

CONTRACT DRAFTING ASSIGNMENT

~~DUE NOVEMBER 18TH~~

DEC 2ND

NO ASSIGNMENT WILL BE ACCEPTED AFTER THIS DATE.

This project will probably be your first opportunity to draft a legal document. The assignment and the materials provided are meant to familiarize you with drafting a binding contract. Additionally, this assignment will test your attention to detail by requiring you to read the hypothetical fully and make sure all provisions are addressed in the contract you draft.

The assignment must be typed, double-spaced, on plain white 8-1/2" x 11" typing paper.

Pay close attention to detail and refer to the material provided for guidance. Reading and referring to the material provided is the key to successfully completing this assignment.

The assignment is to draft a contract assuring all provisions noted in the hypothetical are addressed, which is part of this document.

LEGAL DRAFTING

A. Title of the Contract

The better practice is to develop a title for the contract which is informative. The drafter should be sure that the title of the contract is consistent with the thesis of the document. For example, the Sample Contract (p. 22) could be titled "Portrait Agreement." This gives the reader some indication of what the contract is about. In practice, many attorneys simply use "AGREEMENT" as a title or omit a title altogether. Although this is an acceptable practice, it is far less effective than an informative title.

B. Opening Paragraph(s)

The opening paragraph of a contract should contain the following information:

- (i) Date of the contract;
- (ii) Identification of the parties (usually name and address);
- (iii) Words of agreement (e.g., "make this Agreement").

The following is an example of an opening paragraph involving a "d/b/a" party and a party that is a corporation:

"On June 1, 1987 this Agreement is made between Jane Smith (SMITH) doing business as Smith Auto Parts of 125 Lincoln Avenue, Akron, Ohio 44325 and International Button Machines, Inc. (IBM), an Ohio corporation with an office located at 95 Washington Street, Akron, Ohio 44303, acting by John Jones, its President, duly authorized."

After the opening paragraph, the drafter has a choice of going directly to the first substantive provision of the contract or including a purpose clause (sometimes referred to as "recitals") as a preface to the contract. Consider the following rule of thumb: If the deal is relatively simple and the essence of the transaction is stated in the first few substantive provisions, omit a purpose clause. The following are two reasons to include a purpose clause:

- (i) A complex deal where the essence of the transaction is not stated early in the contract; or

- (ii) There is a particular purpose for the contract which is not otherwise specified. For example, where a contract is designed to comply with a particular provision of law, this should be stated (e.g., "This Agreement is intended to comply with . . ."). By stating this, any doubt concerning interpretation of the contract will be resolved in favor of fulfilling the stated purpose.

C. Cross-References

When the drafter cross-references another section in the contract, it is sometimes helpful to the reader to include, after the section number, a parenthetical identification or brief description of the section being cross-referenced. Examples would be:

- (i) ". . . as stated in Section X (Cancellation)"
- (ii) ". . . as stated in Section X (relating to capital gains)"

This technique is given by way of suggestion; it is not a required technique.

D. Condensing Details

By using inductive reasoning, the drafter can condense many details into a simple proposition. This process is critical to good drafting. Drafting and scientific hypotheses are judged by the same standard -- the simplest one that explains all observed phenomena is best. A general proposition which is drafted so as to avoid any exceptions is better than a general proposition which is drafted so as to require one or more exceptions. Compare the following propositions:

- (i) Mr. Smith will perform the services on all days except Saturdays and Sundays.
- (ii) Mr. Smith will perform the services on all days except weekends.
- (iii) Mr. Smith will perform the services on all weekdays only.

E. Rules of Construction

There are many codified and well-recognized rules of construction. It is important that the drafter play by the rules of the game.

