**Independent Contractor Agreement Instructions**

The Independent Contractor Agreement is designed for persons or business entities who wish to hire other persons to work on an independent contractor (that is, non-employee) basis. It can also be used to engage a business entity such as an LLC or corporation on an independent contractor basis, although many such businesses may already have a contract they prefer to use (which will likely favor their interests over the client’s). Merely calling such a person an independent contractor, rather than an employee, does not necessarily change the nature of the relationship, even if the would-be independent contractor agrees to such a business relationship. In other words, the relationship contemplated must properly be an independent contractor relationship; if it is, then this agreement will define the terms of the independent contractor relationship, in a manner generally favorable to the principal.

Otherwise, an employment agreement should be used, and W-2 payroll status and payroll taxes, unemployment compensation, workers’ compensation, and the like will apply, and this agreement will not serve to override applicable federal and state law. Penalties apply to misclassification of workers, and the federal and state authorities may recharacterize an independent contractor relationship as an employment relationship, resulting in liability for unpaid payroll taxes, unemployment insurance coverage, and the like. Employment agreements are sold separately.

While there are many factors to consider in determining whether the relationship with a principal and a worker is an independent contractor or employment relationship, and tests differ under federal and various state laws, one key factor is control: If the worker has little or no control over the how, when, and where of performing the duties required, then that worker is likely an employee. A secretary who is told to report every morning at 8 AM, answer the phone and file in accordance with company policy, take lunch between 12 – 1 PM, and to punch out at 5 PM, is a classic example of an employee. Such an employee typically incurs no expenses, provides no equipment, takes no risk of profit or loss, is trained by his or her employer, and works for only one employer.

A computer consultant who is hired to perform computer network maintenance, but who can determine within reason when, how, where, and by whom such maintenance is performed (his or her employees or subcontractors may actually do the work), and who has other clients, is an example of an independent contractor. In conjunction with this explanation, the declarations in Section 11 of the Agreement are a good starting point to determine whether the worker being hired is properly classified as an independent contractor: If these declarations don’t ring true or sound appropriate for your business, the worker is likely properly classified as an employee, and this Agreement should not be used.

Section 3 of the Agreement assigns all intellectual property produced by the independent contractor to the hiring party. This section may be deleted if it is not apply under the circumstances.

For further information, see IRS information at: <http://goo.gl/oI2NX1>

If you are in California, also see: <http://www.dir.ca.gov/dlse/FAQ_IndependentContractor.htm>

If you have any questions regarding the foregoing, or about the appropriateness of the Agreement for, or modifying it to fit, your specific needs, you are encouraged to retain an employment law attorney in your state. One such attorney who is familiar with our forms and who is licensed to work with California and Nevada clients is:

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