



Take A Chance With Freelance?

NETA Production Council
September 18, 2014

In September, the NETA Production Council convened a roundtable discussion on how to work with independent producers.

There are three takeaways from the discussion:

- from Idaho Public Television, an informative outline of what a station needs to know
- from UNC-TV, an example of their contract for independent production
- from KET, an example of their contract for independent production.

Questions? Would you like to have a production council webinar of discussion on a related subject? Contact **Gayle Loeber** (gayle@netaonline.org) – she is the council liaison.

I. Idaho Public Television

From: Tim Tower, Director of Finance, Idaho Public Television

Sent: Thursday, September 18, 2014 1:50 PM

To: Jeff Tucker, Director of Content, Idaho Public Television

Subject: Employee vs. Independent Contractor

Attached is a document I put together five years ago for our HR person at that time. It's primarily excerpts from various IRS publications to give information about the three big areas that are evaluated in making a determination.

Generically, our process is first the business need (what do we need to get done for a project and/or to fulfill our mission), and then a subsequent step of figuring out how to make it happen.

To the extent we need manpower to make the project happen, we simply determine whether the person needs to be an employee or an independent contractor and we set it up appropriately. From a cost standpoint, theoretically it's a moot point given an independent contractor will get a higher rate (to cover their employer and operating costs), and the employee will get a lower rate with us paying the employer taxes/costs. Note, as you know, we do not hire such labor in a full-time, benefited role, so it's only the basic employer costs (roughly 10%) in our situation, and thus it's about the same dollars expended in either case.

Keep in mind, if a company makes a poor decision to treat a person as an independent contractor when they should be an employee, there is an additional risk of a labor audit that could result in significant fines, back wages, taxes and benefits. This variable clearly tips the scale to make an effort to be appropriate all the time.

Also, as you know, our independent contractor agreements include language to protect from and/or reduce risks, define relationships, and protect copyrights. Conversely, as an employee, they sign hiring documents (and agree to terms within our policy manual) regarding conflicts, ownership of company assets, non-disclosures, etc. Either way, we feel fairly well covered.

Idaho Public Television Employee or Independent Contractor

Excerpts from IRS Web site: <http://www.irs.gov/businesses/small/article/0,,id=99921,00.html>

Generally, there are three common law rules:

Behavioral: Does the company control or have the right to control what the worker does and how the worker does his or her job?

Financial: Are the business aspects of the worker's job controlled by the payer? (these include things like how worker is paid, whether expenses are reimbursed, who provides tools/supplies, etc.)

Relationship: Are there written contracts or employee type benefits (i.e. pension plan, insurance, vacation pay, etc.)? Will the relationship continue and is the work performed a key aspect of the business?

Behavioral

Behavioral control refers to facts that show whether there is a right to direct or control how the worker does the work.

A worker is an employee when the business has the right to direct and control the worker. The business does not have to actually direct or control the way the work is done – as long as the employer has the right to direct and control the work.

The behavioral control factors fall into the categories of:

- Type of instructions given
- Degree of instruction
- Evaluation systems
- Training

Types of Instructions Given

An employee is generally subject to the business's instructions about when, where, and how to work. All of the following are examples of types of instructions about how to do work.

- When and where to do the work.
- What tools or equipment to use.
- What workers to hire or to assist with the work.
- Where to purchase supplies and services.
- What work must be performed by a specified individual.
- What order or sequence to follow when performing the work.

Degree of Instruction

Degree of Instruction means that the more detailed the instructions, the more control the business exercises over the worker. More detailed instructions indicate that the worker is an employee. Less detailed instructions reflects less control, indicating that the worker is more likely an independent contractor.

Note: The amount of instruction needed varies among different jobs. Even if no instructions are given, sufficient behavioral control may exist if the employer has the right to control how the work results are achieved. A business may lack the knowledge to instruct some highly specialized professionals; in other

cases, the task may require little or no instruction. The key consideration is whether the business has retained the right to control the details of a worker's performance or instead has given up that right.

Evaluation System

If an evaluation system measures the details of how the work is performed, then these factors would point to an employee.

If the evaluation system measures just the end result, then this can point to either an independent contractor or an employee.

Training

If the business provides the worker with training on how to do the job, this indicates that the business wants the job done in a particular way. This is strong evidence that the worker is an employee. Periodic or on-going training about procedures and methods is even stronger evidence of an employer-employee relationship. However, independent contractors ordinarily use their own methods.

