

PERFORMANCE CONTRACT

AGREEMENT made this _____ day of _____, 20_____, between _____ hereinafter called the "Operator Employer," whose address is _____ and _____ hereinafter called the "Artist Employee," whose address is _____ Social Security No. _____ (if AGVA Member, give Membership No.) _____

AGVA Branch _____

WHEREAS, the Operator Employer recognizes that the AMERICAN GUILD OF VARIETY ARTISTS (hereinafter called "AGVA") is the exclusive collective bargaining representative for all Artist Employees now or hereafter employed or engaged by the Operator Employer in the variety entertainment field, including the Artist Employee(s) engaged hereunder, and that AGVA has established the basic minimum terms and conditions of employment for said Artist Employee(s) in the variety entertainment field.

NOW, THEREFORE, in consideration of the foregoing, the execution of this Agreement by each of the parties hereto, and the full and faithful performance of the covenants, representations and warranties contained herein, it is agreed as follows:

1. The Operator Employer warrants that he is the Operator Employer herein at the present time and intends to be such for the duration of this contract, and engages the Artist Employee(s) and the Artist Employee(s) hereby accepts said engagement, to present his/her act under the direction, supervision and control of the Operator Employer as _____ consisting of _ person(s), at the _____

Name of establishment _____ Address of Establishment _____ in _____ in the city of _____

Room Artist Employee to appear for a period of _____ consecutive week(s) or _____ consecutive day(s), number of shows daily _____, and weekly _____ exact number of shows weekly and daily must be specified commencing on _____, 19 ____, for which the Operator Employer agrees to pay the Artist Employee(s) and the Artist Employee(s) agrees to accept, as full payment (all minimum scale salaries are net, no commissions to be paid on minimum scales) the sum of \$ _____ dollars (weekly) of \$ _____ dollars (daily), payable immediately preceding the first performance on the concluding night of each week(s) or day(s) engagement hereunder, plus transportation. No transportation shall be paid by the Artist Employee(s).

2. **OPTIONS AND NOTICE OF EXORCIZE OF OPTIONS.** The Artist Employee(s) hereby gives and grants to the Operator Employer the option of extending this Agreement for _____ (____) consecutive additional periods of _____ (____) week(s) or _____ (____) day(s) immediately following the conclusion of the original engagement hereunder, upon the same or better terms and conditions contained herein for the original period thereof. The weekly or daily compensation during each such option period herein shall be \$ _____ dollars (____) dollars. Each of these options to be effective must be exercised in writing by the Operator Employer no later than _____ (____) week(s) or _____ (____) day(s) prior to the termination of the Artist Employee(s) engagement. (NOTE: On engagements for one week or less AGVA rules require written notice the day following the opening; on engagements of 2 or 3 weeks, the rules require at least one week's written notice and on engagements of 4 or more weeks the rules require at least 2 week's written notice prior to the termination of the Artist Employee(s) engagement. All copies of option notices shall be sent simultaneously to AGVA NATIONAL HEADQUARTERS by the Operator Employer.

3. **IN THE EVENT THE ENGAGEMENT OF THE ARTIST SHALL BE CONTINUED BY MUTUAL CONSENT BEYOND THE EXPIRATION DATE OF THIS CONTRACT (ORIGINAL TERM AND OPTION PERIODS, IF ANY) FOR A PERIOD OF ONE WEEK OR MORE, THE ARTIST EMPLOYEE(S) SHALL BE DEEMED TO BE ENGAGED BY THE OPERATOR EMPLOYER ON A CONTINUOUS EMPLOYMENT BASIS, SUBJECT TO ONE WEEK'S WRITTEN NOTICE OF TERMINATION BY EITHER PARTY TO THE OTHER. ALL OTHER PROVISIONS OF THE ORIGINAL CONTRACT SHALL CONTINUE IN FULL FORCE AND EFFECT THROUGH SUCH CONTINUED ENGAGEMENT.**

4. **AGVA WELFARE TRUST FUND.** The Operator Employer is advised of an AGVA Welfare Program, which provides for Welfare benefits for variety Artist Employee(s) within AGVA's jurisdiction, including Artist Employee(s) hereunder. To assure the benefits of said Welfare Program to said Artist Employee(s) engaged hereunder, the Operator Employer agrees to make contributions to the joint Union Management AGVA Welfare Trust Fund, according to the following schedule:

\$ _____ dollars per person per engagement per day (3 days is deemed a weekly payment).

