

ORCHESTRA LEADERS' CONTRACT

CAPITOL RECORDS, INC., a corporation herein referred to as "Capitol", and Nat (King) Cole, herein referred to as "Artist", have agreed and do hereby agree as follows:

1. Capitol hereby employs the exclusive personal services of Artist in recording twelve selections for Capitol during the term of one year from the date of this agreement. Capitol agrees to accept commercially satisfactory master records of selections recorded by the Artist hereunder. If Capitol desires to place the selection of another Artist on the reverse side of a double-faced record, the approval of the Artist must first be obtained.

2. In consideration of the execution of this agreement by Artist and of the promises and covenants undertaken by Artist hereunder, and for all rights granted or agreed to be granted by Artist to Capitol hereunder, Capitol agrees to pay Artist as follows: (a) A royalty of .01 cents for each double-faced record made hereunder and sold by Capitol throughout the world, if the said record embodies performances by the Artist on both sides thereof; (b) a royalty of one half cents for each single-faced record or double-faced record if said record embodies performances by the Artist on only one side thereof:

A. Upon acceptance by Capitol of each master record Capitol will advance to Artist, on account of such royalties, the sum of \$ 100.00 for each such master record, said advance royalties to be deducted from the total royalties otherwise payable to Artist as herein provided on all records.

B. Capitol will compute royalties after the expiration of each calendar half year and will pay to Artist within 45 days after the expiration of each calendar half year the accrued royalties earned in the preceding calendar half year less the amount of any advances made hereunder by Capitol to the Artist. Royalties will be computed upon records sold by Capitol for which Capitol has been paid, less any returns or other rebates or credits which Capitol may thereafter be required to give or make.

3. In consideration of the execution hereof by Capitol and Capitol's agreement to make royalty payments hereunder Artist gives and grants to Capitol the following rights and options:

A. To extend this agreement for an additional period of one year upon all of the terms and conditions herein set forth except that the royalty payments shall be as follows: (a) A royalty of .01 1/2 cents for each double-faced record made hereunder and sold by Capitol throughout the world, if the said record embodies performances by the Artist on both sides thereof; (b) a royalty of .0075 cents for each single-faced record or double-faced record if said record embodies performances by the Artist on only one side thereof.

B. To extend this agreement for an additional period of one year upon all of the terms and conditions herein set forth except that the royalty payments shall be as follows: (a) A royalty of .02 cents for each double-faced record made hereunder and sold by Capitol throughout the world, if the said record embodies performances by the Artist on both sides thereof; (b) a royalty of .01 cents for each single-faced record or double-faced record if said record embodies performances by the Artist on only one side thereof.

C. To extend this agreement for an additional period of _____ upon all of the terms and conditions herein set forth except that the royalty payments shall be as follows: (a) A royalty of _____ cents for each double-faced record made hereunder and sold by Capitol throughout the world, if the said record embodies performances by the Artist on both sides thereof; (b) a royalty of _____ cents for each single-faced record or double-faced record if said record embodies performances by the Artist on only one side thereof.

D. To extend this agreement for an additional period of _____ upon all of the terms and conditions herein set forth except that the royalty payments shall be as follows: (a) A royalty of _____ cents for each double-faced record made hereunder and sold by Capitol throughout the world, if the said record embodies performances by the Artist on both sides thereof; (b) a royalty of _____ cents for each single-faced record or double-faced record if said record embodies performances by the Artist on only one side thereof.

E. To extend this agreement for an additional period of _____ upon all of the terms and conditions herein set forth except that the royalty payments shall be as follows: (a) A royalty of _____ cents for each double-faced record made hereunder and sold by Capitol throughout the world, if the said record embodies performances by the Artist on both sides thereof; (b) a royalty of _____ cents for each single-faced record or double-faced record if said record embodies performances by the Artist on only one side thereof.

F. To extend this agreement for an additional period of _____ upon all of the terms and conditions herein set forth except that the royalty payments shall be as follows: (a) A royalty of _____ cents for each double-faced record made hereunder and sold by Capitol throughout the world, if the said record embodies performances by the Artist on both sides thereof; (b) a royalty of _____ cents for each single-faced record or double-faced record if said record embodies performances by the Artist on only one side thereof.