One important unwritten rule is the Negative Inference. The Negative Inference works as follows: It is assumed that the writer has made the broadest, most general statement which the writer truthfully can. The negative inference which flows from this assumption is that any proposition which transcends the statement is false. For example, the contract reads "The musician must supply his instrument at his expense." The potential negative inference of this provision is that the orchestra will be obligated to supply the musician with everything else including his tuxedo, shoes, etc. The best weapon to avoid the negative inference is the phrase "including but not limited to." By using this phrase, the drafter is able to deal with one thing while avoiding any negative inference as to all other things. In the musician example, you could draft the following: "The musician must provide the accoutrements of his trade including, but not limited to, his instrument."

When dealing with numbers, phrases such as "at least" or "not more than" should be used if the drafter wants to regulate one side of the cut-off point but not the other. For example, when dealing with a notice provision, the drafter should use the phrase "at least" in order to establish a minimum amount of notice ("X must give Y at least seven days' advance written notice. . .").

When dealing with dates, the drafter should distinguish between the words "by" and "on." If the drafter intends that the stated event occur on a specific date (and on no other date), then the drafter should use "on." However, if the date is a deadline and the stated event may occur at an earlier time, then "by" should be used.

Other rules of construction are included in this Workbook at p. 13. As for Rule 11, if a provision may appear harsh or absurd, the drafter should explain why it is not so. For example, if a contract provides for liquidated damages, the drafter should include a list of items of damages which are represented by the liquidated damages. Of course, if the list of damages is not exhaustive, the drafter should also use the phrase "including but not limited to."

F. Beware of Outside References

If people, physical objects or other documents are central to the contract, the drafter may want to provide for any possible changes in these "outside references" (e.g., death of a person, modification of a document, etc.). For example, if the drafter refers to the Clean Air Act in a contract to describe the company's emissions, does the drafter mean the Clean Air Act as amended or recodified or the Clean Air Act fixed as of the date of the contract? Depending on the drafter's

intent, this provision must be clarified (i.e. "the Clean Air Act as of [date]" or "the Clean Air Act as it may be amended").

G. Defined Terms (Modular Design)

The drafter should organize and arrange the contract so as to facilitate amendment. The drafter should identify and separate the "building blocks" of the contract so that one can be replaced or amended without affecting the rest of the contract. Some of the typical "building blocks" include the parties to the contract, specific places, services or duties, etc. The most important advantage of defined terms is that they help the drafter avoid redundancy and compress information into one efficient definition.

On the other hand, there are disadvantages to the use of defined terms. Even taken collectively, these disadvantages are outweighed by the benefits of defined terms. The disadvantages do indicate that the drafter should take care in using and developing defined terms. One problem with defined terms is that they make the writing dense and more difficult to understand. In view of this, defined terms should be limited to those basic terms of the contract which are repeated many times and will be familiar to the reader.

Another problem is that the drafter and/or reader may become confused between the defined term (as defined in the contract) and the ordinary, dictionary definition of the word or phrase being used. There is no easy solution to this problem. The drafter must take care in choosing the word or phrase to be used as the defined term. The defined term should be consistent with the drafter's thesis. The object is to choose a defined term which would be the least likely to cause confusion and to which the reader will most easily relate.

Defined terms are created either by placing the defined term in parentheses immediately after the word or words to be defined or by stating the defined term in a separate sentence. If the defined term is in a separate sentence, it should be placed in quotation marks. If the defined term is alone in parentheses, quotation marks need not be used. If the defined term is in a phrase in parentheses, then it should be placed in quotation marks. An example of this would be: (collectively referred to as "CLIENTS").

The first letter of each word of a defined term should be capitalized or the entire word or phrase may be capitalized. This is a matter of stylistic preference. Some drafters prefer putting the entire defined term in capital letters. By doing so, it stands out and is easier for the reader to identify.

Defined terms should be placed immediately after the word or words to be defined. On the other hand, instructions for completing a form agreement should be placed below the blank line. If there are a number of things or a list of items being defined, there are at least two alternative approaches:

- (i) create the defined term in a separate sentence before or after the list; or
- (ii) put the defined term immediately after the last item on the list in a parenthetical with the phrase "collectively referred to as . . ." preceding it.

