

AIGA

Independent Contractor Agreement

by
**Shel
Perkins**

Use an agreement like this when you are subcontracting with design firms and ad agencies. (It is reprinted from the book *Talent Is Not Enough: Business Secrets For Designers*, by Shel Perkins). With respect to intellectual property rights, it's important to note that this form favors the design firm because they control the project as well as the client account. You should not use this form when you are selling services directly to a business client. For that, you should prepare a fixed-fee proposal and use the legal terms and conditions that are contained in the *AIGA Standard Form of Agreement for Design Services*.

Designer Independent Contractor Agreement

This services agreement (“AGREEMENT”) is made and entered into as of XX/XX/20XX by and between DESIGN FIRM NAME (“DESIGN FIRM”) and contractor name (“CONTRACTOR”).

DESIGN FIRM desires to retain CONTRACTOR as an independent contractor to perform consulting services for DESIGN FIRM , and CONTRACTOR is willing to perform such services, on terms set forth more fully below. In consideration of the mutual promises contained herein, the parties agree as follows:

1. Services.

- A. CONTRACTOR agrees to perform for DESIGN FIRM those services described in Exhibit A incorporated herein by reference (the “Services”). The parties may delete, add or substitute Services, extend the Term, or alter the terms of compensation by amending Exhibit A, provided that such amendment shall be signed by an authorized representative of both parties and shall indicate whether it is to replace or alter the then existing Exhibit A.
- B. CONTRACTOR is authorized to perform the Services under this Agreement only upon the request or at the direction of, and shall report solely to, a Principal of DESIGN FIRM and/or his or her designee.

2. Compensation.

- A. DESIGN FIRM agrees to pay CONTRACTOR the compensation set forth in Exhibit A for the performance of the Services (“Fixed Compensation”). Such Fixed Compensation shall be payable on the schedule set forth in Exhibit A
- B. DESIGN FIRM shall reimburse CONTRACTOR for reasonable pre-approved travel, living, and other expenses incurred by CONTRACTOR in connection with the performance of Services hereunder. All equipment and tangible materials purchased by CONTRACTOR and reimbursed by DESIGN FIRM under this provision shall be the property of DESIGN FIRM, and, upon request by DESIGN FIRM, CONTRACTOR shall assign ownership in, and deliver, any such equipment to DESIGN FIRM.

3. Intellectual property ownership.

- A. To the extent that the work performed by the CONTRACTOR under this Agreement (“CONTRACTOR'S WORK”) includes any work of authorship entitled to protection under copyright laws, the parties agree to the following provisions.
 - 1. CONTRACTOR'S WORK has been specially ordered and commissioned by DESIGN FIRM as a contribution to a collective work, a supplementary work, or other category of work eligible to be treated as a work made for hire under the U.S. Copyright Act.

2. CONTRACTOR'S WORK shall be deemed a commissioned work and a work made for hire to the greatest extent permitted by law.
 3. DESIGN FIRM shall be the sole author of CONTRACTOR'S WORK and any work embodying the CONTRACTOR'S WORK according to the U.S. Copyright Act.
- B. To the extent that CONTRACTOR'S WORK is not properly characterized as a work made for hire, CONTRACTOR grants to DESIGN FIRM all right, title, and interest in CONTRACTOR'S WORK, including all copyright rights, in perpetuity and throughout the world.
 - C. CONTRACTOR shall help prepare any papers DESIGN FIRM considers necessary to secure any copyrights, patents, trademarks, or intellectual property rights at no charge to DESIGN FIRM. However, DESIGN FIRM shall reimburse CONTRACTOR for reasonable out-of-pocket expenses incurred.
 - D. CONTRACTOR agrees to require any employees or contract personnel CONTRACTOR uses to perform services under this Agreement to assign in writing to CONTRACTOR all copyright and other intellectual property rights they may have in their work product. CONTRACTOR shall provide DESIGN FIRM with a signed copy of each such assignment.
 - E. CONTRACTOR hereby waives any and all moral rights, including the right to identification of authorship or limitation on subsequent modification that CONTRACTOR has or may have in any materials or other deliverables assigned to DESIGN FIRM hereunder.
 - F. All of the provisions of this Section 3 shall be effective only upon full full payment of all Fixed Compensation due pursuant to Section 2 and Exhibit A.

