

Section 5 – Contracts

The material in this Contracts section deals with general contract issues such as what is a contract, why is a contract needed, what types of contracts exist, what items should be included in contracts, what can be done to amend an existing contract, and what can be done when a dispute arises. Typical instances when you would use a contract include:

- Purchasing equipment (computers, organs, furniture)
- Services (painting, roofing, architects, remodeling)
- Using hotels or conference centers

I. Definition of a Contract

A contract is a promise or set of promises constituting an agreement between the parties that gives each a legal duty to the other and also gives each the right to seek a remedy for the breach of those duties. It is the total legal obligation that results from the parties' agreement and a promise or set of promises for the breach of which the law in some way recognizes a duty. In order to be legally binding, a contract must contain competent parties, subject matter, legal consideration (something of value given), mutual assent, and mutual obligation to perform.

One common misconception some have is that a contract must be written to be valid. Generally, oral agreements that have competent parties, subject matter, legal consideration, mutual assent, and mutual obligation to perform constitute legally binding contracts. There are, however, certain types of contracts that must be in writing in order to be legally binding, and, if you have any questions regarding whether a particular contract must be written, it is always best to consult an attorney in your jurisdiction. A written contract is generally preferable because the terms exist in "black and white" instead of merely in the parties' minds.

II. Function of a Contract

A clear written agreement between the parties lets each party know what to expect and avoids future disputes. Without such a written agreement, excess funds may be expended and future working relationships may be hindered.

III. Types of Contracts

As discussed above, a contract can be either oral or written. In addition, a contract can be express, promises communicated by language (i.e., A promises to paint B's garage in return for B's promise to pay A \$250), or implied, parties' conduct indicates that they assented to be bound (i.e., A fills his car with gas at B's gas station. There is an implied contract for the purchase and sale of gas.).

The following are examples of types of contracts churches may encounter:

1. **Purchase Orders** are generally used for items such as office supplies, printing, and computer equipment. Terms and conditions (which typically favor the seller) are preprinted on the form. Remember: You can negotiate these terms if you desire.
2. **Honorarium Letters** are used for services of limited duration rendered by an individual for which no set standard of quality is to be dictated and which does not include the creation of a copyrightable work. Examples of such services are one-time speeches, lectures, teaching engagements, and musical or other performances. (A sample form of honorarium letter is attached as Appendix A).
3. **Independent Contractor Agreements** are used for services rendered by an individual. For such an agreement to be entered into, the services performed by the individual must meet the common law rules which determine whether one has been properly classified as an independent contractor

as opposed to an employee. As stated by the Internal Revenue Service (IRS), “It is critical that business owners correctly determine whether the individuals providing services are employees or independent contractors. Generally, you must withhold income taxes, withhold and pay Social Security and Medicare taxes, and pay unemployment tax on wages paid to an employee. You do not generally have to withhold or pay any taxes on payments to independent contractors.” Misclassification of an individual as an independent contractor can give rise to a variety of liabilities.

No legal test applies in every situation when deciding on how to classify a potential worker. The IRS, Department of Labor (DOL) and certain States all utilize similar, yet different, analytical frameworks for such analysis.

In making the determination whether one is an independent contractor or an employee for the purposes of the IRS, all information which provides evidence of the degree of control and the degree of independence should be considered. Three categories of consideration will provide evidence regarding the degree of control and independence; the categories are: behavioral control, financial control, and the type of relationship of the parties. The IRS publication titled “Independent Contractor (Self-Employed) or Employee?” (<https://www.irs.gov/businesses/small-businesses-self-employed/independent-contractor-self-employed-or-employee>) provides excellent guidance on the topic and the employee/independent contractor test. Similarly, the Department of Labor’s fact sheet titled “Fact Sheet 13: Employment Relationship Under the Fair Labor Standards Act (FLSA)” provides detailed information on the test (<https://www.dol.gov/agencies/whd/fact-sheets/13-flsa-employment-relationship>). Lastly, a few states contain slightly different and occasionally more stringent employee/independent contractor classification rules (for example, California’s “ABC” test) and workers’ compensation rules.