After creating a defined term in a document, you should treat it like a formal name. Do not place an article (e.g., "the" or "a") before a defined term. For example, draft the provision as follows:

"CUSTOMER must notify COMPANY in writing . . ."

NOT: "The CUSTOMER must notify the COMPANY in writing . . ."

H. Flexibility

Timetables or schedules are often used in contracts. To a great extent, the drafter's approach will depend on the client's needs. If it is consistent with the client's needs, try to tie each event called for in the contract to its predecessor event rather than using an absolute standard (e.g., a specific date). To the extent that a standard is needed, try to make it determinable with reference to a flexible beginning point.

I. General Organization

Drafters should put "ongoing provisions" first and "ending provisions" later in the contract.

"Ongoing provisions" are all provisions which contemplate the transaction going forward (e.g., payment, delivery, etc.). "Ending provisions" include provisions that contemplate the end of the transaction (e.g., cancellation, termination) or that deal with special potential problems (e.g., liability, disclaimers, etc.). For example, the first substantive provision of a contract should not be a cancellation provision.

In general, a contract is divided into seven parts, in the following order:

- (1) Opening paragraph identifying the parties [p. 1]
- (2) Preliminary information (e.g., a purpose clause) [pp. 1-2]
- (3) "Ongoing provisions"
- (4) "Ending provisions"
- (5) Closing provisions [pp. 7-8]
- (6) Signatures [p. 9]
- (7) Schedules/Attachments

[references are to workbook pages]

J. Incorporation by Reference

Any attachment to a contract which is intended to be a part of the contract must be incorporated by reference. To incorporate a schedule or attachment into the contract by reference, the drafter should use the following language: ". . . [as stated in] Schedule A, attached to and made a part of this Agreement." The drafter needs to incorporate any attachment by reference only once. After the attachment has been incorporated by reference, the drafter simply refers to the attachment by its title (e.g. Schedule A).

K. Approval Provisions

Where one party's approval is required for something, the drafter often includes a "reasonableness provision" such as:

"Jones must get Smith's approval of the substitute which approval will not be unreasonably withheld."

L. Closing Provisions

The following provisions are often included at the end of a contract. Please note three things:

- (i) Some of these provisions are not always included in all contracts. Please read the notes following each provision for further explanations.
- (ii) Although these are effective drafts of these provisions, they are not the only ways to draft these provisions.
- (iii) This is not an exhaustive list of closing provisions although it will suffice for this course. In practice, you may find the need for other provisions (e.g. an arbitration provision).

1. Modification (Amendment)

Neither party may modify this Agreement without the written consent of the other party.

2. Assignment

Neither party may assign this Agreement without the written consent of the other party.

NOTE:

- (a) There are alternative ways to draft the modification and assignment provisions. In the above provisions, the drafter uses the active voice and the double negative, although other forms are acceptable. For example:
 - (1) passive voice, double negative - "This Agreement may not be modified without the written consent of both parties."
 - (2) Passive voice, positive - "This Agreement may be modified [only] with the written consent of both parties."
 - (3) Active voice, positive - "Either party may modify this Agreement [only] with the written consent of the other party."

The drafter should generally prefer the active voice (all other things being equal).

The drafter uses the double negative to emphasize to the reader the negative nature of the provision.

- (b) As for the modification provision, the drafter should use the above language if the contract does not provide for any unilateral change (i.e., without mutual consent) in any term. If the contract does provide for a unilateral change, the drafter should include language such as "Except as otherwise provided. . ." or "Except as provided

in Section X of this Agreement, neither party may. . ."

- (c) As for the assignment provision, sometimes one party may want to retain the right to assign the contract without the other party's consent. For example, the right to assign a contract (or a series of contracts) may relate to the salability of a business. Where appropriate, and subject to the parties' negotiations, this provision may be drafted to give one party the unilateral right to assign the contract.

3. Governing Law

This Agreement is entered into under and is governed by Ohio law.

