



MASTER SUBCONTRACTOR AGREEMENT

This Master Subcontractor Agreement (this "Agreement") is entered into as of the Effective Date written below, by and between the wholly owned subsidiaries of Mood Media Corporation operating in the United States, including, but not limited to, DMX, Inc. d/b/a Mood Media, Mood Media North America, Ltd. d/b/a Mood Media and Muzak LLC d/b/a Mood Media (hereinafter collectively referred to as the "Contractor") and the below named Subcontractor.

Subcontractor Name: _____ (the "Subcontractor")

Effective Date: _____

RECITALS

WHEREAS Contractor desires to engage Subcontractor to furnish labor, materials, equipment and/or services (collectively, the "Work") for one or more of Contractor's construction projects (each, a "Project"), and Subcontractor desires to provide said Work; and

WHEREAS, this Agreement provides the general terms and conditions which shall govern all Work furnished by Subcontractor to Contractor pursuant to separate written agreements (each, a "Statement of Work") for each specific Project.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

AGREEMENT

- 1. **Contract Documents.** Contractor has entered, or contemplates entering, into agreements (each, a "Contractor Agreement") with certain owners, general contractors, and other parties (together, the "Owner") to provide the Work in relation to certain Projects. The term "Contract Documents" shall consist of and collectively refer to: (a) this Agreement, (b) the relevant Contractor Agreement, (c) all properly executed Statements of Work, (d) all properly executed Change Orders, and (e) all attached Exhibits, including but not limited to (i) Exhibit A – Statement of Work, (ii) Exhibit B – Mood Media Installation and Field Services Standards, (iii) Exhibit C – Unconditional Waiver of Lien and Release, and (iv) Exhibit D – Partial Waiver of Lien and Release. The Contract Documents shall be available for review at Contractor's offices or the Job Site. Subcontractor represents and agrees that it has carefully examined and understands this Agreement and the Contract Documents, has investigated the nature and requirements of the Work to be performed. Subcontractor acknowledges that it enters into this Agreement and any relevant Statement of Work on the basis of its own examination, investigation, and evaluation and not in reliance upon any opinions or representations of Contractor. Subcontractor agrees to be bound to the Contractor by the provisions of the Contract Documents and to assume to Contractor all of the obligations and responsibilities that Contractor assumes under the relevant Contractor Agreement. Where provisions of the Contract Documents are inconsistent, the provision

imposing the higher or stricter standard of performance and/or the greater scope, quantity, or quality of Work to be performed.

2. **Scope of Work.** Subcontractor agrees to furnish and pay for all labor, materials, equipment, taxes, services, and everything necessary for completion of the Work in accordance with the Contract Documents, which must include a Statement of Work in the form attached as **Exhibit A**. Subcontractor agrees to perform all of the Work required by or reasonably inferable from the Contract Documents and appropriate Statement of Work, unless specifically excluded by written agreement with Contractor. The phrase "Work" when used in this Agreement means the specific services the Subcontractor has agreed to perform on behalf of the Contractor, as described in the applicable Statement of Work. The phrase "Job Site" refers to the address, premises or physical location specified in the Statement of Work where the Work is to be rendered by Subcontractor.
3. **Term.** The initial term of this Agreement shall be for a period of twelve (12) months, commencing on the Effective Date indicated above (the "Term"). The Term of this Agreement shall automatically extend and renew for further like periods under the same terms and conditions and without further notice, unless either party gives written notice of its intention to terminate this Agreement at least ninety (90) days before the end of the current Term.
4. **Standard of Care and Compliance with Laws.** Subcontractor warrants that it will perform the Work in a good, prompt, and workmanlike manner in accordance with the Contract Documents and the highest standards for the construction industry in the city where the Project is located. At all times, Subcontractor must use reasonable care in compliance with the highest industry standards and applicable laws, ordinances, rules and regulations (collectively, the "Applicable Laws"), including, but not limited to, the National Electrical Code (NEC), Occupational Safety and Health Administration (OSHA) and the Equal Employment Opportunity Commission (EEOC) requirements. Subcontractor represents and warrants that it is familiar with all Applicable Laws relating to their performance of the Work. If Subcontractor performs any Work contrary to Applicable Law, Subcontractor agrees to assume full responsibility, fully indemnify Contractor, and bear all costs and expenses attributable to their failure to comply with all Applicable Laws. Subcontractor shall at all times maintain competent and adequate supervision and a sufficient number of skilled and competent workmen and sufficient equipment, materials and supplies to perform the Work called for under a Statement of Work. Subcontractor shall also conform to the Mood Media Installation and Field Service Standards, attached to this Agreement as **Exhibit B**.
5. **Timeline for Delivery.** Time is of the essence of this Agreement. Subcontractor shall commence the Work on the "Commencement Date" indicated on the applicable Statement of Work, and shall diligently and continuously prosecute and complete the Work on or before the "Completion Date," as stated on the applicable Statement of Work.
 - (a) **Scheduling.** Subcontractor shall coordinate the Work with the Contractor with regard to other work being performed at the Job Site, and perform in accordance

with the Project schedule as it may be amended, and any other scheduling requirements listed in the Contract Documents or reasonably required by Project conditions or by Contractor in its sole discretion. Subcontractor shall not delay the commencement, progress or completion of the whole or any part of the Work on any Project.

