

Work-Made-for-Hire-Agreement

This Work Made for Hire Agreement (the "Agreement") is made between _____ ("Company"), and _____ ("Contractor").

Services

In consideration of the payments provided in this Agreement, Contractor agrees to perform the following services:

Payment

Company agrees to pay Contractor as follows: _____

Works Made for Hire - Assignment of Intellectual Property Rights

Contractor agrees that, for consideration that is acknowledged, any works of authorship commissioned pursuant to this Agreement (the "Works") shall be considered works made for hire as that term is defined under U.S. copyright law. To the extent that any such Work created for Company by Contractor is not a work made for hire belonging to Company, Contractor hereby assigns and transfers to Company all rights Contractor has or may acquire to all such Works. Contractor agrees to sign and deliver to Company, either during or subsequent to the term of this Agreement, such other documents as Company considers desirable to evidence the assignment of copyright.

Contractor Warranties

Contractor warrants that the Work does not infringe any intellectual property rights or violate any laws and that the Work is original to Contractor.

General Provisions

Entire Agreement

This is the entire agreement between the parties. It replaces and supersedes any and all oral agreements between the parties, as well as any prior writings. Modifications and amendments to this agreement, including any exhibit or appendix hereto, shall be enforceable only if they are in writing and are signed by authorized representatives of both parties.

Successors and Assignees

This agreement binds and benefits the heirs, successors and assignees of the parties.

Notices

Any notice or communication required or permitted to be given under this Agreement shall be sufficiently given when received by certified mail, or sent by facsimile transmission or overnight courier.

Governing Law

This agreement will be governed by the laws of the State of _____.

Waiver

If one party waives any term or provision of this agreement at any time, that waiver will only be effective for the specific instance and specific purpose for which the waiver was given. If either party fails to exercise or delays exercising any of its rights or remedies under this agreement, that party retains the right to enforce that term or provision at a later time.

Severability

If a court finds any provision of this agreement invalid or unenforceable, the remainder of this agreement will be interpreted so as best to carry out the parties' intent.

Attachments and Exhibits

The parties agree and acknowledge that all attachments, exhibits and schedules referred to in this agreement are incorporated in this agreement by reference.

No Agency

Nothing contained herein will be construed as creating any agency, partnership, joint venture or other form of joint enterprise between the parties.

Attorney Fees and Expenses

The prevailing party shall have the right to collect from the other party its reasonable costs and necessary disbursements and attorney fees incurred in enforcing this Agreement.

Jurisdiction

The parties consent to the exclusive jurisdiction and venue of the federal and state courts located in _____ [county], _____ [state], in any action arising out of or relating to this agreement. The parties waive any other venue to which either party might be entitled by domicile or otherwise.

Arbitration

Any controversy or claim arising out of or relating to this agreement shall be settled by arbitration in _____ [county], _____ [state], in accordance with the rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction. The prevailing party shall have the right to collect from the other party its reasonable costs and attorney's fees incurred in enforcing this agreement.

Signatures

Each party represents and warrants that on this date they are duly authorized to bind their respective principals by their signatures below.

Company:

Signature

Date

Typed or Printed Name

Title

Contractor:

Signature

Date

Typed or Printed Name

Title

Explanation for Work Made For Hire Agreement

In the “Services” section, insert the work that the contractor is supposed to perform, for example “Create a website.” Insert the amount to be paid to contractor in the Payment section.

The section titled “Works Made for Hire - Assignment of Intellectual Property Rights” establishes that the work is made for hire. However, if the work does not meet the requirements of copyright law, a back-up provision is added that converts the arrangement to an assignment. This type of provision is commonly used by businesses seeking to make sure that ownership rights have been acquired.

The “Warranty” provision provides an assurance that the Contractor owns the work and that the work is not an infringement. This is necessary to provide an assurance that the work is not taken from another source.

This agreement includes some miscellaneous provisions (“Entire Agreement, No Joint Venture, etc.). For a detailed explanation of these provisions, check out the chapter on Contracts or review the forms for “Sample Contract Provisions.”

Basic Work for Hire Principles

Every copyrightable work created by an employee within the scope of his or her employment is automatically a work made for hire. The term “scope of employment” does not refer to whether the work was created during business hours or at home; it refers to whether the work is within the “scope” or range of activities expected from the employee. As one court stated, the question is whether it is the kind of work the employee was employed to perform.

If a work is created by an employee within the scope of employment, there are no other requirements and no need for a written agreement—it is a work for hire. It is for this reason that when sorting out ownership issues, courts first look at whether an employer-employee relationship exists as opposed to an independent contractor relationship.

That said, a copyrighted work created by an independent contractor (unlike a work created by an employee) is not automatically classified as a work made for hire. For an independent contractor’s work to qualify as a work made for hire, three requirements must be met:

- the work must be specially ordered or commissioned—for example, the hiring party must request that the work be created; it cannot already be in existence
- the work must fall within a group of specially enumerated categories (outlined below), and
- a written agreement must be signed by both parties indicating it is a work made for hire.

Sign the Agreement Before the Work Starts

A work-for-hire agreement should be signed before the independent contractor commences work. However, at least one court has held that the agreement can be executed after the work is completed, provided that at the time the work was created, the parties intended to enter into such an agreement. However, the facts of the case must clearly show the parties’ intent.

EXAMPLE: A magazine paid an artist by check for drawings done over a seven-year period. On the back of each check was a statement that indicated the drawings were works made for hire. A court of appeals ruled that the artist’s signature of the checks for the entire period

demonstrated that he was aware of and accepted the arrangement.

Work-Made-for-Hire Categories

The work of an independent contractor crafts artist will be a work made for hire only if it falls within one of several enumerated categories. Many work-made-for-hire categories are inapplicable to artists—for example, a translation, atlas, test or answer material for a test. Below are those categories that may have some relation to crafts works.

- a contribution to a collective work—for example, creating a pewter chess set for a book featuring many chess sets
- a part of a motion picture or other audiovisual work—for example, creating a tapestry for the set of a television show
- a supplementary work—a work prepared for publication as a supplement to a work by another artist for the purpose of introducing, concluding, illustrating, explaining, revising, commenting upon or assisting in the use of the other work—for example, a publisher is producing a book featuring famous quilts and asks you to diagram a pattern for one of them, and
- an instructional text used in teaching—for example, a book demonstrating how to create crochet works may qualify, provided that it is designed for use in day-to-day teaching activity. If it is not intended as part of a regular teaching program, it will not qualify.

Any work created by an independent contractor that does not fall within one of the above categories cannot be a work made for hire. (As you can see, most crafts work will not qualify.) This is so even if the parties have signed a written agreement stating that the work is a work made for hire.

EXAMPLE: A fiber artist is commissioned to create a work for a school auditorium. The artist signs an agreement entitled “Work Made For Hire.” The artist (not the school) owns the copyright in the fiber work because these textile and fiber works are not included among the enumerated categories of works by independent contractors that can be works made for hire.

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