NOTE: This provision is usually used when the parties contemplate a multi-state transaction, either at present or in the future.

4. Attorney Fees

If either party breaches this Agreement, the breaching party will pay the other party's reasonable attorney fees and court costs.

NOTE: If the amount involved in the transaction is large enough, this is an important provision. In general and in most states, a party to litigation cannot recover attorney fees unless such recovery is provided for by statute or contract.

5. Headings

The headings in this Agreement are for convenience only, and will not be used to modify, limit, or extend any provision.

6. Separability

This Agreement is separable. If any provision of this Agreement is declared void or invalid by any court, all other provisions of this Agreement remain binding.

7. Complete Agreement (Entire Agreement)

This Agreement is the complete understanding of the parties. Any promise or condition not contained in this Agreement is not binding on the parties.

M. Signature Line

The signature line for a corporation should be set up as follows:

International Button Machines, Inc.

by

John Jones
Its President
Duly Authorized

N. Checking Your Document - The "Scenario Approach"

One of the most important aspects of a contract or other document is its comprehensiveness. The underlying lawyering skill involved here is problem analysis. Has the drafter fully and effectively analyzed the legal problem(s) involved in the transaction? All drafters live with the nagging fear that something has been left out of the contract. Some general questions which drafters often ask themselves include:

- (1) Are there contingencies which were omitted?
- (2) What happens if one party fails to perform or inadequately performs any part of his or her obligations? Are the consequences clearly stated?
- (3) Does the contract cover everything?

Of course, this last question represents the drafter's overriding concern about the comprehensiveness of the contract.

One effective way to test the comprehensiveness of a contract is to use the "scenario approach." Under this approach, the drafter "walks through the contract," playing out the entire transaction in his or her mind. Additionally, the drafter should consider all the possible things which could go wrong at every point in the transaction (i.e. a "worst case scenario approach"). By doing this, the drafter is better able to identify substantive terms, contingencies and consequences which may have been omitted. The "scenario approach" is an excellent way in which a drafter can double-check his or her problem analysis.

O. Additional Drafting Pointers

1. Rights and Obligations

In each provision, specifically identify the rights and obligations involved and then clearly express them. In particular, please note the following:

(a) Passive Voice and Unclear Constructions

Be sure to state who has the obligation (or right) and what must be done. The passive voice and other constructions sometimes fail to do this.

- (i) Passive: "The bill must be paid in full by June 1."
"The schedule may be changed by giving notice . . ."
- (ii) Unclear: "Full Payment is due by June 1."

None of these provisions identifies the party who has the obligation or right.

Compare the above provisions with the ones below:

- "Mr. X must pay the bill in full by June 1."
"Mr. X may change the schedule by giving notice . . ."

(b) Attached Schedules

When schedules are attached to the contract, drafters sometimes focus unnecessarily on the contractual process (i.e., filling out the contract) and fail to establish essential obligations. For example, in a contract between Ms. X and Ms. Y, where Schedule A will specify performance obligations of Ms. Y, drafters sometimes write:

"Ms. X must complete Schedule A . . ."

It is unnecessary to review the process by which the contract is completed. This provision fails to state Ms. Y's obligation. This provision should be drafted as follows:

"Ms. Y will provide the services stated in Schedule A . . ."

(c) Distinguish Between Rights and Obligations

For each obligation (duty) in a contract, there is a corresponding right. If X has the duty to perform a service, then Y has the right to receive the service. Usually, it is more important to clearly identify the obligation in the contract, as follows:

- "Buyer must pay Seller . . ."
NOT: "Seller will receive payment . . ."

2. Normal Flow of Provisions

There is a normal flow of certain types of provisions. As to provisions establishing obligations, the normal flow is to first state the obligations and then state the consequences, if any, for failure to fulfill the obligation, as follows:

"Buyer must pay the bill in full by June 1. If Buyer fails to pay the bill in full by June 1, Buyer must pay a late fee . . ."

NOT: "Buyer must pay a late fee if he fails to pay the bill in full by June 1."

