**Independent Contractor Agreement Template**

**How to use this Agreement:** Before you sign up a team member using this agreement, be sure to carefully read through the article below called, “Independent Contractor versus Employee.” Even if you call someone an independent contractor, you may still have to provide the benefits and tax payments for employees if they meet certain criteria. Failing to do so can mean big penalties, so \*do not\* skip this step.

If you are confident that your team member is an independent contractor, fill in the form on page 4, making sure to be specific about what outcome is expected from the team member’s work.

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**Independent Contractor versus Employee**

**(and a checklist to help you figure out which one is which)**

Working with independent contractors has a lot of benefits: you are not burdened by keeping up with employment laws in various states for things like benefits, insurance, and time off, plus you do not pay matching employment taxes to federal and state governments (about 7.5% of the employee’s earnings).

Because of these savings, many business owners try to cast their employees as independent contractors. But beware: just because you call someone a contractor does not mean that the Internal Revenue Service will agree. In an audit (or if the team member complains), you could be liable for back taxes and penalties and interest. Avoid that by running through the following checklist before signing with an independent contractor.

 The IRS wants to be sure that contractors are truly independent business owners, and it looks at about fifteen to twenty factors (depending on who you ask). The more factors that look like employment rather than a contractor relationship, the more likely your team member is an employee. If that is the case, do not use this independent contractor agreement and seek the advice of your accountant about hiring. Or, reconsider the details of your relationship and run through the list again to see if there is a different way to work together.

 The bottom line is that if you decide how and when your team works (that is, exert “behavioral control”), they are employees. If they determine how and when to complete a project, and the completed project is what you are paying for, they are likely independent contractors.

 The following checklist goes through the IRS factors. There is no specific number that makes someone an employee, but remember, the fewer employee-like factors, the better chance you have in proving that your team member is an independent contractor.

**Independent Contractor versus Employee Checklist**

TO USE THE CHECKLIST, get a pen and paper ready. Write “15 points” at the top. Then answer each of the following questions, subtracting a point if necessary. The closer to zero points you are, the more likely your team member is a contractor. The closer to fifteen points, the more likely they are an employee.

1. Contractors work on specific projects for limited periods of time, like one year, rather than indefinitely. If your relationship is limited in time, subtract one point from 15. Otherwise, do nothing.
2. Contractors provide peripheral assistance to a business, rather than performing key functions that employees do. Subtract one point from your total if your contractor is not delivering the main offering your business sells to customers.
3. Contractors make significant investments in their businesses, while employees only purchase incidentals, like work clothes and shoes. Subtract one point if your contractor had to make investments in their business to deliver services to you.
4. Contractors have ongoing costs of doing business, even if they do not currently have clients. Employees do not have ongoing, work-related expenses if they are not working. If your team member has costs of doing business for things like supplies, software, and equipment, subtract one point from your total.
5. Contractors have a risk of loss or opportunity for profit in their business due to their managerial and marketing skills (for example, investing in tools and supplies that cost more than the amount of business they win), while employees do not. If your team member could lose money or turn a profit like a regular business, subtract one point from your total.
6. Contractors have availability to serve a market, evidenced by websites, advertising, and accepting other business opportunities, while employees are beholden to one employer and do not independently market their services. If your contractor could market their services to others, subtract one point from your total.
7. Contractors are paid by the project, by the hour (with a budget in advance), and in longer time increments than employees. Employees are usually guaranteed pay on a more frequent basis and in equal increments. If your team member is not paid a fixed sum on a weekly or biweekly basis, subtract one point from your total.
8. Employees following instructions on where, when, and how to work. Contractors decide that for themselves (although they may follow company policies on confidentiality, for example). If you are paying your contractor for an outcome, rather than the where, when, and how they work, subtract one point from your total.
9. Employees usually receive a high degree of instruction, training, and onboarding, while contractors do not. If you do not provide much instruction, training, or onboarding, subtract one point from your total.
10. Employees often receive periodic evaluations, which review how the work is performed. Contractors do not receive evaluations; instead, the contract will be terminated or renewed if they provided the expected outcome. If you do not evaluate your team members, subtract one point from your total.
11. Employees receive training to do a job a certain way. Independent contractors do the work their own way as professional business owners. If you do not provide training to your team members, subtract one point from your total.
12. Contractors maintain the right to hire others to help them deliver, while employees cannot independently hire someone else to help with their job. If your team members can hire their own team, subtract one point from your total.
13. Business owners (contractors) require special skills, including the initiative demonstrated by being in business for him or herself. Employees do not require special skills beyond their job duties. If your team members are self-starting people with specific, special skills different from basic job capabilities (i.e., simply being able to use a computer), subtract one point from your total.
14. Employees typically do not work under a contract unless they are a high-level executive, while contractors almost always work under contracts. If you will have a contract with your team member, subtract one point from your total.
15. Employees get benefits like insurance, time off, workmen’s compensation if they are injured, and a variety of legal protections for breaks, protected classifications, and disabilities. Contractors purchase their own benefits and insurance as a business expense. If you do not provide benefits to your team members, subtract one point from your total.

