

Date Published: June 2022

Whitepaper

Colorado Independent Contractors – Overview and Sample Agreement

Summary:

This whitepaper covers the classification of workers as either employees or independent contractors. A company's decision on how to classify workers has significant impact on many areas of the law. This whitepaper will describe those various laws and methods for analyzing whether a worker is an employee or an independent contractor. Employers need to keep two things in mind: The distinction between an employee and an independent contractor is neither simple nor clear and involves a detailed analysis, and state and federal agencies aggressively pursue companies who misclassify workers as independent contractors.

Important Notice:

The information provided herein is general in nature and designed to serve as a guide to understanding. These materials are not to be construed as the rendering of legal or management advice. If the reader has a specific need or problem, the services of a competent professional should be sought to address the particular situation.

©Copyright, 2022. Mountain States Employers Council Inc. d/b/a Employers Council. All rights reserved. Quotation from or reproduction of any part of this document, in any form, without prior permission in writing from Employers Council, is prohibited.

I. Introduction

Companies classify individuals performing work for them as either employees or independent contractors. Companies should consider a variety of risks when entering into a working relationship with an independent contractor. Various employment and tax laws presume all workers are employees unless the company can demonstrate otherwise. In other words, the company has the burden of proof in showing an independent contractor relationship exists.

Improperly classifying workers as independent contractors may cause contract, tax, wage, benefit, immigration, workers' compensation, and other liabilities for companies. Even if the company and independent contractor have a written contract that clearly states the worker is an independent contractor, the reviewing agencies have the authority to determine that the working relationship is actually an employment relationship.

This document explains the background behind the law, the focus by the government on misclassification of independent contractors, potential liabilities that arise from misclassifications, the tests used by federal and state agencies to determine independent contractor status, the public policy behind the government's misclassification efforts, what types of events can trigger an audit or scrutiny into independent contractors' statuses, and recommendations to protect your company from misclassification.

II. Background

Most companies' workers perform work as employees. Some companies require services outside of their normal business operations and bring in third parties to perform those services. These third parties are usually independent contractors. This work relationship can be an excellent cost-savings approach if done correctly. However, when done incorrectly, the company can face significant liability.

Companies are not required to withhold payroll taxes, make Social Security and Medicare contributions, pay unemployment and workers' compensation premiums, or provide benefits to independent contractors. The attractiveness of these advantages has led many companies to label workers as independent contractors who are actually employees of the company.

Independent contractors may be referred to as vendors, consultants, project workers, specialists, and other monikers. Whatever they are called, the tests of independent contractor status must be met because the law considers workers either employees or independent contractors.

III. Governmental Focus

FEDERAL INITIATIVES

Since 2011, the U.S. Department of Labor (DOL) and the Internal Revenue Service (IRS) have been sharing information to target independent contractor misclassifications and improve compliance with federal employment laws.ⁱ This initiative also includes a joint information

sharing effort between the DOL, directors of employment agencies at the state level, the Employee Benefits Security Administration, the Occupational Safety and Health Administration (OSHA), Office of Federal Contract Compliance Programs, and the Office of the Solicitor as part of the “Misclassification Initiative.”ⁱⁱ The agencies refer potential violations of statutes and regulations to each other and coordinate combined investigation efforts.ⁱⁱⁱ

STATE INITIATIVES

Colorado

In 2009, Colorado adopted the Misclassification of Employees as Independent Contractors Act (MEICA).^{iv} The state may issue fines of up to \$5,000 per employee that the company misclassifies “with willful disregard of the law” for the first misclassification and up to \$25,000 per misclassified employee for second and subsequent misclassifications. After second and subsequent misclassifications, the state will prohibit the company from contracting with, or receiving any funds from, the state for up to two years. The Act creates a process in which companies may seek advisory opinions from CDLE on worker classifications to avoid a determination of “willful disregard.” The Act also provides an anonymous complaint mechanism where a competing business or affected worker can request the CDLE investigate an independent contractor classification.