\$ _____ dollars per person per week of six (6) consecutive days.

\$ _____ dollars per person per six (6) consecutive day week for engagement outside the Continental limits of the United States and Canada. The Operator Employer by making such contributions to the Trust, accepts and becomes a party to such Trust.

(A) **CONTRIBUTION PROCEDURE:**

(1) The Operator Employer shall issue a check in accordance with the above schedule consisting of an amount equal to coverage for the entire engagement of each Artist Employee(s) performing and employed in the Operator Employer's production and/or establishment.

(2) Checks for Welfare Trust Fund contributions must be made payable to the AGVA Welfare Trust Fund.

(3) Welfare Trust Fund Booking Reports listing the names of all Artist Employee(s) for whom such contributions are made must be attached to the check.

(4) IMPORTANT: checks and Booking Reports must be mailed to the AGVA Welfare Trust Fund, 132 West 43rd Street, New York, N.Y. 10036 prior to the first performance of the Artist Employee(s).

5. REHEARSALS: _____
(place of rehearsal) (time of rehearsal)

The Operator Employer agrees that all rehearsals (if any) shall be subject to AGVA's Rules and Regulations.

6. FILING WITH AGVA. Two fully executed copies of this AGVA Artist Engagement Contract duly executed by all Artist Employee(s) employed hereunder, with all riders annexed thereto, shall be mailed by the Artist Employee(s) to the National Headquarters of AGVA, 1540 Broadway, New York N.Y., 10036 and the AGVA Welfare Trust Fund copy to: 132 West 43rd street New York 10036, within forty-eight (48) hours after being executed and prior to the initial performance of the Artist Employee(s) covered hereunder.

7. The Artist Employee(s) shall render his/her act in the variety field exclusively to the Operator Employer throughout the actual period of services hereof unless otherwise provided herein or otherwise consented to by the Operator Employer in writing.

8. All the provisions of any Minimum Basic Agreement now existing or which may be entered into during the period of this contract between the Operator Employer and AGVA are incorporated herein, and made a part hereof, and shall govern the engagement of the Artist Employee(s) hereunder. however, nothing contained in said agreement shall prevent the Artist Employee(s) from negotiating more favorable economic terms and conditions than are contained in said Minimum Basic Agreement.

NOTE: ALL CLAUSES BEGINING WITH PARAGRAPH 9 HERE OF ARE AN INTEGRAL PART OF THIS ARTISTS ENGAGEMENT CONTRACT.

ADDITIONAL PROVISIONS:

IN WITNESS WHEREOF, the parties hereto have executed this contract on the date and year first above written.

Operator Employer: _____
(full name of Operator Employer, person, firm or corporation)

By: _____
(Officer of corporation, partner or owner)

Artist Employee:

_____ and _____
(Stage Name) (Legal Name)

Other Artist Employees in act
(must be executed by the individual Artist Employees)

AGENT: The undersigned Agent certifies that he has obtained this engagement.
and

(Name of Agent) (Association, if any)

9. The words "Artist Employee(s)" and "Operator Employer " as used herein include and apply to singular and plural members and all genders wheresoever the context hereof will so admit.

10. Artist Employee(s) shall not be required to perform or appear nor shall the Operator Employer request or require the Artist Employee(s) to perform or appear, directly or indirectly, in television regardless of the point of origin of the telecast without first securing the written consent and approval thereto of AGVA.

11. The Operator Employer, throughout the term of this contract, at his own expense shall furnish to the Artist Employee(s) live musical accompaniment according to the usual standard of his establishment for all rehearsals and performances of the Artist Employee(s).

12. A copy of this contract must be filled with AGVA prior to the opening of engagement date stated above.

13. This contract is play or pay and shall not be cancelled.

14. The Operator Employer shall not request or require Artist Employee(s) to mix or solicit drinks from customers.

15. Artist Employee(s) name or likeness may not be used as an endorsement of any product or service nor in connection with any commercial tie-up, without Artist Employee(s) prior written consent.