As to provisions establishing rights, the normal flow is to first state the right and then state the manner in which the right may be exercised, as follows:

"Buyer may change the schedule [establishes the right] by giving written notice to Seller [states the manner of exercise] . . ."

NOT: "Buyer must give written notice to Seller to change the schedule . . ."

3. Architecture and Schedules

Be sure that your document is good-looking and functional. Provide blank lines in any places where the parties must write some information as follows:

<u>MONDAY</u>		<u>MONDAY</u>
_____	to	_____
_____	to	_____
_____	to	_____
_____	to	_____
_____	to	_____

NOT: MONDAY

Also, be sure that the lines are long enough for the necessary information, as follows:

" . . . _____ of
_____ . . . "

NOT: " . . . _____ of _____

As far as function is concerned, use the "scenario approach" to be sure your document will work effectively in all situations. Some examples follow:

(i) If the services may be performed in one, two or three shifts on a given day, the following schedule is ineffective:

Monday _____ to _____

Tuesday _____ to _____

(ii) If the services may be performed at half-hour intervals, the following schedule is ineffective:

	M	T	W	Th	F
9					
10			-		
11			-		
12					

RULES OF CONSTRUCTION

1. A document will be read as a whole and all documents in the same transaction will be read together.
2. Technical terms and terms of art will be interpreted in their technical meaning.
3. An agreement is construed so as to give effect to each term; nothing is presumed to be superfluous.
4. An agreement is construed to create a lawful result.
5. Specific provisions will control over general provisions.
6. Separately negotiated terms will control over standardized or boilerplate terms.
7. Where there is a choice between reasonable meanings, a court will prefer that which operates against the drafter of the document.
8. Where there is a choice between reasonable meanings, a court will prefer that which serves the public interest.
9. A written agreement is usually considered as superseding and discharging all prior written or oral agreements concerning the same subject matter.
10. If possible, all provisions in an agreement are interpreted so as to be consistent with one another.
11. Agreements are construed to avoid harsh or absurd results.
12. Expressio unius est exclusio alterius: expressing one thing (especially in a list) impliedly excludes other things not listed.
13. Eiusdem generis: "of the same kind". When an item (general term) in a list is in dispute, it will be taken as having the same characteristics as other items in the list.

SAMPLE CONTRACT

A is on 1

This agreement made ~~and entered into as~~ of the 1st day of June, 1999 by ~~and between~~ Arnold

of

Porter (~~hereinafter referred to as "Porter" who resides at 124 Main Street in the City of Akron,~~

of

County of Summit and State of Ohio and Dalvador Sali (~~hereinafter referred to as "Sali" who resides~~

at 1111 Park Avenue, New York, New York.

[Sali shall/will paint a portrait of Porter.]

~~Porter wishes to have a personal portrait of himself painted by Sali ad Sali wishes to paint a~~

~~personal portrait of Porter as further described hereinbelow.~~

I. THE PORTRAIT

[will]

~~Subject to the terms and conditions of this agreement, Sali shall paint or cause to have painted~~

of

will

24"x36"

a full-face ~~personal~~ portrait depicting Porter. The portrait shall be an oil painting on a canvas with the

~~dimensions of 24" by 36" framed in a rosewood frame.~~

II. DATE AND LOCATION OF PERFORMANCE

shall/will

portrait

A. Sali ~~hereby agrees to complete the painting in five sittings at Porter's home. Each~~

[approximately]

sitting will be ~~for a period of two (2) hours. The parties will agree at a later point in time on the dates~~

subject to the following deadlines:

of the aforesaid sittings. ~~In reaching such an agreement, the parties agree to comply with the~~

deadlines listed hereinbelow:

- * First Sitting [by] on or before July 1, 1999
- * Second Sitting [by] on or before August 1, 1999
- * Third Sitting [by] on or before September 1, 1999
- * Fourth Sitting [by] on or before October 1, 1999
- * Fifth Sitting [by] on or before November 1, 1999

B. ~~Sali hereby agrees to complete and deliver the completed painting at the residence of~~ portrait Porter's home
 shall/will
 [by] (Porter [no later than] December 1, 1999, which date shall hereinafter be referred to as "Delivery Date.")
 Date."