Financial Control

Financial control refers to facts that show whether or not the business has the right to control the economic aspects of the worker's job.

The financial control factors fall into the categories of:

- Significant investment
- Unreimbursed expenses
- Opportunity for profit or loss
- Services available to the market
- Method of payment

Significant investment

An independent contractor often has a significant investment in the equipment he or she uses in working for someone else. However, in many occupations, such as construction, workers spend thousands of dollars on the tools and equipment they use and are still considered to be employees. There are no precise dollar limits that must be met in order to have a significant investment. Furthermore, a significant investment is not necessary for independent contractor status as some types of work simply do not require large expenditures.

Unreimbursed expenses

Independent contractors are more likely to have unreimbursed expenses than are employees. Fixed ongoing costs that are incurred regardless of whether work is currently being performed are especially important. However, employees may also incur unreimbursed expenses in connection with the services that they perform for their business.

Opportunity for profit or loss

The opportunity to make a profit or loss is another important factor. If a worker has a significant investment in the tools and equipment used and if the worker has unreimbursed expenses, the worker has a greater opportunity to lose money (i.e., their expenses will exceed their income from the work). Having the possibility of incurring a loss indicates that the worker is an independent contractor.

Services available to the market

An independent contractor is generally free to seek out business opportunities. Independent contractors often advertise, maintain a visible business location, and are available to work in the relevant market.

Method of payment

An employee is generally guaranteed a regular wage amount for an hourly, weekly, or other period of time. This usually indicates that a worker is an employee, even when the wage or salary is supplemented by a commission. An independent contractor is usually paid by a flat fee for the job. However, it is common in some professions, such as law, to pay independent contractors hourly.

Type of Relationship

Type of relationship refers to facts that show how the worker and business perceive their relationship to each other.

The factors, for the type of relationship between two parties, generally fall into the categories of:

- Written contracts
- Employee benefits
- Permanency of the relationship
- Services provided as key activity of the business

Written Contracts

Although a contract may state that the worker is an employee or an independent contractor, this is not sufficient to determine the worker's status. The IRS is not required to follow a contract stating that the worker is an independent contractor, responsible for paying his or her own self employment tax. How the parties work together determines whether the worker is an employee or an independent contractor.

Employee Benefits

Employee benefits include things like insurance, pension plans, paid vacation, sick days, and disability insurance.

Businesses generally do not grant these benefits to independent contractors. However, the lack of these types of benefits does not necessarily mean the worker is an independent contractor.

Permanency of the Relationship

If you hire a worker with the expectation that the relationship will continue indefinitely, rather than for a specific project or period, this is generally considered evidence that the intent was to create an employer-employee relationship.

Services Provided as Key Activity of the Business

If a worker provides services that are a key aspect of the business, it is more likely that the business will have the right to direct and control his or her activities. For example, if a law firm hires an attorney, it is likely that it will present the attorney's work as its own and would have the right to control or direct that work. This would indicate an employer-employee relationship.

2. UNC-TV



CONTRACT FOR PROFESSIONAL SERVICES

The University of North Carolina Center for Public Television ("UNC-TV") and _____ ("Contractor"), whose address and phone number are listed under Contractor's signature at the end of this agreement, for the respective considerations and conditions set forth below, mutually enter into this agreement as of July 1, 2014 (the "Agreement"), as follows:

1. SERVICES AND TERM. Contractor shall provide audio, lighting, camera and grip services as required and as directed by the UNC-TV executive producer or producer of the project. The term of this Agreement shall be from July 1, 2014 through June 30, 2015.

2. WARRANTY OF SERVICES. Contractor warrants that Contractor is in the business of providing professional services as described in paragraph 1, above, and is fully able to perform the work in accordance with the highest professional standards and will perform the agreed assignments within such times and in the form agreed to herein.

3. COMPENSATION. In consideration of the services rendered by Contractor, UNC-TV agrees to pay Contractor a negotiated per diem rate for services listed on Attachment A. The negotiated rate shall not exceed UNC-TV's current allowable maximum rate as reflected in the attached rate card (Attachment A). The maximum payment for all services shall be _____, in periodic payments, on satisfactory completion of the services designated in paragraph 1, above, and upon receipt of an itemized invoice of services rendered. No minimum payment or guaranteed number of workdays is implied under the terms of this agreement.