- (b) Delay. If Subcontractor is delayed or hindered, unavoidably and through no fault of its own, in its performance of items on the critical path of the Work because of a breach by Contractor, or for any reason that entitles Contractor to an extension, the Completion Date may be extended at the sole discretion of Contractor. Subcontractor shall give Contractor written notice within three (3) days after the occurrence of any cause, event or condition which could delay or hinder performance of the Work in accordance with the Project schedule. Failure to provide such written notice shall result in the Subcontractor forfeiting any potential extension being made to the Completion Date. An extension of the Completion Date shall be Subcontractor's sole remedy, and in no event shall Subcontractor be entitled to any damages or additional compensation for any delays or hindrances in its performance of the Work, regardless of the source of the delay.
- (c) Accelerated Performance. Contractor may require Subcontractor to accelerate its performance to overcome delays for which Subcontractor is not responsible or to complete the whole or any part of the Work earlier than scheduled. Subcontractor shall provide additional or overtime labor as requested by Contractor, and Contractor shall reimburse Subcontractor the additional direct costs Subcontractor actually incurs as a result of such acceleration. If Subcontractor fails or neglects to maintain adequate progress, Subcontractor shall reschedule other work, and at no cost to Contractor, provide additional or overtime labor reasonably required in the sole discretion of the Contractor to meet Contractor's schedule requirements. Subcontractor shall be responsible for all liabilities, damages, losses, and costs Contractor incurs as a result of delays caused by Subcontractor.
- (d) Labor Relations. To the maximum extent permissible by law, Subcontractor shall be solely responsible to prevent, avoid and minimize the occurrence of strikes, conflicts, job actions or other disputes that could cause delay or interfere with the performance of the Work. Should any such labor disputes occur, Subcontractor shall be solely liable for any resulting damages, expenses or other costs, and shall not be entitled to any adjustments to the schedule or Contract Price.

6. **Payment**. Subcontractor's full compensation for satisfactory performance of the Work, in strict compliance with the Contract Documents, shall be the contract price (the "Contract Price") set forth in the applicable Statement of Work. Subject to Contractor's right to adjustments increasing or reducing the Contract Price or extending or shortening the schedule, as provided for elsewhere in this Agreement, the Contract Price shall be deemed to be full compensation for all Work performed by Subcontractor under each applicable Statement of Work, and is conclusively presumed to cover all foreseen and unforeseen costs, fees, profit, overhead, and expenses arising out of, or related to,

Contractor's performance of the Work. Subcontractor shall hold all payments received in trust for the benefit of any persons or entities furnishing labor, material, services, tools or equipment to Subcontractor in performance of the Work. Subcontractor shall make all payments for any labor, material, services, tools and equipment promptly when due. In its sole discretion, Contractor may make any payments due to Subcontractor payable jointly or directly to anyone to whom payment is due from Subcontractor in relation to performance of the Work.

- (a) Final Payment. The final payment constituting the entire unpaid balance (the "Final Payment") of the Contract Price, including the retainage due and as stated in the applicable Statement of Work, shall be paid to Subcontractor no later than thirty (30) days after the Work called for in the applicable Statement of Work has been fully completed, approved, and accepted by Contractor, in its sole discretion, and all applicable government agencies or similar authorities; provided, however, that Subcontractor acknowledges that no Final Payment shall be made until the Subcontractor has provided an Unconditional Waiver of Lien and Release, in the form attached as **Exhibit C**, and covering all Work performed by Subcontractor under the applicable Statement of Work.
- (b) Progress Payments. At the sole discretion and option of Contractor, or as separately agreed to in the applicable Statement of Work, Contractor may make periodic progress payments for Work completed by Subcontractor (a "Progress Payment"). When applying for a Progress Payment, Subcontractor must submit an accurate application for payment for the relevant period, using *AIA Form G702* or a form acceptable to Contractor. Progress Payments shall be paid after approval of Contractor, based on the percentage of completion of the Work, less ten percent (10%) for retainage or such lesser percentage specified by law or the Contract Documents. Any application for a Progress Payment must specifically state the Work completed during such period, and be accompanied by an appropriate Partial Waiver of Lien and Release, in the form attached as **Exhibit D**. Progress Payments shall be treated as advances on the Contract Price only, and are subject to adjustment in any amount and at the sole discretion of Contractor, whether or not already advanced, as may be necessary to protect Contractor from loss liability or expense.
- (c) Subcontractor Payments. In the event Contractor has reason to believe that Subcontractor is not fulfilling its payment obligations, Contractor may take any steps reasonably necessary to ensure that all obligations of the Subcontractor relating to performance of the Work are properly made. Such steps may include, but are not limited to, the right to withhold out of subsequent payments to Subcontractor a reasonable amount to protect Contractor from any loss, or damage, including attorney's fees, arising out of any lien, claim, security interest or encumbrance. Contractor may continue to pursue any such remedies until Subcontractor submits evidence satisfactory to Contractor that all previous amounts owed in connection with the performance of the Work have been paid.

7. Changes to the Work. Subcontractor may be required by Contractor, without invalidating this Agreement or the applicable Statement of Work, to make changes to the

Work within the general scope of the Statement of Work. The Contract Price and schedule shall only be adjusted accordingly by written agreement with the Contractor (a "Change Order"). Upon Contractor's issuance of a Change Order, Subcontractor shall promptly perform the Work as altered by the Change Order. Subcontractor shall give Contractor written notice, including a complete detailed breakdown, of any request to change the schedule or Contract Price within three (3) days of any Change Order. Subcontractor's failure to provide such written notice shall waive any such claim to adjust the schedule or Contract Price. If Contractor and Subcontractor do not agree on the amount of a requested change to the Contract Price, it is agreed that the Subcontractor shall be entitled to an amount equal to Subcontractor's actual costs plus fifteen percent (15%) for reasonable overhead and profits. Subcontractor acknowledges that Contractor's signing of labor and materials slips shall be for verification purposes only, and shall not be construed as approval of Subcontractor's request for adjustment.