The aforesaid options must be exercised by notice in writing addressed to the Artist at his last known address and deposited in the United States mail not later than ten days prior to the expiration of the next preceding term of this agreement. The options must be exercised consecutively but Capitol may exercise one or more options at any time.

4. Capitol agrees to supply all facilities in connection with the making of the recordings and to pay any compensation payable to the orchestra for each regular recording session in accordance with the scale established by the Local of the American Federation of Musicians having jurisdiction. If the Artist should fail to appear or be late in appearing at the time and place designated by Capitol for recording hereunder, Artist agrees to pay to Capitol all costs, expenses and charges incurred or paid by Capitol by reason thereof. All overtime charges, if any, for the orchestra shall be paid for by Capitol unless such overtime is caused by the fault of the Artist.

5. It is agreed that the performances by the Artist hereunder, and the rights and privileges granted to Capitol by Artist hereunder are of a special, unique, unusual, extraordinary and intellectual character which gives them a peculiar value the loss of which cannot be reasonably or adequately compensated for in damages in an action at law and that a breach by the Artist of any of the provisions of this agreement will cause Capitol irreparable injury and damage. Artist expressly agrees that Capitol shall be entitled to injunctive and other equitable relief to prevent a breach of this agreement or any portions thereof by Artist, which relief shall be in addition to any other rights for damages or otherwise which Capitol may have.

6. Recordings are to be made by Artist at Capitol's studios located in New York or Los Angeles at the times designated by Capitol. Should the Artist, for any reason whatever, be unavailable for the making of recordings at the times designated by Capitol, or fail to make recordings at such times, then the term of this agreement shall automatically be extended for such period of time as shall elapse until Artist renders the required services for Capitol. Capitol shall have at least thirty days notice before Capitol is required to arrange for the making by Artist of the recordings for which Artist was unavailable or which Artist failed to make hereunder.

7. Selections to be recorded hereunder shall be chosen by agreement of Capitol and Artist. In the absence of agreement Capitol's decision as to selections to be recorded shall be final. The decision of Capitol as to whether any record is commercially satisfactory is necessarily based upon artistic discretion and judgment and it is agreed that Capitol may make such decision in its sole and uncontrolled discretion and the decision so made by Capitol shall be binding upon the Artist.

8. If Capitol is prevented from performing its obligations hereunder by reason of any cause beyond its control, including, but not limited to acts of God, war, riot, strikes, walk outs, priorities, lack of materials, invasion, blackouts or by any law, ruling or regulation of any federal or state or other governmental board, agency or administrative office or by any court, then the obligations of Capitol during the continuance of any such condition shall be suspended. If any union having jurisdiction over Artist or over musicians or other personnel whose services are necessary in the making of phonograph records should pass any rule or regulation or take any action which makes it impossible or commercially impracticable for Capitol to make, distribute, sell or otherwise dispose of phonograph records in accordance with its usual business practice, then Capitol may, by notice in writing to Artist, suspend the operation of this agreement during the continuance of such condition. The period of suspension shall be added to the term of this agreement. During any such suspension period Artist agrees not to make any phonograph records for Artist or for any person, firm or corporation other than Capitol.

Artist represents that he is a member in good standing of the American Federation of Musicians and that all persons performing instrumental music hereunder are members of the American Federation of Musicians in good standing. All laws, rules and regulations of the American Federation of Musicians are made a part of this agreement. As the musicians engaged under the stipulations of this contract are members of the American Federation of Musicians, nothing in this contract shall ever be construed as to interfere with any obligation which they owe to the American Federation of Musicians as members thereof. That members of the American Federation of Musicians are authorized to accept employment for the purpose of making phonograph records and electrical transcriptions by such phonograph record and electrical transcription companies as shall have entered into an agreement with the American Federation of Musicians permitting the employment of its members upon the terms and conditions contained in the standard form of agreement promulgated by the American Federation of Musicians to its members on September 30th, 1943.