16. **ARBITRATION.** All claims or disputes by either party (including AGVA) as to the application or interpretation of the terms and conditions of this agreement or the breach of any provisions thereof shall be attempted to be adjusted between the parties (including AGVA) and, in the event they are not satisfactorily resolved, they shall be submitted for arbitration to the Board of Mediation and Conciliation, if any, in the state in which the dispute arose, or if none, to the American Arbitration Association under its Rules then appertaining by AGVA as the Operator Employer. The decision of the arbitrator shall be final and binding on all parties concerned. The cost of the arbitration and the compensation and expense of the arbitrator shall be borne equally by the parties. Such arbitrations held before the American Arbitration Association shall be held in New York City when ever practical and whenever in the opinion of the AGVA Executive Board or the American Arbitration Association, the holding of such arbitration in New York City does not create substantial injustice to either party to the dispute. A claim, dispute or violation which has not been presented to AGVA, by certified mail, return receipt requested, within a period of thirty (30) days from the occurrence of the events giving rise thereto or within thirty (30) days after the termination of the engagement, shall be untimely and shall not be processed.

17. **SECURITY.** The Operator Employer shall deposit with AGVA NATIONAL HEADQUARTERS prior to the opening engagement of the Artist Employee(s) hereunder, security, in the form of cash, certified check or U.S. Treasury Bearer Bond, and amount equal to one week's total compensation, plus transportation for all Artist Employee(s) employed or engaged by the Operator Employer hereunder.

In the event the Operator Employer breaches or violates the above paragraph, AGVA in its discretion may withhold or cancel the performances of its Artist Employee(s) under this contract and shall further hold the Operator Employer responsible for all monies due the Artist Employee(s) under this agreement.

All cash and/or certified checks so deposited with AGVA will be immediately placed by AGVA in and AGVA segregated special account. Interest, if any on such salary security deposits shall be used for the administration of such accounts.

If U.S. Treasury Bearer Bond (must be full amount) the Operator Employer agrees to forward such Treasury Bearer Bond directly to the Irving Trust Company, ATT: Custody Department, 1290 Avenue of the Americas, New York, New York 10019. The Operator Employer agrees to pay the service charge rendered by the Irving Trust Company for the servicing of the Operator Employer's Bond.

In the event of a default by the Operator Employer to pay the Artist Employee(s) compensation and transportation when due, provided the Artist Employee(s) has actually appeared and performed pursuant to this Agreement, or the Operator Employer issued a check in payment therefor which is not collectible, AGVA shall pay from security deposited by the Operator Employer, the compensation and transportation due the Artist Employee(s).

In the event of circumstances other than those in the above paragraph, the Operator Employer and AGVA agree all other disputes, claims, etc., will be submitted to arbitration in accord with Section 16 of this agreement and the decision of the arbitrator shall be final and binding on the parties concerned.

(A) The Operator Employer agrees to replenish the amount of salary security in the event of depletion of such security by reason of a default payment, or arbitrator award, within seven (7) days after written notice by AGVA to the Operator Employer.

(B) AGVA shall have thirty (30) days after receipt of the Operator Employer's written request for return of his salary security to authorize the return of such security.

18. **GOVERNMENTAL BENEFITS.** The Operator Employer agrees to abide by and live up to all present and future State, County, Municipal and Federal ordinances, rules, regulations, laws and statutes enacted for the protection of and more specifically applicable to employment of Artist Employee(s) hereunder. The Operator Employer assumes all responsibility for the payment of all applicable taxes and contribution under Workmen's Compensation, Unemployment Insurance, Social Security or any other law applicable thereto.

(A) **RIDERS.** nothing contained herein shall prohibit any party hereto from annexing any rider to this Artists Engagement Contract to incorporate more favorable terms and conditions applicable to the specific employment or engagement contracted for, provided, however, that no such riders shall modify the printed provisions of this standard form and provided further that all riders must be initiated by the parties hereto and transmitted to AGVA pursuant to the provisions of Section 7. It is further understood that no rider or special provision annexed hereto, shall be binding upon the parties or have any legal force and effect if such rider or special provision is in conflict with any of the provisions of any minimum Basic Agreement between AGVA and the Operator Employer and/or any provision of the Constitution, By-laws or Rules and Regulations of AGVA incorporated by reference herein.

