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BARRISTERS & SOLICITORS

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Your Reference: Independent Contractor Agreement
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Monday, 15 February 2021

Professionals Consolidated, Pty. Ltd. ACN 123 654 798
161 Sussex Avenue
Sydney NSW 2000
Australia

Build this legal document at

<https://www.legalconsolidated.com.au/independent-contractor-agreement-intro/> – telephone us, we can help you complete the questions.

Adj Professor, Dr Brett Davies – Partner

Independent Contractor Agreement

Dear Principal,

Thank you for instructing us to prepare the attached Independent Contractor Agreement.

How to print your document

When you are satisfied that the document is according to your instructions please:

1. Download the PDF (Don't print directly from the browser.)
2. Print the PDF Printer settings: A4 paper
100% scale (turn off 'fit to page')
3. Print single sided (NOT duplex).
4. Once signed keep this covering letter with the document
(However, do not staple the covering letter to the document.)

This Agreement is between:

EastOz Holdings Pty. Ltd. ACN 968 745 231
50 Park Road, Sydney NSW 2000, Australia

(Contractor)

and

Professionals Consolidated, Pty. Ltd. ACN 123 654 798
161 Sussex Avenue, Sydney NSW 2000, Australia

(Principal)

Read through the document to ensure it complies with what you want to achieve.
When you are satisfied with the document, print out two copies of the document:

1. Present them to the Contractor to sign.
2. The Contractor and you sign and retain a copy for your records.

What is the difference between an Independent Contractor/Agent and an employee?

An independent contractor acts on behalf of the principal. This is pursuant to a contract for services. In contrast, an employee is employed in the business of the employer, under a contract of service. An employee is subject to the direction and control of the employer.

In practice it is often difficult to distinguish between a contractor and an employee. This is especially where the contractor's business is wholly or principally concerned with your business. It is easier to prove an Independent Contractor's relationship where the contractor contracts to many principals. Also, various statutes extend the strict definition of 'employee' to include legitimate independent contracts.

The classic test for the existence of an employment relationship was stated by Bramwell LJ in *Yewens v Noakes*: 'A servant is a person subject to the command of his master as to the manner in which he shall do his work.'

This 'control' test was adopted by the High Court in *Humberstone v Northern Timber Mills* and in *Federal Comm of Taxation v J Walter Thompson (Aust) Pty Ltd*:

"The duties to be performed may depend so much on special skill or knowledge or they may be so clearly identified or the necessity of the employee acting on his own responsibility may be so evident, that little room for direction or command in detail may exist. But that is not the point. What matters is lawful authority to command so far as there is scope for it. And there must always be some room for it, if only in incidental or collateral matters."

Multi-factor (Common Law) test

Telling the difference between an independent contractor and an employee is complex. There's no single rule that determines the question. The courts have adopted a multi-factor test to determine whether a person is an employee or independent contractor. We seek to comply with the multi-factor test in *Hollis v Vabu Pty Ltd* [2001] HCA 44 and *Joshua Klooger v Foodora Australia Pty Ltd* [2018] FWC 6836.

How do I avoid an "employment" relationship?

To avoid an employment relationship:

1. the independent agent should not be subject to the principal's control to such a degree to make the principal a 'master';
2. the contract should be inconsistent with its being a contract of service (your Independent Contractor Agreement is designed to do this);
3. the contract should be framed so as to require the contractor to produce a result, rather than to provide personal service;
4. the contractor should be permitted to delegate (once again this is built into your Independent Contractor agreement);
5. where the principal is concerned as to the manner in which the contractor may perform the services, the contract should operate by way of restrictive covenants, rather than by direction or control;
6. the contractor should be required to take out and pay for insurance and tax payment arrangements (your Independent Contractor Agreement is designed to do this); and

Special circumstances where Independent Contractors are deemed "employees"

Legislation deems legitimate independent contractors to also be 'employees'. This imposes obligations upon the principal who is "deemed" an "employer":

Workers Compensation

Workers Compensation, unlike certain other areas of industrial law, does not rely on the existence of an employment relationship at law. Therefore, while there is a legitimate principal/contractor relationship you are still deemed an employer for Workers Compensation purposes. State and Territorial legislation vary. However, a common element of such legislation is to deem a contractor to be an employee of the principal. This is where such work carried out by the contractor is not incidental to a trade or business regularly carried on by the contractor on his or her own behalf. Secondly, State and Territorial legislation deem some contract salespersons to be 'employed' when they are paid on commission.