Common situations where the independent contractor classification may be appropriate include:

- A specific, complex project where specialized knowledge or experience is necessary.
- A project of specific or short duration.
- Exigent circumstances such as meeting needs when an employee is on a prolonged leave of absence.

Some examples of services provided pursuant to such independent contractor agreements are: video production, manuscript acquisition and production or consulting services.

It is highly advisable to not treat the independent contractors as a regular employee and to utilize an independent contractor agreement that clearly establishes the workers as independent contractors. (See Sample Independent Contractor Contract Form attached at Appendix B).

4. **Specialized Contracts** are used for services rendered by individuals or companies. Specialized contracts may be drafted when no other form of agreement (i.e., purchase order, independent contractor agreement) fits the situation at hand. The types of services that may be provided under such an agreement are similar to the types of services that may be provided pursuant to an independent contractor agreement. (See Sample Company Contract Form attached as Appendix C).
5. **Hotel and Conference Contracts** are used for providing accommodations for meetings and conferences. These agreements are types of specialized agreements. Generally, the hotel or conference center will have a form contract that it will provide. However, you should review this form and negotiate any revisions you deem necessary for your event as well as the financial well-being of your council. For example, look for oppressive, one-sided cancellation, indemnity, and attrition clauses as well as clauses regarding overflow of rooms at off-site locations, clauses concerning the hotel or conference center's responsibilities pursuant to the Americans with Disabilities Act, and clauses requiring large advance deposits. Also be aware you may need separate transportation, catering, audiovisual, or parking contracts. Finally, given the current political and security situation review the contract's "Acts of God" clause, paying special attention to whether it may be canceled due to terrorist acts or government imposed state of emergencies.

IV. Terms to Include in Contracts

Certain items should generally be included in contracts. Examples of these items are:

1. the legal names of the parties and their addresses,
2. start and end dates,
3. whether the contract is renewable,
4. a clear statement of the services or product to be provided,
5. a clear indication of the cost of the service or product including any installment payment schedules,
6. a clear statement of the ownership of any copyrightable material,
7. a clear statement regarding whether any expenses shall be reimbursed and, if so, to what level,
8. the parties' taxpayer identification numbers (for a corporation this is its employer identification number),
9. a clear statement regarding termination,
10. a clear statement regarding warranties provided; and
11. a clear statement of how any potential disputes will be resolved (i.e., arbitration, mediation).

V. Amending an Existing Contract

If you have an existing contract and need to change some of its terms, an addendum to the existing contract is needed. It should clearly identify the original agreement it is amending (usually by title and date), identify the specific terms being amended, set forth the amendments in detail, specify that all items not amended remain in full force and effect, and be signed and dated by the parties. (*See* Sample Independent Contractor Contract Addendum attached as Appendix D and Request For Services of a Company Addendum attached as Appendix E).

VI. Dispute Issues

Sometimes, despite your best efforts, contract relationships go sour, and there is a dispute. It is at this point that a well-drafted, detailed contract can be your ally because you can look to it to see what each party's obligations are as well as what is to happen in the event of a dispute (i.e., Can you terminate? Can you require the other party to provide the partially completed product? Do you have an obligation to arbitrate the dispute? If you decide to resort to litigation, must it take place in a particular jurisdiction?). Generally, litigation should be a last resort option because it is costly both in terms of financial resources and human resources.