PUBLIC POLICY - REASONS FOR THE GOVERNMENT ACTION

One study found workers classified as independent contractors cost employers 20 to 40% less than workers classified as employees.^v Misclassification also reduces the amount of tax money the government receives. The government sees misclassifications as giving companies an unfair competitive advantage because they are not paying federal and state unemployment taxes, Social Security and Medicare taxes, and unemployment and workers’ compensation premiums. In Colorado, the CDLE estimated it lost \$167 million in income tax revenues in an 18-month period because of worker misclassifications.^{vi}

Apart from lost tax revenue, the government is also concerned because misclassified workers do not receive the protection of unemployment insurance, workers’ compensation, and other employment benefits. Long ago, a Colorado court addressed the lack of unemployment protection, stating that misclassification frustrates the law’s intent to protect the worker who receives substantially their compensation through employment with an employer.^{vii} This leaves misclassified workers without a source of income upon separation.

LIABILITY

Companies can be held liable under various laws for misclassifying workers as independent contractors. The two agencies that are most likely to discover misclassifications are the state unemployment agency and the IRS. An agency’s determination that a company misclassified a worker may result in the payment of back state and federal taxes and possibly penalties with interest, which can be substantial. Back taxes can include 100% of the employer’s Social Security obligations and 20% of the employee’s Social Security obligations. In certain situations, the employer can be liable for a penalty of 3% of the employee’s wages, 40% of the employee’s FICA taxes, along with 100% of the employer’s FICA taxes, and other penalties from the IRS.^{viii}

Companies who misclassify workers may also be liable for back pay, including minimum wage deficiencies, overtime, and liquidated damages under the Fair Labor Standards Act (FLSA); recordkeeping violations under the Immigration Reform and Control Act of 1986; and penalties under the Occupational Safety and Health Act. Additional issues can arise, and back pay may be assessed if the worker should have been eligible for other types of employment benefits, such as paid time off, health insurance, continued health insurance under the Consolidated Omnibus Budget Reconciliation Act (COBRA), retirement benefits, and related rights under the Employee Retirement Income Security Act (ERISA). If an uninsured, misclassified worker files a workers' compensation claim, the company could be liable for penalties and statutory benefits under the state's workers' compensation system. In addition, discrimination issues may arise if the worker is found to be an employee.

IV. Federal and State Tests

Each government agency has its own set of laws and definitions explaining which factors are important to determine whether a worker is an employee or an independent contractor. The intent of the parties is not determinative. **Even if the worker requested to be classified as an independent contractor, the various agencies will make the determination using the following tests.**

THE FLSA STANDARD: THE ECONOMIC REALITIES TEST

The definition of "employee" under the FLSA is "any individual employed by an employer." This broad definition has led the DOL to formulate its own test for determining whether an individual is an "employee" within the protections of the FLSA or an "independent contractor" excluded from the protections of the FLSA. [§§] The FLSA test is commonly referred to as the "Economic Realities" test. The Economic Realities test focuses on whether the economic realities of the parties' relationship make a worker dependent on the company for whom they provide services. Courts will commonly consider five or six factors, with no single factor being dispositive in making their determination. These factors, as applied by the DOL, are:

1. **The degree of control.** This focuses on the degree of control the employer has over the individual, looking at the matter and means of the work the employer has the right to control, rather than what the employer actually chooses to control. Courts will generally consider:
 - a. which party controls the cost of the work to be performed (employers set the pay rate in most employment relationships, while independent contractors generally control the payment rate for their work);
 - b. who maintains responsibility over licenses, taxes, and similar administrative obligations required to complete the work;
 - c. if the individual is able to hire or fire others to assist them with the work;
 - d. whether tasks toward completion of the work are delegated by the individual;
 - e. which party determines working hours;
 - f. the level of supervision provided by the employer; and
 - g. the frequency of status updates.