If any such "employer" has not taken out Workers Compensation insurance, then the Independent Contractor Agreement should expressly require your contractor to take out the necessary insurance.

Our Independent Contractors agreement expressly states that the Independent Contractor must have sufficient Workers Compensation.

Pay-roll tax

Each State has pay-roll tax. At some point your business grows to such a level that you are employing so many people that the relevant State government applies a tax on the total amount of payroll that you pay. It is a punishment for getting too big. Often a business will decide not to grow further to avoid this unpopular State tax.

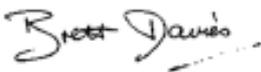
To avoid pay-roll tax the business may start a separate "non-related" business. The second business may be in the form of an Independent Contractor. However, the State law may intervene and still "group" the Principal's and Independent Contractor's

businesses together as one combined employer. They can be grouped on a variety of bases, including:

1. related corporations within the meaning of the *Corporations Law*;
2. persons who carry on businesses subject to common control; and
3. employers who provide or agree to provide the services of employees for use in another person's business.

This now concludes the matter. Thank you for your instructions.

Yours sincerely,



Adj Professor, Dr Brett Davies, CTA, AIAMA, BJuris, LLB, LLM, MBA, SJD
National Taxation Partner
LEGAL CONSOLIDATED BARRISTERS & SOLICITORS

This is a sample of the document you are building on our law firm's website.

<https://www.legalconsolidated.com.au/independent-contractor-agreement-intro/>

Depending how you answer the questions the document and our letter may be different.

We have a 100% money back guarantee. For any reason you can return the document to us for a full refund.

*Dr Brett Davies - Partner
Legal Consolidated Barristers & Solicitors*

Build the legal document at <https://www.legalconsolidated.com.au/independent-contractor-agreement-intro/> - telephone us. We can help you answer the questions.

On our law firm's website, you:

- Retain legal professional privilege
- Receive legal advice
- Get a signed letter on our law firm's letterhead with the legal document
- We take responsibility for the legal document

Only a law firm provides the above. We also offer a 100% money back guarantee on every document you build.

Adj Professor, Dr Brett Davies - Partner



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Independent Contractor Agreement

EastOz Holdings Pty. Ltd.

Professionals Consolidated, Pty. Ltd.

Service Trust Agreement is a type of Independent Contractors Agreement

This Agreement of Contract for Services is between:

EastOz Holdings Pty. Ltd. ACN 968 745 231
50 Park Road, Sydney NSW 2000, Australia

(Contractor)

AND

Professionals Consolidated, Pty. Ltd. ACN 123 654 798
161 Sussex Avenue, Sydney NSW 2000, Australia

(Principal)

Background

- A. The Principal carries on the business. In particular the Principal is in the business of Professional services (**Principal's business**).
- B. The Contractor carries on a business. In particular the contractor carries on the business of Support services (**Contractor's Business**).
- C. The Contractor seeks to provide services to the Principal's business upon the terms of this agreement.

This agreement states:

1 What is the Contractor to do?

The Contractor performs such Work from the Start Date as is assigned to it from time to time by the Principal in a skilful, expeditious and professional manner for the Remuneration. The Contractor warrants that it is duly qualified to and will perform the Work in a careful, skilful, diligent and efficient manner.

If, from time to time, the Contractor is required to be licensed, registered, hold a practice certificate or have insurance specific to them, or their trade or profession before they can undertake certain work, then they will not undertake any such work, or hold out to be available for such work, until they obtain such licence, registration, practice certificate and insurance.

