

Drafting a Contract for INDEPENDENT CONTRACTORS

By Jeff Metzger

Over the past 25 years, our industry has been steadily evolving from single-dimensional (gymnastics only) to multi-dimensional or, as I call it, MVP, Multi-Venue Programming. Our company, *Kids First*, committed to MVP programming in 1988, and that strategy has afforded us continuing growth, not to mention financial strength through diversification. Because of our visibility and position in the industry, I receive many questions about the pros and cons and details

of our various partner relationships: employer-employee; subcontracts; leases and so on. This article focuses on subcontracting, specifically the operational considerations you need to address in your contract.

First, a warning—the Internal Revenue Service (IRS) has a vested interest and a lot to say about who is and who is not an independent contractor. You are hereby advised to speak to an attorney. For a good primer, go here: <http://bit.ly/IndependentContractor>. In layman's terms, a subcontractor

must be *independent*—in other words, the contractor must be “in control.” I have personally witnessed many gymnastics club owners designate certain people as subcontractors; yet, upon inspection, the relationship seems to be more like an employer-employee relationship. You can bet if it seems that



way to me, it is highly likely the IRS would view it the same way. You do not want to get stung for five years of back payroll taxes because you mis-categorized a sub. Cumulative back taxes add up fast!

In no order and certainly not meant to be all-inclusive or legal advice, here are thoughts to consider when drafting your contract:

Clearly define the scope of the services. Example: *instructing children in yoga including but not limited to: classroom instruction; curriculum design; scheduling; hiring, firing and otherwise managing and supervising any needed support staff.* List programming exclusions if it makes sense.

Make crystal clear that the relationship is as an independent contractor. Example: Contractor is not an employee; not entitled to benefits; responsible for all payroll and other taxes. It is not a bad idea to have Contractor indemnify your company from Contractor's failure pay said taxes.

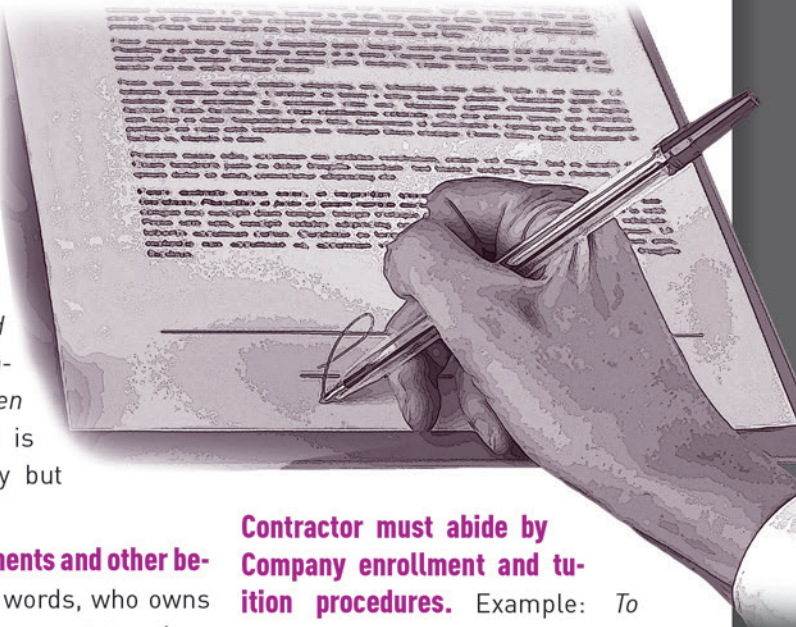
Clearly define the financial relationship. Example: *Contractor's revenue share shall be 50% of all revenue earned by the Contractor's services and Company shall retain the balance. 'Revenue' is defined as all dollars generated by the Contractor for any services provided under the Company's roof including but not limited to tuition and fees from group lessons, private or semi-private lessons or other. Tuition for the classes will be collected by the Company's Hospitality Department. Company will pay Contractor monthly in arrears based on revenue relative to the number of teaching days in the preceding month.*

If for any reason instruction has not been completed at the time that payment is normally due, the revenue share payment will be delayed until such time instruction has been completed. There is more to the story but you get the idea.

Records and documents and other belongings. In other words, who owns what and what happens at termination of the contract.

The space and scheduling. Example: *Contractor has scheduling priority of XXX (The Space) during the hours of XXX. Kids First is free to schedule The Space whenever Contractor does not have regularly scheduled classes. Contractor agrees to communicate their scheduling intentions including any changes early and often.* Failure to be clear about this will inevitably cause bad will.

Length of contract. Generally, Kids First does not offer a Contract with a defined ending. Philosophically, when possible, we prefer this approach: *This Agreement may be terminated by either party without cause on not less than 60 days advance written notice.* As well, you may want to include some language about immediate termination for 'just cause.'



Contractor must abide by Company enrollment and tuition procedures. Example: *To maintain the integrity of Company's enrollment procedure, Contractor understands that its enrollment and tuition procedures must abide with Kids First's enrollment and tuition procedures in all ways including but not limited to: Tuition cycles; Family Discounting Method; Summer discounting method; Money-Back Guarantee; Scholarship Procedure; Makeup procedures (some latitude may be possible upon request).*

The above represents nearly three decades of trial and error. I drafted our first independent contractor contract in 1988, and countless times over the decades, I have refined it as situations arose. I hope by capturing my experience you will have smoother sailing in your independent contractor relationships.

If you would like a PDF of the boilerplate Kids First Independent Contractor Contract and Agreement, please contact Jeff at: info@MetzgerBootCamp.com.