2. **The relative investment in facilities.** This focuses on whether the individual uses their own tools and equipment or if the individual is reimbursed for any purchases or material used for the work.
3. **The individual's opportunity for profit and loss.** This focuses on whether the individual has made any capital investments; risks suffering a loss of capital investment; or can earn a profit by performing the job more efficiently or exercising managerial skill.
4. **The permanency of the parties' relationship.**
5. **The skill required.** This focuses on how much initiative, judgment or planning the individual has in comparison to others on the open market, looking at whether the individual advertises independently, performs routine tasks requiring little training or has an independent business site.
6. **Whether the individual's services are integral to the company's business.** This focuses on whether the individual plays an integral role in the employer's business by performing the type of work that the employer performs for its clientele; whether the individual has supervision over company employees; or if the individual performs a distinct job that is a part of the company's overall process of production.^{ix}

Additionally, the DOL will consider some specific additional factors, although non-determinative of the individual's status, such as:

- The way the individual is paid
- Whether the individual receives a Form 1099-NEC
- Whether the individual is classified as an independent contractor under another law (for example, state law)
- Whether it is a common industry practice for the position to be an employee or independent contractor
- The parties' written agreement^x

Conversely, there are a few factors that the DOL does not consider determinative of whether an individual is an independent contractor, such as where the individual completes the work, the absence of an employment agreement, and whether the worker is licensed by a governmental authority.

Current Status of the Economic Realities Test

In early 2021, the DOL under the Trump administration announced a final rule expressly adopting a slightly narrower version of the economic realities test for evaluating independent contractor status under the FLSA. The rule's test focuses primarily on and affords the most weight to the nature and degree of control over the work and the individual's opportunity for profit or loss.

The rule slightly narrowed what could be considered "control" by indicating that control could not be shown by the individual carrying their own insurance, meeting contractual deadlines or quality standards, or compliance with legal obligations and/or health and safety standards alone.

If consideration of the two factors is inconclusive, the following additional factors may be used in guiding the determination:

- The permanency of the parties' relationship;

- the amount of skill required for the work; and,
- whether the work was a component of the company's integrated production process.

The final rule was set to take effect in March 2021, but the DOL under the Biden administration delayed the rule's effective date and subsequently withdrew it effective May 6, 2021. However, the DOL's decision to withdraw the rule was challenged in *Coalition for Workforce Innovation v. Walsh* in federal court in March of 2022, in which the court found the DOL's withdrawal of the rule to be improper.^{xi} As a result of this finding, the Trump administration's final rule was reinstated. The DOL filed an appeal of the court's ruling on May 13, 2022, and until the issue is resolved by the appellate courts, employers should rely on the Trump administration's final rule.

On June 3, 2022, the DOL announced that they will be developing a proposed rule for determining employee and independent contractor status under the FLSA. Accordingly, employers should expect a new or revised independent contractor rule to be released by the DOL in the near future.

THE REVISED IRS TEST

People who offer their independent trade, business, or profession to the public usually are not employees. The general rule is that a company may not direct or control an independent contractor. The company may require, however, a specific result from the work but not the means or method of accomplishing that result.

The relationship between the parties must be examined to determine if an individual is an employee or an independent contractor. In 2006, the IRS announced a revised test that consolidates its earlier "20-factor" test into 11 factors, organized into three subgroups. The subgroups are behavioral control, financial control, and the relationship between the parties.

Behavioral Control:

Does the company have a right to direct and control how the worker performs the task(s) for which the worker is hired? These factors include the type and degree of the following:

- a. Instructions that the business gives to the worker - The company gives employees instructions about when, where, and how to work. This instruction includes setting working hours, the number and frequency of breaks, how the work is performed, and the type of equipment to use. Directing an employee on the equipment or tool that should be used or where to purchase supplies may show instruction, and independent contractors should not receive this level of instruction.
- b. Training that the business gives to the worker - The company trains employees, especially if that training concerns performing services in a particular manner. Independent contractors typically use their own methodology.
- c. The way work is evaluated – The company's evaluation system measures the details of how an employee performs the work. Independent contractors are generally only evaluated on the end results of the work.