VII. Important Tax Information

Beginning with tax year 2020, the IRS requires that the payer (here, the church or mid council) issue a Form 1099-NEC to any nonemployee worker paid \$600 or more during the year. This would typically arise under an independent contractor agreement or an honorarium. The payer must provide a copy of the Form 1099-NEC to the independent contractor by January 31 of the year following payment. The payer must also send a copy of this form to the IRS by January 31. Form 1099 and the related instructions can be found on the IRS website (<https://www.irs.gov/forms-pubs/about-form-1099-nec>). Note: The 1099-NEC is not used for payments to corporations or to employees. The individual receiving the money should fill out a Form W-9 (U.S. citizen or resident alien) or a Form W-8 BEN (foreign person subject to withholding) and submit it to you so you have the correct information on file to issue the required 1099-NEC. Richard Hammar's *Church & Clergy Tax Guide* has additional information on this topic. IRS forms and instructions are available by telephone at 800-919-9835 and on the IRS's Forms, Instructions and Publications page (<https://www.irs.gov/forms-instructions>).

*Sample form of Honorarium Letter
(on letterhead of Church or Mid Council)*

(Current Date)

(Address of Recipient)

RE: Honorarium

Dear _____:

In order that we may provide you with an honorarium in the amount of _____ Dollars (\$ _____), **(total amount to be paid for services rendered by Recipient)** for your participation as _____ **(description of services provided, i.e., speaker, teacher)** in the _____ Presbyterian Church **(name of church)** (hereinafter “Church Corporation”) “_____” **(name of event Recipient will participate in)** on _____, 21 **(dates Recipient will perform the services)** please complete the certification appearing below. For your convenience attached is a pre-paid envelope for your handling **(optional)**.

(If applicable) Also as agreed, the Church Corporation will reimburse your expenses related to this event up to _____ Dollars (\$ _____) **(total amount to be paid for expenses related to the services being performed)**. All reimbursable expenses must be documented with receipts for amounts in excess of Ten Dollars (\$10).

I thank you in advance for your attention to this matter. Should you have any questions please call _____ at _____ **(name and telephone number of person in Office that can assist Recipient)**.

Sincerely,

Signature and Title of Church Corporation Officer

Attachment

By my signature I, _____ **(name of Recipient)**, hereby certify that this Honorarium is fully understood by me and is entirely satisfactory and that I am not on the payroll of the Church Corporation.

Signature

Date

Sample of Contract for an Independent Contractor

(Name of Church Corporation)

(Address)

This form is to be used for services to be performed by an *individual*. It is not to be used to contract services by a *corporation or other business association*. No work shall be performed until this contract is fully *completed and approved* by all parties. Any work performed prior to such date is at contractor's sole risk that payment will not be approved.

1. Name and Social Security # of Contractor: _____

2. Address & Phone No: _____

3. Trade, Business or Profession: _____

4. Other major clients (Do not include service as an employee): _____

5. Is the Contractor *in any way related* to any employee of Church Corporation (i.e., related by blood or marriage, business associate, partner, or employment relationship)? _____ If so, to whom and what relationship? _____
6. Church Corporation hereby contracts with Contractor, and Contractor agrees to perform the following services in accordance with the terms and conditions outlined in this Contract. If appropriate, attach a copy of any additional terms. This copy must be dated and initialed by both parties hereto and shall be incorporated herein by reference: _____
7. Will Church Corporation set Contractor's working hours; determine work site; or control the day-to-day details of the services? _____
8. Contractor shall begin work on _____, 21_____ and complete work by _____, 21_____.
9. Contractor will perform services in accordance with this contract at _____
10. Will Church Corporation provide Contractor's working space, materials, or equipment? _____
If yes, specify which: _____

11. Are expenses to be reimbursed by Church Corporation? _____ If yes, list type and maximum dollar amount for each expense: _____

12. Church Corporation shall pay Contractor a firm and fixed fee of \$ _____ for the satisfactory completion of all work. The total fee paid shall not exceed this amount and excludes any expenses. The fee shall be paid (check one only):

_____ (A) In a lump-sum payment on _____ or

_____ (B) In installment payments on the following schedule: _____

Signatures:

Contractor (Also Sign Page 2) Date

Church Corporate Officer Date

Title

*Sample of Contract for an Independent Contractor
Terms and Conditions*

Contractor and Church Corporation agree that Contractor shall perform the services described on PAGE 1 according to the following terms and conditions:

- A. **Termination.** This Contract may be terminated by either party upon ten (10) days' written notice. Upon termination, a written report of work completed and the status of the project, including all materials completed or in progress, research findings or other products previously produced by the Contractor, shall become the property of Church Corporation and shall immediately be delivered by Contractor to Church Corporation. In the event of cancellation of this Contract, any amounts previously advanced to Contractor for which satisfactory work has not been completed shall be refunded to Church Corporation, and Contractor shall release to Church Corporation all copies and all rights to all of the written materials produced under this Contract. Immediately upon any cancellation notice, Contractor shall not perform any further work, and Church Corporation shall not make any further payment.
- B. **Time Devoted by Contractor.** It is understood and agreed that Contractor will spend a sufficient number of hours in fulfilling the duties and obligations under this Contract. The particular amount of time may vary from day-to-day and week-to-week.
- C. **Payment.** The fee for the work is stipulated on PAGE 1 and is payable according to the terms specified therein.
- D. **Independent Contractor.** Both Church Corporation and Contractor understand and agree that Contractor is at all times and shall remain an independent contractor in the performance of the duties under this Contract and shall not be considered an agent, employee, partner of, or joint venturer or joint employer with Church Corporation. Contractor hereby acknowledges that she/he is an independent contractor and has no authority to represent, obligate, or bind Church Corporation in any manner or to any extent. Contractor is to do work according to Contractor's best judgment and methods, without being subject to the control of Church Corporation except as to the quality of the final product. Because Church Corporation will not control the manner of performing services, it will not be liable for the negligence of Contractor or Contractor's employees or agents, and Contractor will indemnify Church Corporation for any claims resulting therefrom, including attorney's fees. Contractor will determine the time and place for doing the work consistent with the responsibilities described. Except as otherwise provided on PAGE 1, Contractor will provide the required working space, equipment, materials, and assistance at Contractor's own expense. Under this Contract, there will be no deductions for withholding income or Social Security taxes, and Contractor shall file all applicable tax returns and pay all taxes due thereon. Church Corporation will not obtain Worker's Compensation Insurance or State Unemployment Insurance for Contractor or Contractor's employees. Contractor will not be eligible for, or entitled to, any benefits normally provided for employees of Church Corporation.
- E. **Confidential Information.** Contractor agrees that any information received by Contractor during any activities under this Contract, which concerns the personal, financial, or other affairs of Church Corporation, will be treated by Contractor in full confidence and will not be revealed to any other persons, firms, or organizations.
- F. **Indemnity.** Contractor hereby agrees that all work and services performed and all personnel provided and/or hired under this Contract (with exception of employees of Church Corporation) shall be covered by Contractor's worker's compensation insurance and general liability insurance, and that

Contractor shall be solely responsible for and shall indemnify, hold harmless, and defend Church Corporation with respect to any and all actions, suits, causes of action, or damages based upon or arising out of any work performed hereunder by Contractor or any person hired by Contractor.

- G. **Approvals and Changes.** Church Corporation shall have the right of review, and approval, or disapproval at all stages of the services to be delivered under this Contract.
- H. **Title/Ownership.** Contractor understands and agrees that title to all items prepared and produced by Contractor for Church Corporation under this Contract shall be solely the property of Church Corporation, and Contractor shall have no right or interest therein. Further, all materials of whatever kind are works made for hire under federal law; all rights for publication will be held by Church Corporation; and the copyright will be owned by Church Corporation. Without limiting the generality of the foregoing, Church Corporation shall own all rights in and to all items prepared and any programs, products, and files that result or are derived therefrom. As applicable, Contractor understands and authorizes his or her voice and/or image to be projected on the audio/video recordings produced for Church Corporation under this Contract.
- I. **Entire Agreement.** This Contract represents the entire understanding and agreement between the parties with respect to the subject matter hereof and supersedes all previous negotiations, representations, and writings between the parties relating hereto. No modification, alteration, waiver, or change in any of the terms of this Contract shall be valid or binding upon the parties hereto unless expressed in writing signed by both parties. This Contract shall be deemed to be fully understood, satisfactory, and in effect when signed by all parties indicated below but shall not be binding on Church Corporation until approved by its appropriate officials.
- J. **Governing Law and Venue.** It is understood and agreed by the parties that this Contract shall be construed in accordance with the laws of _____ (state where Church Corporation is located) and that any litigation in connection with this Agreement shall be determined by a court proceeding in _____ (city and state where Church Corporation is located).