4. EXPENSES. UNC-TV will reimburse Contractor for such personal travel and lodging, in accordance with current State regulations governing travel reimbursement, as Contractor shall incur in the performance of this Agreement. Reimbursement shall be made upon receipt of a completed travel reimbursement form and Contractor's original receipts.

5. COPYRIGHT OWNERSHIP. The copyright(s) in any tangible work-product and tangible expression created pursuant to this Agreement ("Work"), at whatever state of completion, shall be owned by UNC-TV, as the creator/author of the Work, as a "work made for hire" as defined in 17 USC 101. To the extent that the Work is not a work made for hire, then Contractor hereby assigns to UNC-TV all right, title, and interest in the Work by execution of this Agreement. The physical embodiment Work is owned by UNC-TV, and it may use the Work in any manner, and Contractor waives all future rights, including the rights of attribution and integrity. Contractor warrants that the Work is original and will not violate or infringe on any third party copyrights, trademark, or any other intellectual property rights, or any rights of privacy or publicity. Contractor agrees to indemnify and hold UNC-TV harmless from any suit or damage caused by a breach of the foregoing warranty.

6. WAIVER OF PERFORMANCE BOND. Because satisfactory performance is required prior to payment under this Agreement, a performance bond otherwise required of Contractor by regulations of the State of North Carolina is waived.

7. INSURANCE. During the term of this Agreement, Contractor, at its sole cost and expense, shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the Agreement. As a minimum, Contractor shall provide and maintain the following coverage and limits:

- a. Worker's Compensation – Contractor shall provide and maintain Worker's Compensation Insurance, as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of \$150,000, covering all of Contractor's employees who are engaged in any work under the Agreement. If any work is subcontracted under the terms of this Agreement, Contractor shall require the subcontractor to provide the same coverage for any of its employees engaged in any work under the Agreement.
- b. Commercial General Liability - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$500,000 Combined Single Limit. (Defense costs shall be in excess of the limit of liability.)
- c. Automobile – Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles, used in connection with the Agreement. The minimum combined single limit shall be \$150,000 bodily injury and property damage; \$150,000 uninsured/underinsured motorist; and \$1,000 medical payment.

Providing and maintaining adequate insurance coverage is a material obligation of Contractor and is of the essence of this Agreement. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. Contractor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this Agreement. The limits of coverage under each insurance policy maintained by Contractor shall not be interpreted as limiting Contractor's liability and obligations under this Agreement.

8. ASSIGNMENT. This Agreement shall not be assigned without prior written approval.

9. USE OF CONTRACT FOR ADVERTISING. Contractor may not use this Agreement for advertising purposes without the prior written approval of UNC-TV.

10. USE OF NAMES AND MARKS. Contractor will not use the marks or names of UNC-TV for any purposes without prior written approval of UNC-TV.

11. GOVERNING LAW; EXCLUSIVE JURISDICTION. This Agreement shall be governed, construed, and enforced by the laws of the State of North Carolina (excluding any conflict of laws provisions of the State of North Carolina which would refer to and apply the substantive laws of another jurisdiction). Any suit or proceeding shall be brought in the courts located in North Carolina. Contractor consents to the exclusive personal jurisdiction and venue of the courts located in North Carolina.

12. TERMINATION. UNC-TV may cancel this Agreement upon thirty (30) days prior written notice for any reason, provided that Contractor shall be paid for satisfactory authorized services rendered under this Agreement prior to the effective date of its cancellation. Sections 2, 5, 9, 10, 11 and 17 shall survive any termination or expiration of this Agreement.

13. TERMINATION FOR CAUSE. If, through any cause, Contractor shall fail to fulfill in timely and proper manner its obligations under this Agreement, or Contractor shall violate any of the covenants or stipulations of this Agreement, UNC-TV shall have the right to terminate this Agreement by giving written notice to Contractor of such termination and specifying the effective date thereof. In such event, Contractor shall cease work immediately upon receipt of such notice. All finished or unfinished work product of any kind or in any format prepared by Contractor under this Agreement shall become the property of UNC-TV. Contractor shall be entitled to receive just compensation for any satisfactory work completed on such project.

Notwithstanding the above, Contractor shall not be relieved of any liability for damages sustained by UNC-TV by virtue of any breach of this Agreement by Contractor. UNC-TV may withhold any payments to Contractor for the purpose of set-off until such time as the exact amount of damages due UNC-TV from Contractor is determined.