Financial Control:

Whether the company has the right to control the business aspects of the worker's job. These include:

- a. The extent to which the worker has unreimbursed business expenses - Companies should not pay an independent contractor's business and traveling expenses. Non-reimbursed expenses provide an opportunity for the independent contractor to realize a profit or loss.
- b. The extent of the worker's investment - An independent contractor often has a significant investment in the equipment and facilities used to perform the services. An independent contractor should have their own tools and materials.
- c. The extent to which the worker makes their services available to the relevant market - An independent contractor is free to seek out other business opportunities, which can include using advertisements, maintaining a visible business location, or communicating about the business through word-of-mouth. An individual who works for a number of persons or companies at the same time generally is an independent contractor.
- d. How the business pays the worker - An independent contractor is usually paid by a flat fee for a "job." Payments made at regular hourly, weekly, or other intervals generally indicate an employment relationship. Sometimes the nature of the services provided dictates an hourly payment, but this should be avoided if possible.
- e. The extent to which the worker can realize a profit or loss - An independent contractor realizes a profit or suffers a loss because of the services performed because the independent contractor operates as their own business.

Type of Relationship Between the Worker and the Business:

Factors to consider are:

- a. Written contracts describing the relationship the parties intended to create - A written agreement between the company and the worker shows the parties' intent to form an independent contractor relationship. The agreement will be considered only if it reflects that actual relationship at the time the services are performed.
- b. Whether the business provides the worker with employee-type benefits, such as insurance, a pension plan, vacation pay, or sick pay - The payment of company benefits to a worker is strong evidence of an employment relationship.
- c. The permanency of the relationship - While independent contractors can have long-lasting relationships with a company, a continuous day-to-day work relationship between a worker and an organization is an indicator of an employment relationship. Relationships that are anticipated to continue indefinitely, rather than for a fixed period, are generally employer-employee relationships.
- d. The extent to which services performed by the worker are a key aspect of the regular business of the company - If a worker provides services that are a key aspect of the company's regular business activity, it is more likely that the company will have the right to direct and control the worker's activities. Integrated services indicate an employer-employee relationship.

STATE TESTS

Companies also must satisfy state tests for independent contractor status. If a state's rules are stricter than IRS regulations, companies must abide by the state's requirements.

At the time of publication, independent contractor misclassification has become a frequent target of investigations by state labor agencies. In addition, state legislatures and courts continue to implement new tests for independent contractor classification that substantially deviate from the traditional tests highlighted below. When an employer seeks to classify an employee as an independent contractor, it must ensure that due diligence has been given to any state laws or cases that may be authoritative. Since independent contractor misclassification is most frequently spotted during an unemployment insurance audit, it is typically a state agency, enforcing state law, that evaluates whether the classification is appropriate.

Employers who rely on purely federal guidance or state law guidance not specific to the state where the independent contractor typically performs work will be ill-equipped to properly classify their independent contractors. In doing so, employers will carry a long-term, significant financial liability.

Many states use two or more of the following tests to determine if a worker is an employee for purposes of unemployment insurance taxes:

1. Whether the individual has been and will continue to be free from the company's control or direction over the performance of such services, both in fact and under the contract of service.
2. Whether the service is either outside the usual course of the company's business or the service is performed outside of the places of business of the enterprise for which the service is performed.
3. Whether the individual is engaged in an independently established trade, occupation, profession, or business.

COLORADO LAW

Tests under the Workers' Compensation Act and Colorado Employment Security Act generally set the legal standards in Colorado.

The two main factors in the Colorado approach to independent contractor determinations are whether the individual is under the direction and control of the company and whether the individual is customarily engaged in an independent trade, occupation, profession, or business related to the service that is performed.

Colorado considers both direction and control and customarily engaged based on these enumerated factors:

1. The independent contractor cannot be required to work exclusively for the company, although the independent contractor may choose to work exclusively for the company for a finite period.
2. There is no quality standard established as to how the work will be performed other than contract specifications.
3. The independent contractor is paid at a fixed or contracted rate, as opposed to salary or hourly.
4. The independent contractor cannot be terminated during the contract unless the terms of the contract are violated or not met.

5. The independent contractor does not normally receive training.
6. The company should not provide tools or equipment to the independent contractor.
7. The time of performance cannot be dictated, but a mutually agreeable schedule can be established.
8. The independent contractor should be paid in a business name, not personally.
9. The independent contractor's business should not be combined with the company's, and they should remain distinct and separate entities.^{xii}

A contract should spell out the factors listed above, but the reviewing agency or court will still look at the totality of the circumstances and the reality of the relationship rather than rely on the language of the contract. For an independent contractor agreement to meet the statutory requirements, the agreement must state in bolded, underlined, or larger type that the independent contractor is responsible for their own unemployment insurance benefits, workers' compensation insurance, and state and federal taxes. In addition, the signatures should be notarized for workers' compensation purposes.

