Review pursuant to this agreement shall not appear in any theatre or other place of amusement or exhibition in the City of New York, Westchester, Nassau or Suffolk Countys or Northern New Jersey, unless Exhibitor expressly grants its consent in writing to such appearances, which consent, however, shall not unreasonably be withheld.

18. It is expressly agreed that the failure of the Exhibitor to insist in any one or more instances upon the strict and literal performance of any of the terms, covenants and conditions of this agreement shall not be construed as a waiver or relinquishment for the future of such terms, covenants or conditions or any right or option of the Exhibitor, but the same shall continue and remain in full force and effect. No waiver by the Exhibitor of any term, covenant or condition herein shall be deemed to have been made, unless expressed in writing and signed by an officer of the Exhibitor.

19. In the event of a breach or threatened breach by BARRACUDA or any of the performers in the variety show of any of the terms, covenants or conditions of this agreement, the Exhibitor shall have the right to invoke any remedy allowed by law or equity including the right to have an injunction restraining such breach or the continuance thereof, and the exercise of any right, shall not be deemed to be in exclusion of any other right.

20. BARRACUDA agrees to comply with all statutes, ordinances, rules and regulations of any governmental authority having jurisdiction over the presentation of the Variety Review.

21. This agreement constitutes the only agreement between the parties and that there are no further agreements or understandings, written or oral made either prior or contemporaneously herewith. This agreement cannot be altered, modified or terminated except by an instrument in writing signed by both parties.

FIRM AMUSEMENT CORPORATION

By Eugene Pivker
Eugene Pivker, Vice President
BARRACUDA MUSIC INC.

By Jack Hooke
Jack Hooke, Vice-President