

This agreement was taken from the Chapter "**BOOKING CONTRACTS**" by Kenneth J. Abdo and Jill Clark from The Practical Musician.

Engagement Contract

1. THIS CONTRACT for the personal services of the Entertainers described below is made this day, ____ [a] ____, between _____ [b] _____, represented by the undersigned and hereafter referred to as "Purchaser" and _____ [c] _____ (collectively or individually referred to as "Entertainer"), represented by the undersigned Group Leader.

2. Date(s) of Engagement(s): _____

3. Performance Times: _____

4. Engagement Type and Description: _____

5. Location of Engagement: _____

6. Other Terms or Conditions: _____

7. Contract Price: _____

8. Payments to be made as follows:

a) _____ non-refundable security DEPOSIT payable to _____
[Group Leader], which must be returned with signed contract by _____

b) _____ BALANCE made payable to _____
[Group Leader] due upon arrival at the engagement to Leader in CASH/CASHIER'S
CHECK/MONEY ORDER (circle one).

c) BALANCE in CASHIER'S CHECK payable to _____
[Group Leader] due by _____

d) OTHER _____

9. This agreement of the Entertainer to perform is subject to proven detention by sickness, accidents, riots, strikes, epidemics, extreme or dangerous weather conditions, acts of God, or any other legitimate conditions beyond Entertainer's control.

10. The Entertainer acts as independent contractor, and not as employee of the Purchaser.

11. [Optional] Entertainers are responsible only for their own conduct. Purchaser agrees to pay for all damage done to Entertainer's equipment due to the wrongful act of Purchaser, its employees, agents or guests. Purchaser assumes all risk of the engagement and shall indemnify

and hold entertainer harmless against any claims or legal actions brought against Entertainer arising out of personal injury or property damage occurring at the engagement which is not caused by the Entertainer.

12. [Optional] The Group Leader will inform the Purchaser if it becomes necessary to replace essential personnel for this engagement. Such changes may give the Purchaser the option to cancel the engagement. Cancellation of this contract by either party and subsequent settlements or changes are subject to the written consent of both parties, which consent shall not be unreasonably withheld.

13. [Optional] This contract is governed by the laws of the State of Minnesota. Any claim regarding this contract shall be resolved by arbitration in _____ County in accordance with the Rules of the American Arbitration Association. The judgement of the Arbitrator shall be binding on all parties hereto. The losing party in arbitration proceedings shall be liable for reasonable attorney fees incurred by the prevailing party.

14. Acceptance. The terms and conditions of this contract are hereby accepted by the Purchaser and Entertainer by them or their representatives' signatures below. The terms of this contract are binding and supersede any oral or written representations.

Company, Club or Private Party Name: _____ [14] _____.

Purchaser's Name: _____ [15] _____.

C/O: _____ [16] _____.

Street Address: _____ [17] _____.

City/State/ZIP: _____ [18] _____.

Phone(s): _____ [19] _____.

Signature of Purchaser: _____ DATE: _____

Title: _____ [20] _____.

Group Leader's Name: _____ [21] _____.

Name of Group: _____ [22] _____.

C/O: _____ [23] _____.

Street Address: _____ [24] _____.

City/State/ZIP: _____ [25] _____.

Leader's SS#: _____ [26] _____.

Signature of Group Leader: _____ DATE: _____

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Explanation Of The Sample Engagement Contract.

Paragraph 1.

The first paragraph sets out when the contract is made, and those who will be signing the contract. Therefore, the date the contract is negotiated, whether in person or by phone, should be inserted in the blank marked [a]. If the contracts are negotiated on one date but not signed until later, the date of a signature will appear on the final page of the contract. Do **not** insert the date of the performance here.

The blank marked [b] is for the name of the Venue (such as a nightclub) or the name of the private party who is purchasing services. If it is a nightclub, insert the name of the club. If it is a private party, insert the name of the organization or individual giving the party. Whenever a Venue is the purchaser, the word "Purchaser" means the individual who actually signs the contract, **on behalf of** the Venue. In legal terms, the Purchaser is "binding" the Venue to the terms of the contract. Make sure that the Purchaser is authorized to negotiate and sign contracts for the Venue. If you have any question about proper authority, it is best to ask in advance, rather than to find out the night of the job that the one really authorized has booked another Act! Worse yet, you may play a job and then find out that the one who signed the contract has no authority to pay you! In the case of a private party, the name in the blank marked [b] and the Purchaser may be the same.

The blank marked [c] is for the name of the individual musician or musical group. A designated member, leader, or agent should negotiate and sign contracts for groups. This will avoid confusion and promote effective communication and negotiation for both the Purchaser and Entertainer. How your musical Act is organized as a business becomes very important here. **[FN Refer to the {Ken's Corporate entities} Chapter at Page _____.]** For example, if you are performing as a sole proprietor, you are personally entering the contract and are personally responsible for performance. If the members of the group work for you, you may be their employer. **[FN Refer to the Independent Contractor or Employee Chapter at Page _____.]** In any event, be mindful of how the entertainers are formed as a business, who is authorized to bind the business and who is ultimately liable for the performance.