14. AVAILABILITY OF STATE FUNDS. Any and all payments to the Contractor are dependent upon and subject to the availability of funds to UNC-TV for the purpose set forth in this Agreement.

15. COMPLIANCE WITH STATE AND FEDERAL LAWS. The parties shall comply with all federal, state, and municipal laws, rules, and regulations that are applicable to the negotiation and performance of this Agreement.

16. ENTIRE AGREEMENT. This Agreement states the entire understanding between the parties with respect to the subject matter hereof and supersedes any previous written or oral representations, statements, negotiations, or agreements.

17. NO AGENCY OR EMPLOYMENT RELATIONSHIP. This Agreement shall in no way be interpreted as creating an agency or employment relationship between the parties.

18. SEVERABILITY. In the event that a court of competent jurisdiction holds that a provision or requirement of this Agreement violates any applicable law, each such provision or requirement shall be enforced only to the extent that it is not in violation of law or is otherwise unenforceable and all other provisions and requirements of this Agreement shall remain in force and effect. All promises, requirements, terms, conditions, provisions, representations, guarantees and warranties contained herein shall survive the expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable federal or State statute, including statutes of repose or limitation.

19. MODIFICATION IN WRITING. This Agreement may be modified only by written amendment executed by the authorized representatives of both parties.

20. NOTICES TO PARTIES. Any notice given, or required to be given, under this Agreement shall be deemed effective either upon personal delivery of a writing thereof or three (3) days after posting the notice thereof in First Class United States Mail as follows:

If to Contractor, addressed:

If to UNC-TV, addressed:

Shannon Vickery Agricola, Director of Production
UNC Center for Public Television
10 T.W. Alexander Drive
P.O. Box 14900
Research Triangle Park, NC 27709-4900

In agreement to the foregoing, the parties, or their representative, hereby affix their signatures.

Name
Address
Phone Number

Date

Federal Tax Identification Number:

THE UNIVERSITY OF NORTH CAROLINA CENTER FOR PUBLIC TELEVISION

Shannon Vickery Agricola
Director of Production

Date

Gail Zimmermann
Director and General Manager (Interim)

Date

Attachment A

UNC-TV Rate Card for Temporary Contract Employees 2014/2015

Position	Maximum Allowable Rate	
Videographer w/UNC-TV Gear	\$400.00	per day
Camera Operator	\$400.00	per day
Videographer w/personal gear	\$900.00	per day
Associate Producer/Associate Director	\$400.00	per day
Technical Director	\$400.00	per day
Best Boy	\$400.00	per day
Audio A-1	\$450.00	per day
Audio A-2	\$375.00	per day
Lighting Director	\$400.00	per day
Lighting Assistant	\$350.00	per day
VTR Operator	\$375.00	per day

Production Assistants, including but not limited to:

Production Assistant	\$300.00	per day
Floor Manager	\$300.00	per day
Utility	\$300.00	per day
Teleprompter Operator	\$300.00	per day
Character Generator (CG) Operator	\$300.00	per day
Grip	\$350.00	per day
Stage Manager	\$350.00	per day
Scenic Carpenter	\$250.00	per day
Make-up Artist	\$60.00	per hour
	\$350.00	per day
Editor	\$400.00	per day

Rates are negotiable up to the maximum allowable rate

Day rates are for 10 Hours

3. KET

**Kentucky Educational Television Foundation, Inc.
600 Cooper Drive
Lexington, KY 40502**

Department: Production

Budget Code: Various Production Budgets

Encumbrance

Amount: \$0,000.00 (Includes 7.65% Social Security)

This Contract July 1, 2013

is Effective:

And Expires: June 30, 2014

Contract For: Name
Address
Address
Phone

AGREEMENT

THIS AGREEMENT is made and entered into this 5th day of July 1, 2013, by and between Kentucky Educational Television Foundation, Inc., 600 Cooper Drive, Lexington, KY 40502, hereinafter referred to as the Foundation, and Name, address: address hereinafter referred to as the Contractor.

RECITALS

WHEREAS, the Foundation desires to have the following services performed on its behalf; and

WHEREAS, the Foundation has concluded that KET Foundation personnel are not available to perform said service or it would not be feasible to utilize KET Foundation personnel to perform said services; and

WHEREAS, the Contractor is available and is qualified to perform said service; and

WHEREAS, for the hereinbefore stated reason, the Foundation desires to avail itself of the services of the Contractor;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed by and between the Foundation and the Contractor:

SECTION 1: DESCRIPTION OF SERVICES

The Contractor will perform the services described with particularity as follows:

- 1) Videographer
- 2) Editor

Performance duties shall be under the direction of Name, title Production Manager.