8. **No Subcontracting or Assignment.** Subcontractor shall not subcontract or delegate its duties and obligations under this Agreement without first obtaining Contractor's written consent in each instance, and for each specific subcontractor of Subcontractor. Subcontractor agrees that any attempt to subcontract or delegate its duties and obligations without Contractor's prior written consent shall be void *ab initio*. In the event that Contractor consents to Subcontractor subcontracting or delegating any of its duties and obligations under this Agreement, as a condition to such consent, Subcontractor must enter into a written agreement with such third party containing provisions consistent with this Agreement, in Contractor's sole discretion. Subcontractor shall not assign any part of this Agreement or any other Contract Document or any part thereof, including any Statement of Work, without the prior written consent of Contractor.

9. **Termination; Nonconforming Work.**

(a) **Termination For Cause.** If Subcontractor is in default under any term of the Contract Documents, and fails within two (2) days after receipt of written notice to commence and diligently continue to correct and remedy its default, Contractor may, without prejudice to any other remedy, terminate Subcontractor's performance under the applicable Statement of Work and/or this Agreement, upon notice to Subcontractor. Upon such termination for cause, Contractor may take possession of Subcontractor's materials and equipment used or to be used in performance of the Work, and complete the Work in whatever manner Contractor deems appropriate. Upon such termination, Subcontractor shall not be entitled to any further payment until completion of the Project, and shall be liable to Contractor for any liabilities, claims, damages, losses, and costs Contractor incurs as a result of such termination.

(b) **Nonconforming Work.** If within two (2) days period Subcontractor is unable to remedy or cure nonconforming Work, Subcontractor shall refund to Contractor all monies paid by Contractor to Subcontractor for the Work that fails to conform to the specifications in the applicable Statement of Work and Contract Documents. In addition, after Subcontractor's opportunity to remedy or cure such nonconforming Work, Contractor may engage one or more third parties to do so, in Contractor's sole discretion. In such event, Subcontractor shall be liable for all

costs incurred by Contractor in remedying Subcontractor's nonconforming Work (the "Remedial Costs"), including, but not limited to, the necessity of completing, redesigning or replacing any portion of the Work performed by Subcontractor under the Statement of Work so that such Work conform to the specifications of such Statement of Work. Any Remedial Costs shall be reimbursed to Contractor by Subcontractor within ten (10) days of Subcontractor's receipt of Contractor's invoice for such Remedial Costs. The foregoing remedies available to Contractor are cumulative, non-exclusive, and are in addition to any other remedies that may be specified elsewhere in this Agreement or which may be otherwise available to Contractor at law or in equity.

- (c) Termination for Convenience. Contractor shall have the right to terminate this Agreement or any Statement of Work immediately and for its convenience, by giving Subcontractor written notice of termination, which shall be effective upon receipt by Subcontractor. Subcontractor shall be entitled to recover a portion of the Contract Price based on the reasonable value of the Work properly performed prior to termination plus reasonable direct close-out costs, but only to the extent of Contractor's recovery for such Work and costs from the Owner of the Project. Subcontractor shall not be entitled to payment for any Work not completed, including lost profit or unabsorbed overhead. If Contractor is ever determined to have terminated Subcontractor's performance of the Work or this Agreement for cause wrongfully, it shall instead be deemed a termination for convenience under this subparagraph. In no event shall any payments made for a termination with or without cause exceed the total Contract Price as reduced by the sum of (i) the amount of payments previously made to Subcontractor, and (ii) the cost of the remaining Work in the applicable Statement of Work.

10. **Warranty.** Subcontractor warrants and guarantees to Contractor and Owner of the relevant Project, that any materials or equipment furnished shall be new unless otherwise specified, and that all workmanship shall be of the best quality, free from faults and defects and in strict compliance with the Contract Documents. Subcontractor warrants the Work to Contractor and Owner on the same terms and for the same period as Contractor warrants the Work to Owner under the Contract Documents, and shall perform all warranty obligations required of Contractor under the Contract Documents with respect to the Work.

11. **Insurance.** Subcontractor shall obtain and maintain insurance from a responsible insurer with an A.M. Best rating of "A" or better and satisfactory to Contractor. Subcontractor's insurance coverage shall apply to any Work furnished by or through Subcontractor for Contractor on any Project. All insurance policies carried by Subcontractor must provide at least the coverage and minimum policy limits (the "Policy Limits"), which are required by subparagraphs (a) through (g) of this paragraph and the Contract Documents.

- (a) Worker's Compensation Coverage. Subcontractor shall be responsible for obtaining and furnishing, at its sole expense, an employer's workers compensation insurance policy ("Employer Policy") with minimum Policy Limits satisfying all statutory requirements of the State in which the Project is located

and the State of the Subcontractor's principal place of business. If employers' liability insurance is statutorily required in the State in which the Project is located and/or the State of the Subcontractor's principal place of business, a minimum Policy Limit of **\$1,000,000.00** per occurrence shall be maintained.