III. PAYMENT

A. Porter shall/will pay Sali ^{or} by
~~Sali will be paid the amount of Fifteen Thousand (\$15,000.00) Dollars in the form of~~

as follows:

bank or certified check in accordance with the following schedule:

- * 20% Upon At the time of the execution of this Agreement
- * 10% Immediately after each sitting
- * 30% D D By delivery date

The parties agree that Porter may mail the initial payment to Sali's residence and shall make home

the remaining payments ~~provided for herein~~ to Sali at Porter's home.

travel

B. Porter will reimburse Sali for ~~any and~~ all reasonable expenses for ~~travel~~ between Sali's home [for each sitting.] ~~New York City and Porter's home during the term of this agreement.~~

C. ~~The method of payment for travel expenses will be made pursuant to the terms stated~~ shall/will ~~hereinbelow.~~ Sali ~~agrees to submit to Porter receipts or other proof of all travel expenses.~~ Within [receiving] , Porter shall/will reimburse seven (7) days of [his receipt of] the proof ~~of travel expenses, reimbursement of such expenses will be~~ made by Porter to Sali by check or money order.

If A D. ~~In the event that Porter cancels this agreement [at any time] during the term hereof,~~ Sali is entitled to/has the right to retain and Porter shall/will pay Sali ~~will be entitled to the retention of all payments made by Porter. Porter's cancellation will further~~ ~~entitle Sali to an additional~~ Two Thousand (\$2,000.00) Dollars, [which ~~amount represents~~ ~~damages including~~ but not limited to ~~compensation~~] for foregone employment opportunities.

If completed by E. ~~In the event that Sali fails to complete and deliver the portrait [on or before the]~~ [December 1, 1999] [will] [to Porter.] [Delivery Date], then he [shall] refund ~~any and all monies and payments [he has received from~~ and to Porter.] Moreover, he will also pay Porter Two Thousand (\$2,000.00) Dollars as compensate for limited to damages including but not ~~compensation for~~ loss of his bargain.

before F. If Porter dies ~~prior to~~ the last sitting then Sali will keep ~~any and all monies and~~

[December 1, 1999]

payments he has received from Porter. If Sali dies before [Delivery Date], then his estate will

payments to Porter
repay ~~any and all~~ money [Sali received from Porter].

IV. SUPPLIES AND MATERIALS

[will] [will]
Porter [shall] supply ~~any and all~~ [necessary] lighting equipment. Sali [shall] provide ~~any and~~
[necessary]
all other supplies required for the painting of the portrait.

V. USE OF FINAL PORTRAIT

[is entitled to] portrait
Sali [has the right to] use ~~and include~~ a photograph of the completed painting in his
professional portfolio.

VI. CANCELLATION

F [each of] (4)
The parties hereby agree that following the first four sittings only, [Porter may look at the
portrait [Porter] [has the right]
painting and] if [he] finds the work unsatisfactory [for any reason], then he [is entitled] to cancel this
Agreement, subject to the terms and conditions set forth in Section III D. Said cancellation may be
made by Porter orally or in writing.

DELIVER D

VII. FAILURE TO COMPLETE PORTRAIT ON TIME

If completed [December 1, 1999]
In the event that Sali fails to complete and deliver the portrait by [Delivery Date], then he will
as stated in
keep the portrait and pay compensation to Porter in accordance with the terms and conditions of

has
Section III E. However, Porter shall have the option of accepting the portrait and paying for it
despite late or incomplete
notwithstanding the fact that Sali's performance is late. The exercise of this option by Porter may
be oral or written.

VIII. DEATH OF PARTIES

A. If Porter dies before the last sitting, then Sali, subject to the terms of Section III F,
need not finish the portrait.