19. The Operator Employer shall not request any Artist Employee(s) directly or indirectly to appear in or attend any benefit without first receiving written approval from Theatre Authority, Inc, 485 Fifth Avenue, New York, New York 10017, and AGVA National Headquarters.

20. **NO DISCRIMINATION.** The Operator Employer shall not discriminate against any Artist Employee(s) because of his/her membership in AGVA, because of his/her filing of any claim or the processing of the same or because of any complaint he/she may make concerning the application of the provisions of this Agreement, or a Minimum Basic Agreement, or because of his/her participation in lawful union business, nor shall any Artist Employee(s) be discriminated against because of his/her race, creed, religion, color, or sex.

21. **AGVA REPRESENTATION.** The Operator Employer shall admit any authorized AGVA representative to visit the Artist Employee(s) or observe rehearsals or performances of the Operator Employer's production, or on other official business at any reasonable time.

22. NO KICKBACKS. neither the Operator Employer, nor its officers, agents, representatives or employees, shall solicit or receive from any Artist Employee(s) or person representing an Artist Employee(s), shall offer or give to the Operator Employer, or its officers, agents, representatives or employees, or to any other person a kickback. It shall be deemed a kickback to solicit or receive or give or offer to give, directly or indirectly, any money, gift, gratuity or other thing of value, as an inducement to securing or maintaining an engagement; provided, however, that this Section shall not prohibit commissions paid by an Artist Employee(s) to and AGVA franchised agent.

23. The Operator Employer shall not request nor shall an Artist Employee(s) execute or deliver any release whereby any provisions of this Agreement are waived or released without the prior written consent of AGVA NATIONAL HEADQUARTERS.

24. No Artist Employee(s) employed or engaged to perform services at the Operator Employer's establishment shall be required to cross a picket line established by a labor organization at the Operator Employer's premises and which picket line is approved by AGVA, nor shall any Artist Employee(s) be disciplined, or this Agreement be considered or deemed breached by the Artist Employee(s), by reason of such Artist Employee(s) refusal to cross such picket line.

25. BINDING EFFECT OF AGREEMENT. In the event the Operator Employer sells, transfers or assigns his business prior to the termination of this Agreement, this Agreement shall be applicable and binding upon the Operator Employer's transferees, successors and assigns and both the Operator Employer and any transferees, successors and assigns guarantee the complete performance of this contract for the full term thereof.

26. UNION RIGHTS. AGVA, by reason of the provisions of this Agreement, shall, in addition to the rights of the Artist Employee(s) provided hereunder, have the right to administer and enforce the provisions of this Agreement.

27. UNION SECURITY. Subject to the provisions of the Labor Management Relations Act of 1947, as amended, it shall be a condition of employment hereunder that all Artist Employee (s) covered by this Agreement who are members in good standing on the date of execution of this Agreement shall remain members in good standing throughout their employment and/or engagement with the Operator Employer, and those who are not members of AGVA on the date of execution of this Agreement, shall, on the 30th day following execution of this Agreement, become and remain members in good standing of AGVA. It shall also be a condition of employment that all Artist Employee(s) covered by this Agreement, shall on or after the 30th day following the Artist Employee(s) first employment or engagement by the Operator Employer as a performer in the variety field of the entertainment industry, become and remain members of AGVA in good standing.

(A) The Operator Employer agrees to report to the AGVA National Office, Membership Department, within five (5) days of the first employment of a non-member of AGVA, giving the non-member's name, Social Security number, and first date of employment.

(B) Notwithstanding anything to the contrary herein, this paragraph shall not be applicable if all or any part thereof shall be in conflict with applicable law; provided, however that if all or any part of this paragraph becomes permissible by virtue of a change in applicable law, whether by legislative or judicial action, the provisions of this paragraph held valid shall immediately apply.

28. SEVERABILITY. If any portion of this contract is in conflict with any applicable Federal or State Law now in force or hereafter enacted, such provision shall become inoperative, but all other provisions of this contract shall remain in full force and effect.

29. INTERPRETATION. This Agreement shall be interpreted, construed and applied according to the laws of the State of New York and any action against the American Guild of Variety Artists shall be brought only in courts located in the County and State of New York.