- (b) Commercial General Liability Coverage. Subcontractor shall be responsible for obtaining and furnishing, at its sole expense, a commercial general liability insurance policy ("General Liability Policy") in the form of *ISO Form CG 0001 1204* or an equivalent form acceptable to Contractor, covering contractual liability applicable to Subcontractor's indemnity obligations and the Work for a period of not less than one (1) year following completion of the Project, having a minimum Policy Limit of no less than **\$1,000,000.00** per occurrence and **\$2,000,000.00** in the aggregate per Project. The General Liability policy must include personal and bodily injury liability, broad form property damage liability and blanket contractual liability and it must be "occurrence" based, as opposed to "claims made."
- (c) Commercial Automobile Liability Coverage. Subcontractor shall be responsible for obtaining and furnishing, at its sole expense, a commercial automobile liability insurance policy ("Automobile Policy") in the form of *ISO Form CA 0001 0306* or an equivalent form acceptable to Contractor, covering bodily injury or death and damage to property for all vehicles used in the course of the Work, including owned, non-owned and hired vehicles, having a minimum Policy Limit of no less than **\$500,000.00** per occurrence.
- (d) Umbrella Liability Coverage. Subcontractor shall be responsible for obtaining and furnishing, at its sole expense, an excess umbrella liability insurance policy ("Umbrella Policy") in the form of *ISO Form CU 0001 1207* or an equivalent form acceptable to Contractor, covering claims on a strict follow-on basis for bodily injury or death and property damage (including, without limitation, loss of use therefrom) and broad form contractual liability coverage, having a minimum Policy Limit of no less than **\$1,000,000.00** per occurrence.
- (e) Additional Insured Coverage. The Subcontractor shall have all Additional Insureds named as such by means of an endorsement to the General Liability Policy, Automobile Policy, and Umbrella Policy, using *ISO Form CG 2010 0704* and *ISO Form CG 2037 0704*, or equivalent endorsement(s) acceptable to Contractor. The phrase "Additional Insured" when used in this Agreement means the Contractor ("the wholly owned subsidiaries of Mood Media Corporation operating in the United States, including, but not limited to, DMX, Inc. d/b/a Mood Media, Mood Media North America, Ltd., d/b/a Mood Media and Muzak LLC d/b/a Mood Media"), Owner, and any other parties required by the applicable Statement of Work and other Contract Documents to be named as such, each on a primary and non-contributory basis to any other insurance carried by the Additional Insureds.
- (f) Insurance Certificates. Prior to starting performance of the Work, Subcontractor shall furnish to Contractor current endorsements and certificates (together, the

“Certificates of Insurance”), showing coverage and limits meeting or exceeding the minimum requirements described above in subparagraphs (a) through (d), and all required Additional Insureds indicated above in subparagraph (e). The Certificate of Insurance shall specify that no part of such insurance policy shall be modified, canceled or allowed to expire until the terms and conditions described above in subparagraphs (a) through (d) have been satisfied. Subcontractor shall provide copies of the actual insurance policies if requested by Contractor. The certificate holder portion of all Certificates of Insurance must show the following: “Mood Media Corporation, 1703 West Fifth Street, Suite 600, Austin, TX 78703.”

- (g) Waiver of Subrogation; Primary & Non-Contributory; Notice of Cancellation. All insurance policies described above in subparagraphs (a) through (d) shall provide for a waiver of subrogation in favor of Contractor and Owner. Contractor and Subcontractor also waive and release all rights against each other for damages caused by fire or other perils to the extent covered by property insurance upon the Project or any materials, tools or equipment, except such rights as each may have to the proceeds of such insurance. Subcontractor shall be responsible for payment of any deductible arising out of the Work and not paid by Owner. In the event of any loss, Subcontractor shall be bound by any adjustment which shall be made between Contractor, Owner, and the insurance company or companies. Loss, if any, shall be made payable to Contractor and/or Owner, as their interests may appear, for the account of whom it may concern. All insurance policies described above in subparagraphs (a) through (d) shall be specifically endorsed to provide that the coverages obtained by virtue of this Agreement will be primary and that any insurance carried by Contractor shall be excess and non-contributory. All insurance policies described above in subparagraphs (a) through (d) shall be specifically endorsed to provide that such coverage shall not be canceled or materially changed without at least thirty (30) days' prior written notice to Contractor.
- (h) Failure to Possess Required Coverage. If Subcontractor fails to obtain, maintain or provide Certificates of Insurance, as required in subparagraph (f) above, or other evidence of the required insurance acceptable to Contractor, Contractor may, but shall not be obligated to, obtain any such coverage on Subcontractor's behalf and withhold such costs from payment of the Contract Price. Subcontractor shall be responsible for any liabilities, claims, damages, losses and costs Contractor incurs as a result of any such failure to comply with any provisions of this entire Section 11.

- 12. Indemnification.** To the fullest extent permitted by law, Subcontractor shall defend, indemnify, and hold harmless Contractor, its parent(s) and/or subsidiaries, affiliates, officers, directors, agents, employees, representatives, successors and assigns (collectively the “Indemnified Parties”) from and against any and all actions, claims, suits, demands, judgments, losses, costs, expenses and/or damages, including, but not limited to, attorneys' fees, arising out of, or resulting from, or relating in any way to the performance of the Work. Without limiting the foregoing, Subcontractor shall further defend, indemnify, and hold harmless the Indemnified Parties from and against any and

all actions, claims, suits, demands, judgments, losses, costs, payments made under any workers' compensation law or under any plan for disability and death benefits, expenses and/or damages, including, but not limited to, attorney's fees, for or arising out of any personal injuries to, or the death of, any of Subcontractor's employees or agents or any other person arising out of, or resulting from, or relating in any way to the performance of the Work. The foregoing indemnification obligations shall not apply to the extent of Contractor's sole gross negligence or willful misconduct. The provisions contained in this paragraph shall survive the termination of this Agreement. Such obligations shall not be construed to negate, abridge or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this paragraph. In claims against any person or entity indemnified under this paragraph by an employee of Subcontractor, or anyone directly or indirectly employed by Subcontractor, or anyone for whose acts they may be liable, the indemnification obligation under this paragraph shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