4. Intellectual property ownership.

- A. CONTRACTOR represents and warrants that the Work Product and all materials and Services provided by CONTRACTOR hereunder will be original with CONTRACTOR or its employees or contract personnel, or shall be in the public domain, and that the use thereof by DESIGN FIRM or its customers, representatives, distributors, or dealers will not knowingly infringe any patent, copyright, trade secret or other intellectual property right of any third party. CONTRACTOR agrees to indemnify and hold DESIGN FIRM harmless against any liability, loss, cost, damage, claims, demands, or expenses (including reasonable outside attorney's fees) of DESIGN FIRM or its customers, representatives, distributors, or dealers arising out of any breach of this paragraph.
- B. DESIGN FIRM represents and warrants that all materials provided to CONTRACTOR hereunder will be original with DESIGN FIRM or its employees or contract personnel, or is properly licensed for use as described in Exhibit A, or shall be in the public domain, and that the use thereof by CONTRACTOR will not knowingly infringe any patent, copyright, trade secret or other intellectual property right of any third party. DESIGN FIRM

agrees to indemnify and hold CONTRACTOR harmless against any liability, loss, cost, damage, claims, demands, or expenses (including reasonable outside attorney's fees) of CONTRACTOR arising out of any breach of this paragraph.

5. Confidentiality.

- A. "Confidential Information" means the Work Product and any DESIGN FIRM proprietary information, technical data, trade secrets or know-how, including, but not limited to, research, product plans, products, services, customers, customer lists, markets, software, developments, inventions, processes, formulas, technology, designs, drawings, engineering, hardware configuration information, marketing, finances, or other business information disclosed by DESIGN FIRM either directly or indirectly in writing, orally or by drawings or inspection of parts or equipment.
- B. CONTRACTOR and its employees and consultants shall hold all Confidential Information in the strictest confidence and shall not, during or subsequent to the term of this Agreement, use DESIGN FIRM'S Confidential Information for any purpose whatsoever other than the performance of the Services on behalf of DESIGN FIRM. Confidential Information does not include information that (i) is known to CONTRACTOR at the time of disclosure to CONTRACTOR by DESIGN FIRM as evidenced by written records of CONTRACTOR, (ii) has become publicly known and made generally available through no wrongful act of CONTRACTOR, or (iii) has been rightfully received by CONTRACTOR from a third party who is authorized to make such disclosure. Without DESIGN FIRM'S prior written approval, CONTRACTOR shall not directly or indirectly disclose to anyone the terms and conditions of this Agreement. CONTRACTOR may disclose that it is "working with" DESIGN FIRM'S, but shall not otherwise characterize the nature or scope of the Services.
- C. CONTRACTOR agrees that it will not, during the term of this Agreement, improperly use or disclose any trade secrets of any former or current employer or other person or entity with which CONTRACTOR has an agreement or duty to keep in confidence information acquired by CONTRACTOR in confidence, if any, and that CONTRACTOR shall not bring onto the premises of DESIGN FIRM any unpublished document or proprietary information belonging to such employer, person, or entity unless consented to in writing by such employer, person, or entity.
- D. CONTRACTOR recognizes that DESIGN FIRM has received and in the future will receive from third parties their confidential or proprietary information subject to a duty on DESIGN FIRM'S part to maintain the confidentiality of such information and to use it only for certain limited purposes. CONTRACTOR agrees that CONTRACTOR owes DESIGN FIRM and such third parties, during the term of this Agreement and thereafter, a duty to hold all such confidential or proprietary information in the strictest confidence and not to disclose it to any person, firm, or corporation or to

use it except as necessary in carrying out the Services for DESIGN FIRM consistent with DESIGN FIRM'S agreement with such third party.

- E. Upon the termination of this Agreement, or upon DESIGN FIRM'S earlier request, CONTRACTOR shall deliver to DESIGN FIRM all of DESIGN FIRM'S property and Confidential Information in tangible form that CONTRACTOR may have in CONTRACTOR'S possession or control.
- F. Notice of immunity from liability: An individual shall not be held criminally or civilly liable under any 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; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual (i) files any document containing the trade secret under seal; and (ii) does not disclose the trade secret, except pursuant to court order.

6. Conflicting obligations.

CONTRACTOR certifies that CONTRACTOR has no outstanding agreement or obligation that is in conflict with any of the provisions of this Agreement, or that would preclude CONTRACTOR from complying with the provisions hereof, and further certifies that CONTRACTOR will not enter into any such conflicting agreement during the term of this Agreement.