Paragraph 2.

Include the date of the engagement or the dates, if you are booking more than one job. Make sure to state the year in addition to the month and date, even if you think everyone knows what year is in question. To avoid confusion about a particular date, it is best to identify the day of the week.

Paragraph 3.

Be specific about clarifying performance start, break and finish times. This will prevent disputes over payment. If the Purchaser's expectations for performance times are unrealistic, at least you know it up front, and you can try to negotiate a more workable arrangement.

Paragraph 4.

Describe the type of engagement. For example, "back yard private party," or, "outdoor concert." If there is something peculiar about the job, this is the place to describe it. This information will perhaps help you best prepare for the performance.

Paragraph 5.

Indicate the place of the engagement. Although this is usually simple, be as specific as you think is necessary. For example, if a club has several different stages, indicate the exact stage for the performance. Also, hotel chains or clubs may have several locations in a city. Be specific. Include directions if necessary. Remember, if you are late, the contract is breached.

Paragraph 6.

Insert any other information you think helps describe the particular job, or which may be a "condition" to performing a job, such as:

"Entertainers are expected to arrange for and pay their own warm up Acts;"

"Entertainers may run a bar tab during the performance, but any bar tab will be taken off the top of the payment due;" or "Entertainers will provide personnel to accept admission at the door."

"Victory party, performance to be held only in the event that Josephine Smith wins the election."

You may have special conditions that apply to a show, including staging or power requirements. The Purchaser may request a particular song or set. There may even be a dress requirement. This is the place to note these miscellaneous but often very important particulars that may have been informally discussed or negotiated but in fact make a significant difference in how the show is staged and received.

Paragraph 7.

Insert the total dollar amount of the payment you expect for the engagement (or any other type of payment you expect). Include all costs or expenses to be paid by the Purchaser.

Paragraph 8.

This particular contract provides several payment options. The payment method usually depends on the type of engagement and the type of Act. You may want to require a non-returnable security deposit as provided in 8a. The deposit should be 10% to 50% of the price. Larger deposits are justified for jobs requiring travel. The deposit ensures that you at least earn something in the event of cancellation by the Purchaser.

It is a good idea to request a deposit for a private party. These Purchasers are usually amateurs at hiring Acts. They may have unrealistic expectations, last-minute cancellations, or problems over payment. Although you can negotiate with the Purchaser about whether the balance due is expected before or after the performance, start by asking for payment before the performance or at least before the end of the performance. Even well intentioned Purchasers will forget to pay and leave before the show is over. Bad intentioned or disgruntled Purchasers will just refuse to pay. Just in case there is a contract issue to address or negotiate, it is better for you to approach the payment issue before you have completed your end of the deal.

Although the standard in the industry at one time was "pay before we play," most clubs and multi-act concert Venues now make payment after the performance, this gives the Venue better control over the Act. Note that option 8(c) is appropriate for these situations. It also allows you to demand full payment prior to show time.

You can specify whether you want cash, company check or cashier's check (or money order). Most Acts do not accept personal checks but it is sometimes unavoidable in the case of private parties or weddings.

[Group Leader] is inserted in the payment alternatives as the most likely recipient of any deposit and final payment. Depending only on how the Act does business, any name can be inserted.

8(d) allows for those situations in which you and the Purchaser negotiate an unusual payment method, such as a round of Barry Manilow tickets for the trio and a good written reference.

Paragraph 9.

Although the Act should always attempt to play any job they contract for, even if a personnel substitution is necessary, this paragraph protects the Act in case it cannot perform for some legitimate reason. Sometimes an irreplaceable member of the Act becomes very ill or is injured and the group just cannot perform that job. Obviously, a head cold is not going to be a reasonable excuse for non-performance. However, this paragraph should ensure that serious illness or other catastrophe should relieve the Act of its legal obligations under the contract.

Sample paragraph 9 is a particularly important and common paragraph. It should be included in all booking contracts. Club owners have been known to sue bands who do not arrive to play the gig as scheduled on the theory that they would have made more money in liquor sales if a particular band had played. So, even when you **have** to cancel a gig, give the Purchaser as much advance notice as possible to try to find a replacement Act. This may avoid a legal dispute.

If the Purchaser thinks this sample paragraph gives the Entertainer too much leeway, you can limit the language to "serious illness, injury or death." After all, who would look you in the eye and say, "I don't care if your lead singer dies in a car accident, I expect you to play the job!?"

Paragraph 10.

This sample Engagement Contract assumes that the musicians are independent contractors and not employees of the Venue. **[FN For a discussion of the difference, refer to the Simple Contract Law for Musicians Chapter at Page_____.]** If the musicians are employees of the Venue, then that should be stated in the contract.

Paragraph 11.