13. **Risk of Loss.** Any equipment, materials or supplies of Subcontractor used, present or stored on the Job Site or any location where the Work is or will be performed under a Statement of Work shall be done so at the sole risk of Subcontractor, and Subcontractor specifically agrees and acknowledges that Contractor shall not be liable for any loss, damage or destruction of any such equipment, materials or supplies for any reason whatsoever under any circumstances. Subcontractor shall take reasonable care to protect the property of Contractor and the property of all of Contractor, Owner, and other subcontractors. In the event of loss, damage or destruction of equipment, materials or supplies that were provided or paid for by Contractor, Subcontractor specifically accepts risk of loss for such items, and shall reimburse Contractor for the replacement costs of all such equipment, materials or supplies, together with all incidental costs and expenses. Subcontractor shall be responsible for keeping the Job Site clean, orderly and free from debris.
14. **Liens.** Subcontractor shall keep the Project free of liens and claims and shall defend, indemnify and hold Contractor harmless from all expenses incurred as a result of liens or claims filed by Subcontractor or those contracting with or under Subcontractor. If a lien or claim is filed or threatened by Subcontractor or those contracting with or under Subcontractor, Subcontractor shall cause it to be released or discharged by payment or bond within twenty four (24) hours after becoming aware of the lien or claim. If Subcontractor fails to do so, in addition to any other available remedies, Contractor may pay all sums necessary to obtain release or discharge. Subcontractor shall be responsible for any liabilities, claims, damages, losses and costs, including attorney's fees, Contractor incurs as a result of any such failure. Notwithstanding the foregoing, Subcontractor shall execute the appropriate waivers and releases as a condition to all payments made under this Agreement, in the form of the Unconditional Waiver of Lien and Release attached as **Exhibit C** (for Final Payment) or Partial Waiver of Lien and Release attached as **Exhibit D** (for Progress Payments).
15. **Performance & Payment Bonds.** Contractor, at its option, may require Subcontractor to obtain, at Subcontractor's sole expense, one hundred percent (100%) performance,

payment, and lien bonds (collectively, the “Bonds”) from an authorized corporate surety company licensed to do business in the state where the Project is located. In the event Subcontractor fails to obtain the requested Bonds within ten (10) days of being requested to do so by Contractor, Contractor may undertake the obligation to obtain such Bonds, and Subcontractor specifically consents to permit Contractor to charge Subcontractor for all reasonable costs and expenses incurred in obtaining any such Bonds.

16. **Licenses, Permits and Taxes.** Subcontractor shall secure and pay for all required permits, governmental fees, and licenses necessary for proper execution and completion of the Work. Subcontractor shall pay all sales, use, consumer, gross receipts or other similar taxes relating to the performance of the Work. Upon Contractor’s request, Subcontractor shall promptly furnish to Contractor a certificate from the appropriate state and local taxing authorities evidencing payment of all applicable taxes.
17. **Audit.** At any time, Contractor shall have the right to audit, inspect and copy, upon twenty-four (24) hour notice to Subcontractor, all books, records, documents and such other evidence in the possession or custody of Subcontractor as may be necessary to verify all amounts charged or otherwise claimed to have been incurred by Subcontractor in relation to performing the Work.
18. **Relationship of the Parties.** Subcontractor is an independent contractor of the Contractor, and all persons employed by Subcontractor to furnish the Work are employees of Subcontractor, and under no circumstances should be treated as employees of Contractor. Subcontractor acknowledges that neither it nor any of its employees or agents will be treated as an employee of Contractor for any purposes, including but not limited to, all federal, state and local taxes, employment taxes, income tax withholding, employee benefit plans, workers’ compensation laws and state unemployment benefits. Further, it is understood and agreed that: (a) No agency, employment, joint venture or partnership is created hereby or between the parties; (b) the business to be operated by Subcontractor is separate and apart from any which may be operated by Contractor; (c) Subcontractor is not an affiliate of Contractor; and (d) no representation will be made by either party which would create an apparent agency, employment or partnership. Neither party shall have the power of authority to act for the other in any manner to create obligations or debt which would be binding upon the other; nor be responsible for any obligation or expense whatsoever of the other; nor be responsible for any act or omission of the other or any employee of the other.
19. **Safety.** Subcontractor shall take all necessary and reasonable safety precautions with respect to performance of the Work, the safety of its employees and the maintenance of a clean and safe Job Site, and shall comply with all safety measures initiated by Contractor and with all Applicable Laws, ordinances, rules, regulations and orders for the safety of persons or property. Subcontractor shall immediately report to Contractor any injury to any employee or agent of Subcontractor occurring on the Job Site or any premises on which Subcontractor was authorized by Contractor to enter. Further, Subcontractor shall take all necessary and reasonable safety precautions specified in the Mood Media Installation and Field Service Standards, attached to this Agreement as **Exhibit B**