In a recent Colorado Supreme Court decision, it was held that whether an individual is customarily engaged in an independent business can only be resolved by applying the totality of the circumstances to the relationship between the company, the worker, and the worker's independent business. There is no single factor or set of factors that are dispositive.^{xiii} The status of the law had been that to be customarily engaged, the individual must have had more than one client at a time.^{xiv} The current status is to review the nine factors above and any factors that indicate whether the worker had their own business or had "business trappings." Business trappings, as demonstrated by other case law, can be advertisements, seeking work from others, having a business name, not working full time for any one employer, the ability to work for others, having a business office separate from the company, business cards, and owning one's own equipment.

OTHER BUSINESS RELATIONSHIPS RECOGNIZED BY THE IRS

The IRS recognizes three other business relationships that can exist between a company and a person performing services: 1) common-law employees, 2) statutory employees, and 3) statutory non-employees. These are not considered independent contractor relationships.

Common Law Employees

Anyone who performs services is an employee if the employer controls what will be done and how it will be done. Even if the person has freedom of action, the critical factor will remain that the employer has the right to control how the services are performed. The focus is not on the label of the relationship but on its substance.

Officers of the corporation are generally employees, unless the officer performs no or only minor services, and the officer neither receives nor is entitled to pay. Directors of corporations usually are not employees.

Statutory Employees

Statutory employees also must be treated as employees under the IRS guidelines. The IRS recognizes that four categories of common law independent contractors are statutory employees under the tax guidelines:

- a. Drivers who distribute beverages (other than milk) or meat, vegetable, fruit, or bakery products, or who pick up and deliver laundry or dry cleaning.
- b. Full-time life insurance sales agents whose principal business activities are selling life insurance or annuity contracts, or both, primarily for one life insurance company.
- c. Individuals who work at home on materials or goods that a company supplies and that must be returned to the company or a designated destination and who are subject to the company's specification for the work to be completed.
- d. Full-time traveling or city salespersons who solicit orders from wholesalers, contractors, or retailers for merchandise for resale or for use in the buyer's business operations.

Statutory Non-Employees

The IRS identifies two common categories of persons as non-employees for the purpose of defining the employment relationship. The IRS considers certain employees to be "statutory non-employees." These employees are treated as self-employed for federal tax purposes: direct sellers, certain types of companion sitters, and licensed real estate agents. Certain companion sitters who are not employed by a companion sitting placement service are usually considered self-employed, while direct sellers and licensed real estate agents are treated as self-employed if: 1) substantially all payments for services as direct sellers or real estate agents are directly related to sales or other output rather than hours worked, and 2) the services are provided under a written contract that states that they are not employees for federal tax purposes.^{xv}

- a. **Direct Sellers.**^{xvi} A direct seller is any person engaged in selling (or soliciting the sale of) consumer products to the ultimate consumer or for resale to a buyer on a buy-sell basis, a deposit-commission basis, or any similar basis, provided the sale or resale of the product occurs in a place other than in a permanent retail establishment. The seller's services must be performed under a written contract between the seller and the firm. The written contract must provide that the seller will not be treated as an employee with respect to such services for federal employment tax purposes.
- b. **Licensed Real Estate Agents.**^{xvii} Other than those identified, this category includes persons who conduct appraisals, if the person's compensation is based on sales or other output.

V. What Triggers an Audit or Investigation?

The IRS has made independent contractor misclassification a priority. The agency conducts random audits based on 1099 form submissions and similar filings. State unemployment agencies conduct investigations or audits based on unemployment claims filed by out-of-work independent contractors, anonymous complaints about misclassification,^{xviii} and on the state's own initiative. State agencies are now communicating the results of their investigations to each other, which causes multiple audits for one company.