How many points do you have left? There are no hard and fast rules, but if you have eight or more points, you will want to speak to your accountant or re-evaluate the relationship with your team member.

**Independent Contractor Agreement**

This Independent Contractor Agreement is between [your Company name] (“Company”) and [name of contractor’s LLC or corporation if they have one] (“Contractor”). It starts on the latest date that a party signs this Agreement and lasts for [insert time here: one year, six months, etc.].

**RECITALS**

**This Purpose of this Agreement:**

Company [one sentence explanation of what your company does, such as “helps companies launch or transform their culture or diversity initiatives into forward thinking, sustainable programs through a three-part process”].

Contractor agrees to [insert short description of how contractor will help, such as “create signature content in the area of gender relations in the workplace”].

This Agreement is made to outline the terms of the parties’ relationship and how their respective intellectual property will be treated during this Agreement and after termination.

**This Agreement DOES NOT do any of these things:**

This Agreement does not make the parties partners, joint venturers, co-owners, principals or agents, or employers or employees of one another, and their relationship is governed by the terms of this Agreement only.

This Agreement does not require either party to refrain from or reduce existing business lines or obligations unless otherwise specified or to devote all of their business time to delivering the services identified in this Agreement.

This Agreement does not give Contractor the right to bind the Company to contracts, and Contractor should not state otherwise to anyone.

THEREFORE, the parties agree to these terms:

**1. Contractor’s Duties**

 A. Contractor agrees to provide the following services to Company:

 [Explain the services or project in detail here. The financial aspects will be detailed in a different section. Also, feel free to refer to an Exhibit A Scope of Work, if you have something else in writing that already explains in detail what your contractor is going to do for your company. For example, your contractor might be responsible for creating standard operating procedures for setting up new funnels; setting up a new membership site; creating and implementing a social media marketing campaign on Facebook and Instagram related to a specific, upcoming launch of yours; creating sales pages using a certain page-builder software that your contractor has experience with; reviewing pre-call questionnaires for prospects that do not fit certain criteria, etc.]

**2. Financial Terms**

A. Contractor will be paid [how much] on a [monthly, quarterly, or one-time flat fee] basis.

 B. Contractor shall provide a W-9 form for the tax identification number associated with payment.

**3. Non-Exclusive Engagement; No Benefits.**

 A. Both parties acknowledge and understand that this Agreement is not exclusive in nature, and that both are free to enter into other contracts for the same or similar services, so long as such contracts shall not interfere with the performance by Contractor of its duties or the exercise of its rights or the enjoyment of its benefits under this Agreement.

 B. Contractor will not participate in Company benefits, insurance, accumulation of vacation or sick leave, unemployment compensation, or other benefits.

**4. Property Rights and Works for Hire.**

A. The parties acknowledge that substantial penalties exist if they fail to comply with the terms of licenses, patents, and other third-party content and materials. They agree to adhere to the intellectual property rights of third parties that may be implicated by this Agreement.