SECTION 2: COMPENSATION

- A. Payment to the Contractor shall be made as follows: The Contractor will be paid a sum not to exceed \$ 8,000.00. Contractor is paid \$ 375.00 per day for an

estimated 20 days. Any hour past the 10th hour in one day will be paid at time and a half, \$56.25 per hour. Production Days scheduled for less than 4 hours will be paid at a half day rate of \$187.50.

- B. Cancellations within 24 hours of crew call will be paid as a full day or a half day as originally scheduled.
- C. Contractor will submit invoices for payment.
- D. Any expenses incurred for in-state travel and approved in advance will be reimbursed from the appropriate budget with sign-off from Director of Production.
- E. Any expenses incurred for out-of-state travel shall require an authorization form approved in advance of travel. The Contractor shall submit expense vouchers, including receipts, for expense reimbursement.

SECTION 3: SOCIAL SECURITY

A. _____ The parties are cognizant that the Foundation is not liable for Social Security contribution pursuant to 42 U. S. Code, Section 418, relative to the compensation of the Second Party for this contract.

B. X The parties are cognizant that the Foundation is liable for Social Security employer's contributions and for making Social Security withholdings pursuant to 42 U. S. Code, Section 418, relative to the compensation of the Second Party for this contract.

Contractor shall be solely responsible for payment of wages and benefits to any employees used in the conduct of this contract. This contractual relationship shall not be construed as exclusive.

Contractor shall not hire Foundation employees to perform any portion of the work or services provided for herein, except upon written prior approval of the Foundation.

SECTION 4. LIABILITY

Foundation and Contractor mutually agree to indemnification for any and all liability or loss arising in any way out of the performance of their respective obligations under this contract. The work to be performed under this contract will be entirely at the Contractor's risk. Any public liability or Worker's Compensation insurance which may be required for performance of the contract is the sole responsibility of the Contractor.

SECTION 5. DURATION

Either party may cancel this contract on fourteen days' written notice; otherwise, the contract shall remain in force until June, 30, 2014.

SECTION 6. INTEGRATION AND MODIFICATION

This agreement embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein; and this agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto. There may be no modification of the agreement, except in writing, executed with the same formality as this instrument.

SECTION 7. DISCRIMINATION

It is the strict policy of the Foundation to comply with state and federal prohibitions against discrimination because of race, religion, color, national origin, sex, age or handicap in the selection of the contracting parties. Contractor agrees that it will comply with all state and federal prohibitions against discrimination because of race, religion, color, national origin, sex, age, or disability in all of its employment practices.

SECTION 8. CONFLICT OF INTEREST LAWS AND PRINCIPLES

By his/her signature, the Contractor certifies that he/she is legally entitled to enter into this contract with the Kentucky Educational Television Foundation, Inc., and by holding and performing this contract will not be violating either any conflict of interest statute (KRS 45A.330-45A.340, 45A.990), or KRS 11A.040 of the Executive Branch Code of Ethics, relating to the employment of former public servants.

IN WITNESS WHEREOF, the parties have executed this Agreement at Lexington, Kentucky, the day and year first above written.

Further, if the Contractor is a retiree under state law, Contractor certifies that he/she has notified and received permission from the Kentucky Employment Retirement System (KERS) to perform services under this contract.

SECTION 9: OWNERSHIP

Contractor hereby agrees that Kentucky Educational Television, Foundation, and/or Kentucky Authority for Educational Television shall forever own copyrights. Duties under this contract shall be considered "work for hire." Contractor hereby irrevocably assigned to Kentucky Educational Television Foundation and/or Kentucky Authority for Educational Television all rights, title, and interest in and to all copyrights in these contract works. Kentucky Educational Television, Foundation and/or Kentucky Authority for Educational Television shall have the right

to assign its rights under this contract to others and to further market, sell, and distribute the materials in any manner whatsoever.

KENTUCKY EDUCATIONAL TELEVISION FOUNDATION, INC.

BY: _____

Senior Director for Finance and Administration, KET

DATE: _____

CONTRACTOR:

BY: _____

ADDRESS: _____

DATE: _____

SOCIAL SECURITY NUMBER: _____

FUNDS AVAILABLE:

DATE: _____

Business Office