VI. Recommendations

If a company uses independent contractors, it should consider implementing the following:

- a. Carry out a “self-audit” of your company using both the IRS and state tests to make certain your company is working with an independent contractor.
- b. Use an independent contractor agreement for each independent contractor. Seek assistance with questions and independent contractor agreements from an Employers Council attorney.
- c. Require all independent contractors to register as business entities with the Secretary of State, have proof of business insurance and workers’ compensation insurance (or waiver), provide proof of similar business relationship(s) with other client(s), maintain a state and federal EIN, be paid by invoice to a business name rather than a 1099, and provide their own equipment.
- d. Maintain well-documented files on all independent contractors, including invoices that the independent contractors submit to the company, records of repairs for work performed, copies of the independent contractors’ certificates of incorporation and applicable insurance coverages, independent contractors’ business cards, advertisements for the independent contractors’ businesses, and/or photographs of trucks or other equipment with the independent contractors’ names on them.
- e. Train managers and employees to understand classification issues so that they can ensure correct classification at the time an individual is engaged and reduce the odds that an independent contractor’s status will be undermined by changes in workplace practices and day-to-day use of independent contractors.
- f. Redistribute the independent contractor workforce by utilizing a staffing company.
- g. Request an advisory opinion from the state unemployment agency.
- h. Request a determination letter from the IRS.
- i. Take advantage of the IRS Voluntary Classification Settlement Program to reduce liability caused by misclassifications.^{xix}
- j. Some states also require employers to follow the new hire reporting process for independent contractors. This is a requirement in Colorado. Consult [the HHS website](#) for further information.

VII. Sample Independent Contractor Agreement

This INDEPENDENT CONTRACTOR AGREEMENT ("Agreement") is made this _____ day of _____, 20____, by and between [Name of Company] a [State of Incorporation] corporation, having its principal place of business at _____ ("Company") and [Name of Independent Contractor] a [State of Incorporation] corporation [if applicable], having its principal place of business at _____ ("Contractor").

NOW THEREFORE, in consideration of the promises and covenants contained herein, the parties agree as follows:

Scope of Agreement

Contractor shall provide the following professional services, (hereinafter "Services")

Contractor shall commence, perform, and complete such Services and receive contract pay by Company for such services in the following manner, as negotiated or bid by Contractor:

Company is engaged in providing _____ services and wishes to enter into this agreement with Contractor in order to provide these Services.

Term

The term of this agreement shall commence on _____, 20____, and shall continue until _____, 20____. The agreement may be terminated earlier by final completion of Services by Contractor and acceptance of such Services by Company or through the termination provisions described herein. If Services are not complete by the end of the contract period, this contract shall be renegotiated.

Intent of the Parties

It is the expressed intent of the parties that the Contractor is an independent contractor and not the agent, employee, or servant of Company, and that:

- a. **CONTRACTOR SHALL SATISFY ALL TAX AND OTHER GOVERNMENTALLY IMPOSED RESPONSIBILITIES, INCLUDING, BUT NOT LIMITED TO, PAYMENT OF STATE, FEDERAL AND SOCIAL SECURITY TAXES, UNEMPLOYMENT TAXES, WORKERS' COMPENSATION, AND SELF-EMPLOYMENT TAXES. NO FEDERAL, STATE, OR LOCAL TAXES OF ANY KIND SHALL BE WITHHELD OR PAID BY THE COMPANY.**
- b. **CONTRACTOR IS NOT ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS OR WORKERS' COMPENSATION BENEFITS UNLESS SUCH COVERAGES ARE PROVIDED BY THE INDEPENDENT CONTRACTOR.**

- c. Contractor does not have the authority to act for the Company or to bind the Company in any respect whatsoever or to incur any debts or liabilities in the name of or on behalf of the Company. Contractor is not an agent of the Company and will not hold itself out to the public as an agent of the Company.
- d. Contractor has and hereby retains control of and supervision over the performance of Contractor's obligations hereunder and control over any persons employed by Contractor for performing the Services hereunder.
- e. Company will not provide training or instruction to Contractor or any of its employees regarding the performance of Services hereunder.
- f. Neither Contractor nor its employees will receive benefits of any type from the Company.
- g. Contractor represents that it is engaged in providing similar services to the general public and is not required to work exclusively for the Company.
- h. All Services are to be performed solely at the risk of Contractor, and Contractor shall take all precautions necessary for the proper and sole performance thereof.
- i. Contractor will not combine its business operations in any way with the Company's business operations, and each party shall maintain their operations as separate and distinct.