[December 1, 1999]
B. If Sali dies before [Delivery Date] then his estate, subject to the conditions of Section
Porter's
III F, may deliver the portrait and receive payment for it at option of Porter.

IX. LIABILITY

shall/will
Sali hereby agrees to reimburse Porter for any and all reasonable cleaning expenses which
by
may have been caused as a result of Sali's painting.

[CLOSING PROVISIONS]

Dalvadore Sali

Date

Arnold Porter

Date

Contract Hypothetical
Fall 2003
4050

Fred Flintstone represents several popular musicians, including Stung, Willie Weed Wilson, and Backstage Boys. His agency, Flintstone Agency, Inc., a Georgia Corporation of which he is the president, books these artists for live concerts at arenas, music halls, fairs, stadia, and wherever else the price is right. Fred already has a contract between his company and the artists. Now he needs an agency contract to be used when he books the groups with various promoters.

All artists will receive a set amount per concert. All promoters will be required to pay some money up front and will pay the remainder by certified check. The dates on which the down payment and the remainder are due will be specified in the contract. There will be at least a 1 ½% monthly penalty for any late payments. Each group will get a specified number of free tickets in specific seats to be indicated in the contract.

For each concert, the parties negotiate all items (e.g. personnel, equipment, etc.) which each party must provide. Generally, the promoter has to provide and pay for stagehands, loaders for set up and tear-down, forklift operators, and an electrician. Each artist will specify the size of the stage needed as well as power requirements for sound and lighting systems. There will be a time schedule to follow for rigging and lighting, sound checks, meals, stage changes, and show-times provided by Fred's agency. The contract will specify the dates by which each of Fred's notices will be submitted. The doors should always open 90 minutes before show-time, but never before sound check is completed. The agency will also provide a stage diagram, list of equipment needs, and catering requirements, if applicable.

All headliners must have sole headline billing and Flintstone Agency, Inc., will have the right to approve any other act. There can be no reproductions of the performance without Fred's prior written permission. There may be other concert restrictions which the parties may negotiate and itemize in the contract.

The artists' obligation to perform is subject to sickness or injury resulting in the inability to perform. The contract will automatically terminate if there are acts of God or anything else which substantially destroys the concert location, thereby making it impossible to hold the concert. Also, this entire deal automatically ends if there are labor problems or strikes, any order of any public authority or any other cause beyond the control of the agency or the promoter, any one of which makes it impracticable to have the concert. In the event of the automatic termination of this contract, a refund will be made to the promoter of all monies paid as a down payment. This refund will be made 3 days after the concert is cancelled. Also, if the singer is unable to perform as a consequence of illness or some other physical problem, the singer cannot perform at some other location on the date scheduled for the concert.

The promoter must provide adequate security and can only give backstage passes to authorized personnel. He must get any required permits, provide crowd control, and indemnify the artist and his employees against damage or injury. For some of the bigger acts, the promoter may be required to purchase insurance, in which case the extent and amount of coverage would be

negotiated and specified in the contract. The promoter may also be required to submit a certificate of insurance 3 days in advance of the concert, thereby establishing proof of insurance coverage. The promoter must get the agency's approval for advertising. Merchandising, if any, is handled in a separate contract.

In the event that Fred's agency fails to provide advance notice of any concert requirements to the promoter (as required by the contract), Fred wants a provision requiring the promoter to make his "best efforts" in satisfying the requirements.

Each artist will have varying requirements for dressing rooms, towels, mirrors, seats, electrical outlets, and food for the crew, and artists' dressing rooms. The promoter will need some advance notice for these matters.

Fred's agency will furnish, among other things, the artist, road personnel, sound and lighting equipment and personnel, and such back-up band and back-up singers as required.

The promoter may provide limos to and from the airport, hotel, and concert location, plus parking spaces for the limos, private automobiles, and semis.

The corporate office is located at 466 Peachtree Street, Atlanta, Georgia.