B. If Contractor creates content for Company under this Agreement, Contractor agrees that the content is a Work for Hire. [explain]

**5. Termination of this Agreement**

 A. Either party may terminate this Agreement without cause upon [how many days’ notice, such as 30 or 60 days. Consider how long it would take you to replace this person in deciding how much notice you require] days’ notice.

 B. Either party may terminate for cause using the procedure below. For Cause means [list the reasons why you would want to terminate much sooner than in Section A above, such as “failure of a party to respond to the other party for seven business days, unless arrangements have been made in advance; breach of Non-Compete, Non-Solicitation, or Confidentiality provisions of this Agreement; violation of third-party content licenses; financial misconduct; or in case of an unapproved assignment or delegation of this Agreement.”]

 C. **For cause termination:** Upon a breach of this Agreement by a party, the terminating party must provide written notice by email identifying the breach and requesting cure. The party in breach must cure within [how many days will you allow the Contractor to fix the breach/problem, such as 14 days] days (or if more than [the number of days you chose] days is required to cure, must make material and significant effort toward cure within [the number of days you chose] days). If not cured in that time frame, or if material efforts have not been made in that time, the terminating party may cease its activities under this Agreement and the Agreement will terminate.

 D. Upon termination, Contractor’s obligations under this Agreement terminate.

**6. Non-Solicitation, Confidentiality**

A. During the term of this Agreement and for one year after it is terminated, the parties agree not to solicit the other party’s employees or contractors for employment (or other financial or business arrangements). During the term of this Agreement and for two years after it is terminated, Contractor agrees not to solicit Company’s clients or prospective clients (measured at the date of termination) for services or products Company provided or would provide to such clients or prospective clients.

B. During the term of this Agreement and for two years after it is terminated, the parties agree to keep material, non-public information confidential from third parties, except as disclosure is required within their respective organizations to fulfill their obligations under this Agreement. To resolve questions regarding what information should be confidential, the parties should consider how they would safeguard the same information if it were their own (i.e., “do unto others”).

C. Nothing in this Agreement prohibits the parties from negotiating a written waiver of this Section 6 for valuable consideration at or prior to termination.

**7. Other Legal Matters.**

 A. To the fullest extent permitted at law and equity, nothing in this agreement, the conduct of the parties, or the course of dealing among them shall be construed as a general or limited partnership of any kind whatsoever.

B. The parties’ relationship should be governed by this agreement, rather than common law.

C. Contractor represents and warrants that it (i) has a social security number or employer identification number or has filed business taxes in a prior year; (ii) understands that there may be a duty to hold business licenses, insurance and bonding to provide the services under this Agreement; (iii) notwithstanding the exercise of any control necessary to comply with any statutory, regulatory or contractual obligations, maintains control and discretion over the means and manner of the work, with the primary element bargained for in this Agreement is the result of the work; (iv) Contractor has control over the time the work is performed subject to the completion schedule; (v) Contractor is free to work for other principals; (vi) Contractor is free to hire employees to provide incidental assistance in the work; and (vii) Contractor has made a substantial investment in tools and/or licensing in the business of Contractor for completion of the work.

 D. The parties agree not to delegate their central functions (as opposed to administrative or ministerial functions) to third parties, without prior notification to the other party.

 E. Each party is responsible for complying with state and federal laws regarding taxation, insurance, permitting, licensing, and intellectual property, at its sole cost and expense, and each expressly agree they have not, and will not ever, rely upon the other in making determinations of any kind concerning these matters, but will rely only upon qualified third-party professionals.

 F. Assignment; No oral waivers or modifications. This Agreement may not be assigned to any other party. Its requirements may not be waived or modified except in writing signed by both parties.

 G. [your state] law governs this Agreement and it will be enforced by either party in [your state], both of which submit to the personal jurisdiction and venue of the [your county], [your state] courts. The drafting of this Agreement shall not be construed in favor of either party, as both have had the opportunity to review and comment prior to signing.

H. Survival. Sections 4, 6, and 7 shall survive the termination of this Agreement.

I. Disputes. The Parties agree to engage in one four-hour mediation session before a mediator licensed to practice law in the State of [your state] prior to the filing of any lawsuit whatsoever.

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| Company | Contractor  |
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