Contractor Responsibilities

In addition to all other obligations contained herein, Contractor agrees:

- To furnish all tools, labor, and supplies in such quantities and of the proper quality to professionally and timely perform the Services.
- To proceed with diligence and promptness and hereby warrants that such Services shall be performed in accordance with the highest professional workmanship and service standards in the field to the satisfaction of Company.
- To comply, at its own expense, with the provisions of all state, local, and federal laws, regulations, ordinances, requirements, and codes that are applicable to the performance of the Services hereunder or to Contractor as an employer.

Contract Payment

a. Payment

For the satisfactory performance of the Services hereunder, Company shall pay Contractor the fixed or contract rate of _____ for its Services within _____ days after receipt of Contractor's invoice. Payment will not be made on a salary or hourly basis. Company shall have no obligation to make any payments until such time as Company accepts performance as satisfactory. All payments under this contract will be made to the trade or business name of the Contractor. No payments will be personally made to an individual under this contract. Contractor acknowledges the contract pay was negotiated or bid by Contractor.

b. Invoices

Contractor shall submit invoices for all Services performed. Such invoices shall state a description of each specific Service performed.

Insurance

- a. No later than seven days after execution of this Agreement, Contractor shall provide Company with certificates of insurance evidencing the types and amounts specified below:
 1. Standard workers' compensation insurance as required by law or applicable waiver in state where Service is performed.
 2. Comprehensive general liability insurance for operations and contractual liability adequate to cover the liability assumed hereunder and that is consistent with standard industry practices.
 3. Automobile liability insurance in those instances where Contractor uses an automobile, regardless of ownership, for the performance of Services. Contractor shall carry insurance, insuring all owned and non-owned automobiles.
- b. Insurance coverage shall not be reduced below the limits described above or canceled without Company's written approval of such reduction or cancellation.
- c. Contractor shall require that any of its agents and/or subcontractors who enter upon the Company's premises shall maintain like insurance. Certificates of such insurance shall be provided to Company upon request.
- d. With regard to all insurance, such insurance shall:
 1. Be primary insurance to the full limits of liability herein before stated, and should Company have other valid insurance, Company insurance shall be excess insurance only.
 2. Not be canceled without thirty (30) days prior written notice to Company.

Notice

Any notice to be given hereunder by either party to the other shall be in writing and shall be deemed given when sent by certified mail.

Notices to Company shall be addressed to:

Notices to Contractor shall be addressed to:

If either party changes its address during the term herein, it shall so advise the other party in writing as herein provided, and any notice thereafter required to be given shall be sent by certified mail to such new address.

Termination

Neither Company nor Contractor may terminate this Agreement during the contract period unless the specifications of this Agreement are not met by either party. If, at any time, a party's performance or conduct under this Agreement is found by either party to be in breach of this Agreement, the breaching party shall have three (3) days to cure the breach. If the breach is not cured within three (3) days from notification of the breach, then this Agreement may be terminated by the non-breaching party. If damages are caused to the non-breaching party as a result of the breach of this Agreement, the breaching party shall be liable for damages, including, but not limited to, any costs, attorney's fees, special, indirect, incidental, or consequential damages, including loss of profits.

General Terms and Conditions

a. Enforcement and Waiver

The failure of either party in any one or more instances to insist upon strict performance of any of the terms and provisions of this Agreement shall not be construed as a waiver of the right to assert any such terms and provisions on any future occasion or of damages caused thereby.

b. Severability

If any of the provisions of this Agreement shall be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Agreement, but rather the entire Agreement shall be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the party shall be construed and enforced accordingly, to effectuate the essential intent and purposes of this Agreement.

c. Nonexclusive Nature

This Agreement does not grant Contractor an exclusive privilege or right to supply Services to the Company. Company makes no representations or warranties as to a minimum or maximum procurement of Services hereunder.

d. Governing Law

This Agreement shall be construed and interpreted in accordance with, and its performance governed by, the laws of the State of Colorado.