2 Work

To undertake the following tasks and services as is assigned to the Contractor from time to time by the Principal, its agents or employees:

1. To provide service support to support the Principal's business.
2. Provide taxation and accounting services
3. Preparation of taxation returns and related documents
4. Preparation of financial statements and related documents

Principal business owners can not share profit with their spouse and children. However, there is plenty of work in the business that does not necessarily relate to its operation.

For example, the hiring of staff, accounting, nurses, receptionist and marketing can be profit centres for another business. This other business is called a Service Trust.

5. Taxation and accounting planning and advice.
6. Produce and present internal tax and accounting seminar papers.
7. Provide training and support to the Principal's agents and employees in relation to tax and accounting matters.
8. Provide photocopying services.
9. Provide office support and leasing.
10. Marketing, corporate design and identity and brand awareness.
11. Liaison with printing companies to amongst other things, ensure the quality and stationary (with the ability to do printing brokering).
12. Industrial relations and advocacy.
13. Plant and equipment and telephone services (plant and equipment) as and from time to time.
14. Secretarial, administrative and other staff (staff) as provided from time to time.
15. Stationery and other consumables (consumables) as provided from time to time.
16. Premises (premises) as provided from time to time.
17. Debt collection services (debt collection services) as required and provided from time to time.
18. Such other facilities and services as the parties may agree from time to time by an exchange of emails.

A service trust is often a:

1. Family Trust
2. Unit Trust
3. Company

Build these 3 types of service trusts on our website.

<https://www.legalconsolidated.com.au/independent-contractor-agreement-intro/>

3 Who maintains the Contractor's equipment

Where the Contractor is required to provide or utilise equipment, the Contractor warrants that such equipment is suitable for the Work and is maintained by the Contractor in good working condition. All costs are borne by the Contractor.

4 Who controls the Contractor and its employees?

The Contractor supplies the Work as an independent contractor. The Contractor is not in partnership, or in a joint venture or an employee, servant or agent of the Principal.

Nothing in this agreement is construed as to constitute the Principal to be an employer and the Contractor (or its own employees and agents) to be an employee. It is the express intention of the parties that such a relationship is denied.

Nothing in this agreement is construed as to constitute either party to be the agent of the other. It is the express intention of the parties that such a relationship is denied.

Upon written notice to the Contractor, the Principal can demand that any of the Contractor's employees and agents cease to perform the Work. In such event the Contractor provides the services of an alternative person. The parties acknowledge that the Contractor only (not the Principal):

- 4.1 Is able to delegate duties for the contracted services.
- 4.2 Is required to make its own insurance and tax payment arrangements.
- 4.3 Controls and is responsible for itself and its employees. If any legislation imposes an employer/employee obligation onto the Principal then the Contractor carries out all such obligations and pays all such costs and indemnifies and holds the Principal harmless. Further, the Contractor states that it has the necessary insurances (such as Workers Compensation) for itself and any of its employees and sub-contractors connected with the Principal's business. The Contractor provides evidence of such insurance to the principal at the Principal's request. Further the Contractor indemnifies the Principal and pays any additional payroll tax payable because of grouping.

5 Start Date

As mutually agreed by the parties including via an exchange of emails.

6 Remuneration

As agreed by both parties from time to time.

7 Mode of Payment

The Remuneration is paid calendar monthly in arrears unless agreed otherwise.

8 What does the Contractor keep confidential?

Except as authorised by the Principal in writing or required by the Contractor's performance of the Work, the Contractor does not (directly or indirectly) reveal to any third party such confidential information (reasonably regarded as confidential, being information not in the public domain or known to the Contractor's competitors):

- 8.1 technical data, research and development information, any trade secret, confidential dealing, operation or process
- 8.2 any information concerning the organisation, business, finances, transactions or affairs of the:
 - 8.2.1 business records, client records, information, notes, products, know how, trade secrets, other data and secret information
 - 8.2.2 Principal or any related corporation or associate of the Principal
 - 8.2.3 names and details of clients, suppliers and agents or employees and employees details
 - 8.2.4 clients of any related corporation or associate of the Principal
 - 8.2.5 accounting procedures or financial information

(collectively Confidential Information)

*Service Trust
Agreements are also
popular for:*

1. Professionals such as engineers, dentist, lawyers and accountants that can't otherwise share profit easily

The Contractor keeps with complete secrecy all Confidential Information. The Contractor does not use (or attempt to use) any Confidential Information in any manner. The Contractor does not use (or attempt to use) any Confidential Information that may (directly or indirectly) cause injury to the Principal (or the Principal's business) or which may be likely to do so. This restriction continues after the Work is completed. This restriction continues after this agreement terminates.