This paragraph protects the Entertainer in the event that Purchaser, its employees, agents or guests damage Entertainer's equipment. It further limits the Act's legal responsibility in case there is illegal audience conduct or vandalism during the performance. Although it would be a different story if the Act actually **caused** a riot, this paragraph is intended to protect the Entertainer from responsibility for audience conduct (it "holds them harmless"), simply because they were playing at the time.

This provision also provides that the Purchaser will be responsible to compensate ("indemnify") Entertainer in the event the Entertainer is sued for damage or injury **not** caused by the Entertainer.

This language is very favorable to the Entertainer. It might raise a "red flag" for the Purchaser and result in lengthy negotiations over this one point. If you decide **not** to use this paragraph, **at least be sure never to sign a contract that states that the Entertainer will be held responsible for the conduct of the audience.** Of course, the Entertainer **will** be held

responsible for the conduct of its members.

Paragraph 12.

It is easier to replace some members of the Act than others. The Venue usually wants to know that the important members of the Act will be present to play the job. The audience reaction might be very different if the lead guitarist is replaced. This paragraph provides for notice to the Venue of a member change, but does not automatically give the Venue the right to cancel the contract. To be legal, any cancellation of the contract must be agreed to in writing by the Entertainer. However, it gives the Venue a greater sense of security that the band they hire will be the band that plays.

If you inform the Venue that a particular member has been replaced, and the Venue cancels the engagement without your agreement, you may have a right to the money the Entertainer would have earned if it had played the job. Although it may not be practical to pursue the Venue for breaking the contract, it is better to know in advance that the Venue will be upset about the member change, rather than playing the Venue and then not getting paid. If the Venue breaks the contract upon notice of member change, you can retain the security deposit and arrange another engagement.

Paragraph 13.

The arbitration paragraph is optional. It states that the contract will be interpreted under Minnesota law. You can provide for this, even if the Venue is in another state. Any disputes will be heard by an arbitrator and not by a district court judge. Arbitration is for the most part cheaper and faster than lawsuits in court. It is usually a more even-handed arena for the "little guy." Under the language of this paragraph, the decision of the arbitrator is "binding". This means that the other side generally cannot get a court to change the arbitrator's decision. Because the arbitrator does get paid for services, arbitration is appropriate for high dollar contracts.

Although you do not **have** to be represented by an attorney in arbitration, it is wise to hire an attorney when a dispute gets to this stage. An attorney can help define and present the relevant facts, evidence, issues and arguments. Note that the losing party in arbitration will have to pay the attorney fees of the winning party.

For lower dollar amounts, you can omit this paragraph, and have the option of going to Small Claims court. You cannot be represented by an attorney in Small Claims court (unless the "Referee" specifically allows it). The current dollar limit for small claims is \$5,000 (although this amount is periodically increased). You can be represented by an attorney in appeals from small claims courts.

Acceptance.

The "acceptance" paragraph clarifies that the contract include **all of the points you negotiated**, and that these points are agreed to by both the Purchaser and the Entertainer. Remember, if it isn't in the contract, it isn't part of the deal. Make sure the contract is fully signed and that each party receives an original or copy of the original contract. Now, you have a deal!

Marked Blanks 14 through 25.

It is best to get all of the information in marked blanks [14] through [20] from the Purchaser. If a Purchaser signs on behalf of a company or club, list that person's title below the signature.

All of this information will help you if there is a dispute about the contract, or about the Purchaser's authority to sign the contract.

In addition, providing the Purchaser with full information about the Group Leader (marked [21] through [26]) will help the Purchaser get in touch with the Leader if something changes about the engagement. It will also ensure that the deposit is mailed to the proper address. The Purchaser will need the Group Leader's Social Security number in order to send the IRS and the Group Leader Form 1099-Misc.

Addendum or a Rider

The Personal Appearance Rider usually establish consistent standards to be followed for each concert of a tour. The following are examples of the types of points big name Acts include in their riders:

1. Top headline billing.
2. No advertising without Act's approval.
3. No interviews without Act's approval.
4. Method of payment, including settlement of box office receipt before concert starts and in the presence of the Act's tour accountant.
5. Restrictions on how tickets look and are sold, and when they can be given as promotions or discounted.
6. Security requirements to protect the Act and keep order.
7. Promoter to purchase insurance coverage for each performance (up to \$10,000,000 for death and personal injury and \$1,000,000 for property damage).
8. Promoter to indemnify and protect Act ("hold it harmless") from liability due to injury or property damage occurring at performance.
9. Transportation requirements, such as late model limousines of a particular color.
10. High quality dressing room facilities, and food and drink to be provided in the dressing rooms.

A Technical Rider can also be quite basic or extravagant, depending on the Act. Possible points in this type of rider include:

1. stage requirements;
2. sound wings;
3. sound and lighting consoles;
4. forklifts, power, rigging, generators, lights;
5. key personnel - tour manager, production manager, lighting director, sound engineer, etc.;
6. detailed catering menu for breakfast, lunch, dinner, drinks and dressing rooms each day with serving times.