- (a) Hazardous Materials. In the event Subcontractor encounters hazardous onsite materials reasonably believed to be asbestos or polychlorinated biphenyl (PCB) or other hazardous materials which have not been rendered harmless, Subcontractor shall immediately stop performance of the Work in the area affected and report the condition to Contractor in writing. Subcontractor's work in the affected area shall resume in the absence of asbestos or polychlorinated biphenyl (PCB) or other hazardous materials, or when such materials have been rendered harmless, by written agreement of Contractor and Subcontractor.
 - (b) Drugs and Alcohol Prohibited. Subcontractor agrees that it has a policy to prohibit the use of controlled substances, drugs and alcoholic beverages of any kind prior to and when on any Job Site.
 - (c) Background Checks. Subcontractor represents that it performs regular background checks on all of its employees and agents, and that it will, upon request from Contractor, provide proof of such background checks.
20. **Confidentiality**. Subcontractor shall keep all information relating to the Project and the Work, and all information furnished by Contractor, Owner, or any agents of Contractor or Owner, as confidential and proprietary. Subcontractor shall take all reasonable measures, including any required by the Contract Documents, to protect such confidential information, and shall not permit its release to anyone except as necessary for performance of the Work. Subcontractor shall require any recipient of such information to protect it in the same manner. The provisions of this paragraph shall survive the termination, for any reason, of this Agreement. All such confidential information shall remain the property the owner of such Marks, and shall be immediately returned upon request.
21. **Non-Solicitation**. Subcontractor shall not (a) induce or attempt to induce any employee of Contractor to leave Contractor's employ or in any way interfere with the relationship with Contractor and any of its employees, or (b) induce or attempt to induce any client, supplier, licensee or other business relation of Contractor to cease doing business with Contractor, or in any way interfere with the relationship between any client or business relation and Contractor. The provisions of this paragraph shall survive and remain effective for the period of two (2) years following the termination, for any reason, of this Agreement.
22. **Trademarks**. Subcontractor acknowledges that Contractor and its related entities and affiliates are the sole and exclusive owners of its trademarks, service marks, trade names and logos (together, the "Marks"). Subcontractor agrees that it will not make any use of the Marks except with Contractor's prior written consent, and that any use of the Marks by Subcontractor and the goodwill associated with such use shall inure to Contractor's benefit. Subcontractor agrees and acknowledges that it shall not acquire any interest in the Marks or the goodwill associated with the Marks by virtue of this Agreement or Subcontractor's use of the Marks.

23. Claims and Disputes.

- (a) Notice Required. Unless provided otherwise in this Agreement, Subcontractor shall give Contractor written notice of any claim within ten (10) days of the beginning of the event giving rise to the claim or the claim shall be deemed waived.
- (b) Adjustments. Subcontractor shall submit any claim for adjustments to the Contract Price and/or Completion Date for changes directed or required by Contractor or additional costs that result from deficiencies or discrepancies in the Contract Documents or acts or omissions of Owner in writing in such shorter time as the Contract Documents may require to permit Contractor to comply with the applicable provisions of the Contract Documents with respect to submission of claims by Contractor to Owner. Contractor shall process such claims as provided in the Contract Documents. Adjustments to this Agreement or the applicable Statement of Work shall be made if, and only to the extent that Contractor obtains like adjustments from Owner.
- (c) No Interruption of Work. Subcontractor shall commence and continue performance of the Work, and Contractor shall continue to make undisputed payments in accordance with the Contract Documents, pending resolution of any claim or dispute which may arise between Contractor and Subcontractor. Subcontractor specifically represents and warrants that they shall not stop, slow, interrupt or suspend performance of the Work on account of any disputes or disagreements with Contractor, including, without limitation, disputes over payment for such Work or changes to the Work pursuant to Section 7 above.
- (d) Consolidation of Claims. Contractor, may, in its sole discretion, join or consolidate the resolution of any claims or disputes between Contractor and Subcontractor with the resolution of any claims or disputes between Contractor and the Owner or other subcontractors. Subcontractor agrees to be bound to Contractor by the results of any proceedings in the same manner that Contractor is bound by such results.
- (e) Dispute Resolution. Any disputes not resolved by negotiation, shall be subject to mediation pursuant to the American Arbitration Association's Construction Industry Mediation Rules as a condition precedent to the filing of any litigation. Mediation shall be held at a mutually agreeable location within the State the Job Site is located. Any disputes not resolved by such mediation shall be resolved by litigation in a court of competent jurisdiction where the Project is located, unless Contractor elects, in its sole discretion, that the dispute shall be resolved by arbitration pursuant to the American Arbitration Association's Construction Industry Arbitration Rules. The prevailing party in any litigation or arbitration shall be entitled to an award of reasonable attorney's fees and costs. In no event shall

Contractor ever be liable to Subcontractor for consequential damages, however caused.

24. General Terms.

- (f) Severability. If any section, provision, or other portion of this Agreement is held to be illegal, invalid, or otherwise unenforceable by a court of competent jurisdiction (an "Invalid Portion"), the parties hereto shall exercise best efforts to agree on legal, valid, and enforceable substitute language that is as similar in effect to the Invalid Portion as possible. The remaining portion of this Agreement not declared illegal, invalid, or otherwise unenforceable and shall, in any event, remain valid and effective for the remainder of the Term of this Agreement, unless the Invalid Portion goes to the essence of this Agreement.
- (g) Counterparts. This Agreement may be executed in any number of identical counterparts, each of which shall be deemed to be an original for all purposes, but all of which shall constitute one and the same agreement. The parties agree that photocopy, facsimile, electronic or other copies shall have the same effect for all purposes as an ink-signed original.
- (h) Notices. Any notices to be given hereunder are to be directed to the parties at their addresses set forth in the signature block of this Agreement, or at such other address as either party may direct in writing. Any notice required to be given under this Agreement shall be properly addressed, sent by registered or certified mail, return receipt requested, and shall be deemed given when mailed.
- (i) Waiver. Any failure of Contractor to insist upon or enforce any term or provision or to exercise any right, option, or remedy of this Agreement or other Contract Document, or to require at any time performance of any provision hereof, shall not be construed as a waiver of any such term or provision. No waiver by Contractor of any term or provision hereof shall be binding unless made in writing and signed by Contractor.
- (j) Governing Law. Any interpretation, controversy, claim or dispute arising out of or relating to this Agreement, or any breach thereof, shall be governed solely and exclusively according to the laws of the State of Texas, without regard to conflict of law provisions.
- (k) Entire Agreement. This Agreement, including the Exhibits and other attachments hereto, contains the entire agreement between the parties with regard to the subject matter hereof, superseding any prior agreements and writings and may not be changed other than by an agreement in writing signed by the parties. Each Statement of Work, when executed by both Contractor and Subcontractor, will be automatically incorporated by reference into this Agreement, and all Work will be performed under the terms of this Agreement and the applicable Statement of Work and other applicable Contract Documents.