Under the existing rules of the American Federation of Musicians, Capitol is required to enter into a contract upon the so-called form "B" for each recording session. Under said form B contract, Capitol is required to pay to the instrumental musicians, including the leader, the minimum cash amount required by the rules of the Local having jurisdiction, said sum to be distributed by the leader amongst the leader and the members of the orchestra rendering services under said form B contract. It is agreed by the Artist that the advance royalties payable to Artist hereunder for each master record recorded at any such recording session shall be the cash funds advanced by Capitol to the leader for distribution under said form B contract and the Artist agrees to accept such advance royalties payable hereunder for distribution by him pursuant to the provisions of said form B contract. If the American Federation of Musicians should require a contract other than said form B or should make rules or regulations concerning payment other than those contained in said form B then this agreement shall be adjusted accordingly, it being the purpose and intent hereof that any payments required of Capitol in connection with recordings by said form B or any similar contract required of Capitol by the American Federation of Musicians shall not be in addition to the advance royalties payable to Artist hereunder, but shall be taken from such advance royalties.

9. Artist represents and warrants that Artist is able to enter into this agreement and to perform the obligations undertaken hereunder. Artist agrees during the term of this agreement that Artist will not make any phonograph records for Artist or for any person, firm or corporation other than Capitol. Artist further agrees that Artist will not, after the expiration of this agreement, make any phonograph records for any person, firm or corporation other than Capitol using any of the selections or assisted by Artist hereunder for Capitol. It is agreed that if would be impracticable or extremely difficult to fix the actual damages sustained by Capitol in the event of any breach by Artist of the covenants contained in this paragraph, and therefore, by way of liquidated damages, and not by way of penalty, it is agreed that from and after the breach of any of the covenants contained in this paragraph by Artist Capitol shall not be obligated to pay any further royalties to Artist hereunder.

10. In consideration of the execution of this agreement by Capitol and of the agreements undertaken by Capitol herein Artist has given and granted and does hereby give and grant to Capitol the following:

A. The sole and exclusive right to manufacture, advertise, sell, lease, license or otherwise use or dispose of in any and all fields of use, throughout the world, or to refrain therefrom throughout the world or any part thereof, records embodying the performances to be recorded hereunder, upon such terms and conditions as Capitol may approve and as herein provided.

B. The right to use and publish and to permit others to use and publish the Artist's name, likeness and photograph and to write and publish and to permit others to write and publish articles concerning the Artist for advertising and trade purposes in connection with the sale and exploitation of products of Capitol and of the phonograph records made hereunder, and to use as descriptive of the Artist the phrase "Capitol Exclusive Artist" or any similar appropriate phrase. It is expressly agreed that Capitol may release records of selections made hereunder under the name of Capitol or under any other name which from time to time may be selected by Capitol.

C. Sole and exclusive ownership in and all the right, title and interest to the phonograph records made hereunder including, but not limited to, the right to use and control all masters, matrices and records obtained from recordings made hereunder and the performances embodied thereon or therein.

D. Capitol agrees, at its own expense, to have instrumentations, orchestrations and arrangements made for the purpose of making recordings hereunder if Capitol believes it necessary or desirable. If Artist owns or has instrumentations, orchestrations and arrangements for such selections Artist agrees that Capitol may incorporate them in making any recordings hereunder without making any further or additional payments to the Artist.

11. All notices which Capitol may require or desire to serve upon Artist in connection with this agreement may be served by mailing the same to Artist, postage prepaid, at the following address: G.A.C. 9028 Sunset Blvd. Hollywood or such other address as Artist may designate from time to time in writing. In the event Capitol mails such notice, the date of mailing of such notice shall be deemed the date of the service thereof.

12. If any part or provision of this agreement is invalid or illegal then the invalid or illegal part or provision shall be deleted herefrom and the remainder of the agreement shall continue as though the deleted portion had never been a part hereof.

Any dispute or controversy between Capitol and Artist with reference to this agreement, its interpretation or effect or with reference to any breach or alleged breach thereof shall be submitted to arbitration in accordance with the laws of the State of California. Nothing herein contained shall deprive Capitol of the right to resort to the courts for equitable and other injunctive relief.

IN WITNESS WHEREOF, the parties hereto have executed this agreement this tenth day of November, 1943.

CAPITOL RECORDS, INC.

By Nat King Cole
Artist