The Principal and its agents agree to keep confidential the Contractor's Confidential Information (**Contractor's Confidential Information**) being all information relating to the current or future business interests, methodology or affairs of the Contractor and its related parties or any person or entity with which it deals or is concerned with, including, without limitation, all:

- 8.3 technical data;
- 8.4 research and development information;
- 8.5 business records, compliance processes and procedures, training processes, procedures, copyright documents, electronic communications or records, software supplied under the agreement, client records, information, notes, know how, trade secrets, or other data;
- 8.6 accounting procedures or financial information;
- 8.7 names and details of clients, suppliers and agents;
- 8.8 employee details; and
- 8.9 secret information

reasonably regarded as confidential, being information not in the public domain or likely to be disclosed to competitors' Contractor(s).

2. Asset protection
– one entity holds the high-risk activities (employees, tenancies & advice) the other keeps all the 'good' assets (land, intellectual property) in a low-risk entity.

9 Employees, suppliers and clients are not to be interfered with

No party will through itself or another person under the direction of that party (such as a family member or company under that parties' control):

- 9.1 solicit, canvass, induce or encourage any person or entity who is an employee or agent of another party to leave the employment of that other party
- 9.2 solicit, canvass or approach any person or entity who is a client, customer or patron of the other party, with a view to establishing a relationship with or obtaining the custom of that person or entity in a business which carries on the business of a similar or related nature to the other party
- 9.3 interfere or seek to interfere, directly or indirectly, with the relationship between the other party and its clients, employees and suppliers in the conduct of the other parties' business

10 When are documents and records returned to the Principal?

All records and documents (paper, electronic or otherwise) and copies and extracts made or acquired by the Contractor, in the course of performing the Work, are the Principal's property. The Contractor collects up and returns such records and documents to the Principal when the agreement is terminated or upon the Principal's demand.

11 How does the Contractor protect the Principal?

The Contractor:

11.1 Acts with the utmost good faith in all of its dealings with the Principal.

11.2 Does not intentionally do anything which is or may be harmful to the Principal.

11.3 Reports promptly all reasonable information, explanations and advice which the Principal requires or as to which the Principal should properly be informed.

The Contractor is responsible for and indemnifies the Principal against liability, damage or injury to persons or property caused by the Contractor. The amount of claims, damages, costs and expenses payable, suffered or incurred by the Principal as a result of any such loss, damage or injury is made good at the Contractor's expense. Any loss, damage or injury is deducted from the value of Remuneration due or becoming due to the Contractor.

Any additional expenses are to be advised by the Contractor before they are incurred. All such expenses are to be mutually agreed upon.

12 Bound by the law?

The Contractor complies at its own cost and expense with all legislation, regulations, by-laws, ordinances or orders as it affects or applies to the Contractor or the Works performed by the Contractor. Further, the Contractor indemnifies the Principal from and against all actions, costs, charges, claims and demands arising from the Contractor's non-compliance.

This agreement is subservient to any compulsory or binding laws. It is subservient to any mandatory awards that apply. If any laws force the Principal to withhold Superannuation or pay for Workers Compensation or any other requirement then the Principal so complies. However, all additional costs, as far as the law allow, reduce any payments to the Contractor. Further, the Contractor, as far as the law allows, indemnifies and holds the Contractor harmless in all such matters.

13 How much notice is needed to end this agreement?

This agreement continues in force until the Termination Date, or by either party giving to the other one month's notice in writing.