e. Entire Agreement, Amendments, and Modification

This Agreement constitutes the entire Agreement between Company and Contractor with respect to the subject matter of this Agreement, and these provisions shall supersede or replace any conflicting or additional provisions that may be contained in any other writing, document, or the like. In the event of a conflict between any provisions appearing in any other writing and in this Agreement, the provisions of this Agreement shall be controlling. This Agreement may not be modified or amended except in writing with the same degree of formality with which this Agreement has been executed.

f. Confidentiality [if Contractor will have access to confidential information]

Contractor may have access to Company's Confidential Information, which includes: all non-public information concerning or arising from Company's business, trade secrets, client and customer lists, and other information not generally known to the public. Contractor agrees

to maintain confidentiality of such information and to not share Confidential Information with anyone outside of Company.

g. Notice of Immunity Under the Defend Trade Secrets Act of 2016.

Under the DTSA, Company hereby gives notice to Contractor that Contractor has immunity for the disclosure of a trade secret when reporting a suspected violation of law and/or in an anti-retaliation lawsuit. Contractor will not be held criminally or civilly liable under federal or state trade secret law for the disclosure of a trade secret that is made: (i) in confidence to a federal, state, or local government official either directly or indirectly, or to an attorney solely for the purpose of reporting or investigating a suspected violation of law; or (ii) in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. In addition, if Contractor files a retaliation lawsuit against Company for reporting a suspected violation of law, Contractor may disclose the trade secret to his or her attorney and use the trade secret information in the court proceeding, if (i) Employee files any document containing the trade secret under seal; and (ii) does not disclose the trade secret, except pursuant to court order.

h. Assignability

Contractor may assign all terms and conditions, benefits, or interests included hereunder in the Contractor's discretion.

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to sign this **INDEPENDENT CONTRACTOR AGREEMENT** as of the date first stated above.

COMPANY

CONTRACTOR

(Signature)

(Signature)

(Type Name)

(Type Name)

(Title)

(Title)

(Date)

(Date)

State of _____

State of _____

County of _____

County of _____

SWORN to before me this ____ day

SWORN to before me this ____ day

of _____, 20__

of _____, 20__

Notary Public

Notary Public

My Commission expires:

My Commission expires:

ⁱ www.dol.gov/whd/workers/Misclassification/

ⁱⁱ *Id.*

ⁱⁱⁱ *Id.*

^{iv} C.R.S. § 8-72-114

^v Statement of Seth D. Harris, Deputy Secretary, U.S. DOL, before U.S. Senate Committee on Health, Education, Labor, and Pensions (June 17, 2010), <https://www.govinfo.gov/content/pkg/CHRG-111shrg76452/html/CHRG-111shrg76452.htm>.

^{vi} Colorado H. B. 09-1310, Annual Compliance Report, Misclassification of Employees as Independent Contractors (June 2, 2011)

^{vii} Auto Damage Appraisers, Inc. v. Indus. Comm’n, 666 P.2d 1113 (Colo. App. 1983)

^{viii} I.R.S. Pub. 15 (2013), <http://www.irs.gov/publications/p15/aro2.html>

^{ix} DOL: Fact Sheet #13: Employment Relationship Under the FLSA

^x *Id.*

^{xi} *Coal. for Workforce Innovation v. Walsh*, No. 1:21-CV-130, 2022 WL 1073346 (E.D. Tex. Mar. 14, 2022)

^{xii} C.R.S. § 8-70-115 and C.R.S. § 8-40-202

^{xiii} *Indus. Claim Appeals Office*, 325 P.3d 560 (Colo. 2014).

^{xiv} *Speedy Messenger v. Indus. Claim Appeals Office*, 129 P.3d 1094 (Colo. App. 2005).

^{xv} IRS Publication 15-A: Employer’s Supplemental Tax Guide (2022)

^{xvi} I.R.C. § 3508(b)(2)

^{xvii} I.R.C. § 3508

^{xviii} In Colorado, anyone may file a written complaint. C.R.S. § 8-72-114(3)

^{xix} IRS Voluntary Classification Settlement Program

<http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Voluntary-Classification-Settlement-Program>