[remainder of page intentionally left blank; signature page to follow]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date written above.

Subcontractor:

By: _____
Signature

Printed Name

Title

Noticing Address

Date: _____

Contractor:

By: _____
Signature

Printed Name

Title

Subsidiary Name

1703 West Fifth Street, Suite 600
Austin, Texas 78703

Noticing Address

Date: _____

**EXHIBIT A
STATEMENT OF WORK**

DATED: _____

Contractor:

Name: _____
Address: _____
City/State/ZIP: _____
Representative: _____
Phone / Fax: _____
Email: _____
License No.: _____

Project:

Name: _____
Address: _____
City/State/ZIP: _____
Project No.: _____
Misc.: _____

Subcontractor:

Name: _____
Address: _____
City/State/ZIP: _____
Representative: _____
Phone / Fax: _____
Email: _____
License No.: _____

Owner:

Name: _____
Address: _____
City/State/ZIP: _____
Representative: _____
Phone / Fax: _____
Email: _____
License No.: _____

NOTE: If Contractor should have a Contractor Agreement with any party other than Owner (e.g., a General Contractor), like information must be included or attached to this Statement of Work.

TERMS

- 1. Description of Work.** The "Work" shall refer to and include the following labor, materials, equipment and/or services, including any adjustments thereto:

NOTE: Any drawings, plans, or other specifications reasonably required to adequately describe the Work must be attached to this Exhibit A and treated as incorporated hereto.

- 2. Contract Documents.** In order to be treated as valid and enforceable, this Statement of Work must be at all times treated as incorporated into the Master Subcontractor Agreement currently in effect between Subcontractor and Contractor (the "Master Agreement"). Further, this Statement of Work shall incorporate by reference all other documents treated as "Contract Documents" in Section 1 of the relevant Master Agreement.

3. Contract Time and Schedule. Pursuant to Section 5 of the Master Agreement (Timeline for Delivery), Subcontractor shall commence the Work on the Commencement Date indicated immediately below, and shall diligently and continuously prosecute and complete the Work on or before the Completion Date indicated immediately below.

Commencement Date: _____ **Completion Date:** _____

4. Contract Price. Pursuant to Section 6 of the Master Agreement (Payment), Subcontractor's full compensation for satisfactory performance of the Work, in strict compliance with the Contract Documents, shall be the Contract Price indicated immediately below.

Contract Price: \$ _____

5. Labor: Union Labor Only yes no Prevailing Wages Required yes no

6. Bonds: Performance/Payment Bonds Required yes no

THIS STATEMENT OF WORK IS MADE IN ACCORDANCE WITH AND SUBJECT TO THE SPECIFIC TERMS SET FORTH ABOVE AND IN THE MASTER SUBCONTRACTOR AGREEMENT THIS "EXHIBIT A – STATEMENT OF WORK" IS ATTACHED TO AND INCORPORATED INTO BY THE REFERENCE.

Subcontractor:

By: _____
Signature

Printed Name

Title

Subcontractor Company

Date: _____

Contractor:

By: _____
Signature

Printed Name

Title

Subsidiary Name

Date: _____

EXHIBIT B
MOOD MEDIA INSTALLATION &
FIELD SERVICES STANDARDS

[insert current copy of Mood Media Installation & Field Services Standards]

EXHIBIT C

SUBCONTRACTOR UNCONDITIONAL WAIVER OF LIEN AND RELEASE

The undersigned subcontractor (the **"Subcontractor"**) represents and warrants that it has been fully paid and has received final payment from the Application for Payment accompanying this Subcontractor Unconditional Final Release and Lien Waiver (this **"Lien Wavier"**), in the amount of \$ _____ as full and final settlement under the Master Subcontractor Agreement and applicable Statement of Work dated _____ (together, the **"Contract"**) between the undersigned Subcontractor and Mood Media Corporation, or one of its wholly-owned subsidiaries, including, but not limited to, DMX, Inc. d/b/a Mood Media, Mood Media North America, Ltd., d/b/a Mood Media and Muzak LLC d/b/a Mood Media (collectively, the **"Contractor"**) relating to the construction project known as and located at _____ (the **"Project"**) owned by _____ (the **"Owner"**).

In consideration for this final payment, and other good and valuable consideration, receipt of which is acknowledged, the undersigned Subcontractor makes the following representations, warranties, and guarantees:

1. The undersigned Subcontractor and Contractor have fully settled all terms and conditions of the Contract, including any amendments or modifications thereto, as well as any other written or oral commitments, agreements, and/or understandings in connection with the Project.
2. The undersigned Subcontractor has been paid in full from the Application for Payment accompanying this Lien Waiver, for the labor, services, and materials provided in connection with the Contract, including all work performed or any materials provided by its subcontractors, vendors, suppliers, materialmen, laborers, or other persons or entities.
3. The undersigned Subcontractor has paid in full all its subcontractors, vendors, suppliers, materialmen, laborers, or other persons or entities providing services, labor, or materials to the Project; there are no outstanding claims, demands, or rights to liens against the undersigned Subcontractor, the Project, or the Owner in connection with the Contract on the part of any person or entity; and no claims, demands, or liens have been filed against the undersigned Subcontractor, the Project, or the Owner relating to the Contract.
4. The undersigned Subcontractor releases and discharges Contractor and Owner from all claims, demands, or causes of action, including but not limited to all lien claims and rights, that the undersigned Subcontractor has, or might have, under any present or future law, against either of the Contractor or Owner in connection with the Contract. The undersigned Subcontractor hereby specifically waives and releases any lien or claim or right to lien in connection with the Contract against Contractor, Owner, Owner's property, and the Project, and also specifically

waives, to the full extent allowed by law, all liens, claims, or rights of lien in connection with the Contract by the undersigned Subcontractor's subcontractors, suppliers, vendors, materialmen, laborers, and all other persons or entities furnishing services, labor, or materials in connection with the Contract.