3. Companies wanting to liberate wealth and move profit into a trust structure. The service trust often holds appreciating assets. These include real estate, franchises, copyright and 'leased out' business names.

14 Can the Principal end the agreement without notice?

The Principal may determine this agreement at any time and without prior notice. This is the case if the Contractor is guilty of any dishonesty, serious misconduct or serious neglect of duty. This is also the case if the Contractor is in breach of any of the terms of this agreement or refuse to comply with any reasonable instructions or directions given by the Principal.

15 What happens if one of the parties becomes insolvent?

Either party may end the agreement in writing (without notice) if the other party suffers any of the following:

15.1 For a corporation:

- 15.1.1 an application is made to a court for an order or an order is made that the corporation can be wound up
- 15.1.2 an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of that corporation or one of them is appointed, whether or not under an order
- 15.1.3 a meeting is convened or a resolution is passed to appoint an administrator for that corporation
- 15.1.4 the corporation proposes or enters into an agreement of company arrangement with or for the benefit of all or any class of its creditors without the consent of the other party
- 15.1.5 a resolution is passed to wind up or dissolve that corporation
- 15.1.6 the corporation is dissolved
- 15.1.7 the corporation is or becomes insolvent within the meaning of that expression in subsection 95A(2) of the *Corporations Law* or any of the events mentioned in paragraphs (a) to (f) inclusive of subsection 95A(2) of the *Corporations Law* occurs in respect of the corporation
- 15.1.8 the appointment of an administrator in respect of that corporation or receiver or manager or receiver and manager of the whole or part of the assets and undertaking of the corporation

15.2 For an individual:

- 15.2.1 the individual proposes or enters into a agreement of arrangement or agreement of assignment or an assignment for the benefit of it or any class of creditors
- 15.2.2 the individual commits an act of bankruptcy

Service trust is a business. Service Trust Agreement provides services, for a profit, to the principal's business. The services are provided at 'market rates'. This is required by the ATO TR 2006/2.

Build service trust agreement

<https://www.legalconsolidated.com.au/independent-contractor-agreement-intro/>

16 Can the Contractor assign its rights under this agreement?

The Contractor may not assign its rights under this agreement without the Principal's prior written consent.

17 How can this agreement be varied?

The agreement can be varied in writing and signed by all the parties or by an exchange of emails.

18 Have the parties agreed to anything outside of this agreement?

This agreement is the entire agreement for contract for service between the Contractor.

19 What happens if part of this agreement is unenforceable?

If the whole or part of a provision of this agreement is held to be invalid or in any jurisdiction it is severed from this agreement. It is severed to the extent of its invalidity or unenforceability. However, this does not affect the validity and of the remainder of the agreement.

20 How can one party give notice to the other?

Any notice given for any purpose under this agreement is served on the Principal if delivered or posted to the respective addresses or by email.

21 Are the Contractor's staff and assigns also bound?

A reference to a party to this agreement includes its agents, employees and assigns.

22 What law applies to the agreement?

This agreement is governed and construed according to the laws of the state in which the Principal resides in, as evidenced by the Principal's address in this agreement. Each party irrevocably submits unconditionally to that jurisdiction and of all courts competent to hear appeals for any legal action, suit of proceeding arising from this agreement.

The service trust then distributes the 'profit' it makes. This profit is from running the business (service trust). The profit goes to the non-working spouse, children and other taxpayers at a lower tax rate.

Build service trust agreement

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SIGNED on the day of 20

As Contractor

Signed by an authorised officer of

EastOz Holdings Pty. Ltd. ACN 968 745
231
50 Park Road, Sydney NSW 2000,
Australia



in front of:



Witness Signature



Witness Full Name (print clearly)



Witness Address

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au/independent-contractor-
agreement-intro/](https://www.legalconsolidated.com.au/independent-contractor-agreement-intro/)

As Principal

Signed by an authorised officer of

Professionals Consolidated, Pty. Ltd. ACN
123 654 798
161 Sussex Avenue, Sydney NSW 2000,
Australia



In front of:



Witness Signature



Witness Full Name (print clearly)



Witness Address