7. Term and termination.

- A. This Agreement shall be effective as of the date CONTRACTOR first performed the Services. This Agreement shall continue until the date specified in Exhibit A or termination as provided below ("Term").
- B. Either party may terminate this Agreement without cause upon ten (10) days prior written notice to the other party.
- C. If DESIGN FIRM terminates (except for CONTRACTOR'S uncured material breach of this Agreement) DESIGN FIRM will pay CONTRACTOR for all services or expenses actually incurred up to the date of termination.
- D. Sections 3 and 4 shall survive termination of this Agreement.

8. Assignment.

CONTRACTOR acknowledges that the consulting services to be performed hereunder are of a special and unique nature. Neither this Agreement nor any right hereunder or interest herein may be assigned or delegated by CONTRACTOR without the express written consent of DESIGN FIRM. Any such attempted assignment shall be void

9. Independent contractor.

CONTRACTOR shall perform the Services hereunder as an independent consultant. Nothing in this Agreement shall in any way be construed to constitute CONTRACTOR as an agent, employee, or representative of DESIGN FIRM. Since CONTRACTOR is not an employee of DESIGN FIRM, it is understood that neither CONTRACTOR nor any of its employees is entitled to any employee benefits during the Term. CONTRACTOR shall pay all necessary local, state, or federal taxes, including but not limited to withholding taxes, workers' compensation, FICA, and unemployment taxes for CONTRACTOR and its employees. CONTRACTOR acknowledges and agrees that CONTRACTOR is obligated to report as income all compensation received by CONTRACTOR pursuant to this Agreement, and CONTRACTOR agrees to indemnify DESIGN FIRM and hold it harmless to the extent of any obligation imposed on DESIGN FIRM (i) to pay withholding taxes or similar items or (ii) resulting from CONTRACTOR'S being determined not to be an independent contractor. In the performance of all Services hereunder, CONTRACTOR shall comply with all applicable laws and regulations.

10. Equitable relief.

CONTRACTOR agrees that it would be impossible or inadequate to measure and calculate DESIGN FIRM'S damages from any breach of the covenants set forth in Sections 3, 5, or 6 herein. Accordingly, CONTRACTOR agrees that in the event of such breach, DESIGN FIRM will have, in addition to any other right or remedy available, the right to seek to obtain from any court of competent jurisdiction an injunction restraining such breach or threatened breach and specific performance of any such provision.

11. Miscellaneous.

This is the entire agreement between the parties relating to the subject matter hereof and no waiver or modification of the Agreement shall be valid unless in writing signed by each party. The waiver of a breach of any term hereof shall in no way be construed as a waiver of any other term or breach hereof. If any provision of this Agreement shall be held by a court of competent jurisdiction to be contrary to law, the remaining provisions of this Agreement shall remain in full force and effect. Neither party shall have any liability for its failure to perform its obligations hereunder when due to circumstances beyond its reasonable control. This Agreement shall inure to the benefit of and be binding upon each party's successors and assigns. This Agreement is governed by the laws of the State of STATE NAME without reference to conflict of laws principles. All disputes arising out of this Agreement shall be subject to the exclusive jurisdiction of the state and federal courts located in COUNTY NAME COUNTY, STATE NAME, and the parties agree and submit to the personal and exclusive jurisdiction and venue of these courts.

In witness whereof, the parties hereto have executed this Agreement as of the day and year first written above.

For Design Firm

Authorized signature _____

Print name and title _____

Date _____

Address _____

For Contractor

Authorized signature _____

Print name and title _____

Social Security or Federal Tax ID Number _____

Date _____

Address _____

Exhibit A

Services to be performed by Contractor.

Contractor shall perform and Design Firm shall pay for the following services:

Term

The Term shall commence on the date hereof and terminate on xx/xx/20xx

Fixed compensation

DESIGN FIRM shall pay the CONTRACTOR as follows (select one)

- Project rate of \$x
- Day rate of \$x/day
- Hourly rate of \$x/hour
- Other: \$x

Invoice schedule

CONTRACTOR shall invoice DESIGN FIRM as follows (select one):

- At the end of each week
- At the end of each month
- Upon completion of the project

Payment schedule

Payment shall be made within thirty (30) days of DESIGN FIRM’S receipt of CONTRACTOR’S invoice.

Agreed

I have read and understand the above terms.

For Design Firm

Authorized signature _____

Print name and title _____

Date _____

Address _____

For Contractor

Authorized signature _____

Print name and title _____

Social Security or Federal Tax ID Number _____

Date _____

Address _____