5. The undersigned Subcontractor shall indemnify, defend, and hold harmless Contractor and Owner from any action, proceeding, arbitration, claim, demand, lien, or right to lien relating to the Contract, and to the full extent permitted by law, shall pay any costs, expenses, and/or attorney's fees incurred by the Contractor and Owner in connection therewith.

The undersigned Subcontractor makes the foregoing representations and warranties with full knowledge that the Contractor and Owner shall be entitled to rely upon the truth and accuracy thereof.

Dated: _____

Printed Name: _____
Company: _____
Title: _____

NOTICE: THIS DOCUMENT WAIVES AND RELEASES LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL WAIVER AND RELEASE FORM.

ACKNOWLEDGMENT

State of _____

County of _____

I, a Notary Public for the above County and State, certify that _____ personally came before me this day and acknowledged that they are the _____ [title] of _____ [company name]. Witness my hand and official seal this _____ day of _____, 201__.

Notary Public

My Commission Expires: _____

EXHIBIT D

**SUBCONTRACTOR
PARTIAL WAIVER
OF LIEN AND RELEASE**

OWNER: _____ (the "Owner")

PROJECT: _____ (the "Project")

PROJECT ADDRESS: _____ (the "Project Site")

COUNTY OF: _____

STATE / ZIP: _____

SUBCONTRACTOR: _____ (the "Subcontractor")

JOB NUMBER: _____

**APPLICATION FOR
PAYMENT NUMBER:** _____

PERIOD ENDING: _____ (the "Payment Period")

**AMOUNT OWED TO
SUBCONTRACTOR:** _____ (the "Amount Owed")
[should agree to AIA G702 line 8]

**BILLED TO DATE
LESS RETAINAGE:** _____
[should agree to AIA G702 line 6]

RETAINAGE: _____ (the "Retainage")
[should agree to AIA G702 line 5]

DISPUTED CLAIMS: _____ (the "Disputed Claims")

The undersigned Subcontractor, for and in consideration of the progress payments made to it or on its behalf by Mood Media Corporation, or one of its wholly-owned subsidiaries, including but not limited to DMX, Inc. d/b/a Mood Media, Mood Media North America, Ltd., d/b/a Mood Media, and Muzak LLC d/b/a Mood Media (collectively, referred to as the "**Contractor**"), warrants, represents, and guarantees as follows:

1. Upon receipt of the above Amount Owed, the undersigned Subcontractor will have received payment in full, less only the above Retainage and Disputed Claims, if any, for all labor, services, materials, fixtures, apparatus, and/or equipment furnished in the construction of the Project

from its commencement through the above Payment Period and except for receipt of the above Amount Owed, Retainage and Disputed Claims, there are no outstanding amounts due or to become due from Contractor and/or its sureties in connection with the Project.

2. All labor, services, materials, fixtures, apparatus, and/or equipment covered by the Application for Payment in which this Partial Release and Lien Waiver (this "**Lien Wavier**") accompanies have been incorporated into the Project and title has passed to the Owner or, in the case of materials, fixtures, apparatus and/or equipment stored at the site or at some other location previously agreed to by the Owner, title will pass to the Owner upon receipt of the above Amount Owed, free and clear of all liens, claims, security interests or encumbrances.
3. No labor, services, materials, fixtures, apparatus and/or equipment covered by the Application for Payment in which this Lien Waiver accompanies, or any previous Application for Payment, has been acquired subject to an agreement under which any interest or encumbrance is retained by the seller or any other person.
4. All labor, services, materials, fixtures, apparatus and/or equipment, and all applicable taxes of any kind, fees, and benefits, have been paid for in full through the above Payment Period.
5. The undersigned Subcontractor hereby waives, releases and dissolves any mechanics liens or rights of lien it has or may have on the Project including the real estate and the improvements thereon, on account of labor, services, materials, fixtures, apparatus and/or equipment furnished for the Project from its commencement through the above Payment Period, except for the above Retainage and Disputed Claims, and except for any portion of the above Amount Owed not yet received.
6. The undersigned Subcontractor hereby releases, remises and discharges, and shall defend, indemnify and hold harmless, the Owner and Contractor and their sureties, from all claims, debts, demands, liabilities and damages it ever had, now has or ever may have, whether known or unknown, arising out of or relating in any way to the undersigned Subcontractor's agreements with the Contractor relating to the Project and or furnishing labor, services, materials, fixtures, apparatus, and/or equipment in the construction of the Project from its commencement through the above Payment Period, except for the above Retainage and Disputed Claims, and except for any portion of the above Amount Owed not received.

The undersigned Subcontractor makes the foregoing representations, warranties, and guarantees with full knowledge that the Contractor and Owner shall be entitled to rely upon the truth and accuracy thereof.

Dated: _____

Printed Name: _____
Company: _____
Title: _____

NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT'S LIEN, STOP PAYMENT, NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.

ACKNOWLEDGMENT

State of _____

County of _____

I, a Notary Public for the above County and State, certify that _____ personally came before me this day and acknowledged that they are the _____ [title] of _____ [company name]. Witness my hand and official seal this _____ day of _____, 201__.

Notary Public

My Commission Expires: _____