These Terms Have Been Read and Agreed to By:

Contractor Date

Church Corporate Officer Date

Title

*Sample of Contract for an Independent Contractor
Request for Services of a Company*

(Name of Church Corporation)

(Address)

This form is to be used for services to be performed by a company. It is not to be used to contract services by an individual. No work shall be performed until this contract is fully completed and signed by all parties. Any work performed prior to such date is at company's sole risk that payment will not be approved.

1. Company Name _____ (“Company”)

2. EIN # _____

3. Full Address & Phone No _____

4. Trade, Business or Profession: _____

5. Other major clients: _____

6. Church Corporation hereby contracts with Company, and Company agrees to perform the following services in accordance with the terms and conditions outlined in this Contract. If appropriate, attach a copy of any additional terms which must be dated and initialed by both parties hereto and shall be incorporated herein by reference: _____

7. Company shall begin work on _____, 21_____ and complete work by _____, 20_____

8. Company will perform services in accordance with this Agreement at _____

9. Will Church Corporation provide Company's working space, materials or equipment? _____ If so, specify which: _____

10. Are expenses to be reimbursed by Church Corporation? _____ If yes, list type, maximum dollar amount for each expense: _____

11. Church Corporation shall pay Company a firm and fixed fee of \$_____ for all work satisfactorily completed. The total fee paid shall not exceed this amount and excludes any expenses. The fee shall be paid (check one only):

_____ (A) In a lump-sum payment on _____; **or**

_____ (B) In installment payments on the following schedule: _____

SIGNATURES (also print name):

Church Corporation

Date

Company (Also Sign Part 2)

Date

TERMS AND CONDITIONS - Part 2 of 2

Company and Church Corporation agree that Company shall perform the services described in PART 1 according to the following terms and conditions:

- A. **Termination.** This Contract may be terminated by either party upon ten (10) days' written notice. Upon termination, a written report of work completed and the current status of the project, including all materials completed or in progress, research findings or other products previously produced by the Company, shall become the property of Church Corporation and shall immediately be delivered by Company. In the event of termination of this Contract, any amounts previously advanced to Company for which satisfactory work has not been completed shall be refunded to Church Corporation, and Company in turn shall release to Church Corporation all copies and all rights to all of the written materials produced under this Contract. Immediately upon any termination, Company shall not perform any further work, and Church Corporation shall not make any further payment.
- B. **Time Devoted by Company.** It is understood and agreed that Company will spend a sufficient number of hours in fulfilling the duties and obligations under this Contract. The particular amount of time may vary from day-to-day and week-to-week.
- C. **Payment.** The fee for the work is stipulated in PART 1 and is payable according to the terms specified therein. The fee is fixed and firm.
- D. **Independent Contractor.** Both Church Corporation and Company understand and agree that Company is, at all times and shall remain, an independent contractor in the performance of the duties under this Contract and shall not be considered an agent, employee, partner of, or joint venturer or joint employer with Church Corporation. Company hereby acknowledges that it is an independent contractor and has no authority to represent, obligate, or bind Church Corporation in any manner or to any extent. Company is to do work according to Company's best judgment and methods without being subject to the control of Church Corporation, except as to the quality of the final product. Because Church Corporation will not control the manner of performing services, it will not be liable for the negligence of Company or Company's employees or agents, and Company will indemnify Church Corporation for any claims resulting therefrom, including attorneys' fees. Company will determine the time and place for doing the work consistent with the responsibilities described. Except as otherwise provided in PART 1, Company will provide the required working space, equipment, materials, and assistance at Company's own expense. Under this Contract, there will be no deductions or withholding of income or Social Security taxes, and Company shall file all applicable tax returns and pay all taxes due thereon. Church Corporation will not obtain Worker's Compensation Insurance or State Unemployment Insurance for Company or Company's employees. Company will not be eligible for, or entitled to, any benefits normally provided for employees of Church Corporation.
- E. **Confidential Information.** Company agrees that any information received by Company during any activities under this Contract, which concerns the personal, financial, or other affairs of Church Corporation, will be treated by Company in full confidence and will not be revealed to any other persons, firms, or organizations.
- F. **Indemnity.** Company hereby agrees that all work and services performed and all personnel provided and/or hired under this Contract (with exception of employees of Church Corporation) shall be covered by Company's worker's compensation insurance and general liability insurance and that Company shall be solely responsible for and shall indemnify, hold harmless, and defend Church Corporation with respect to any and all actions, suits, causes of action, or damages based upon or arising out of any work performed hereunder by Company or any person hired by Company.
- G. **Approvals and Changes.** Church Corporation shall have the right of review and approval or disapproval at all stages of the services to be delivered under this Contract.
- H. **Title/Ownership.** Company understands and agrees that title to all items prepared and produced by Company for Church Corporation under this Contract shall be solely the property of Church Corporation, and Company shall have no right or interest therein. Further, all materials of whatever kind are works made for hire under federal law; all rights for publication will be held by Church Corporation; and the copyright will be owned by

Church Corporation. Without limiting the generality of the foregoing, Church Corporation shall own all rights in and to all items prepared and any programs, products, and files that result or are derived therefrom.

- I. **Entire Agreement.** This Contract represents the entire understanding and agreement between the parties with respect to the subject matter hereof and supersedes all previous negotiations, representations, and writings between the parties relating hereto. No modification, alteration, waiver, or change in any of the terms of this Contract shall be valid or binding upon the parties hereto unless expressed in writing signed by both parties. This Contract shall be deemed to be fully understood, satisfactory, and in effect when signed by all parties indicated below but shall not be binding on Church Corporation until approved by its appropriate officials.
- J. **Governing Law and Venue.** It is understood and agreed by the parties that this Contract shall be construed in accordance with the laws of _____ (insert state of incorporation of Church Corporation) and that any litigation in connection with this Agreement shall be determined by a court proceeding in _____, _____ (insert city and state of Church Corporation).
- K. **Expenses.** If applicable, a copy of Church Corporation’s travel and reimbursement policies and guidelines shall be provided upon request and such policies and guidelines are hereby fully incorporated. Church Corporation shall not reimburse Company for charges for movie rentals or alcoholic beverages.

THESE TERMS HAVE BEEN READ AND ARE AGREED TO BY:

Company

Date

Sample of Contract Addendum for an Independent Contractor

ADDENDUM

THIS FIRST ADDENDUM is entered into this *(insert Day)* day of *(insert Month)*, 20__ in accordance with that certain Independent Contractor Contract (hereinafter "Contract") dated *(insert Date)*, 20__ by and between *(insert name of Church Corporation)* of *(insert address)* (hereinafter "Church Corporation") and *(insert individual's name)* of *(insert individual's address)* (hereinafter referred to as "Contractor").

1. Both Church Corporation and Contractor agree that paragraph number *(insert number (or letter) of Contract's paragraph that is to be amended)* of the Contract is hereby amended, whereby *(insert the change to be made)*
 - Examples of Changes:
 - Contractor will provide the following additional services to the Church Corporation: _____
 - Contractor shall complete the work by *(insert new date)*.
 - Church Corporation shall pay Contractor up to an additional *(insert amount of additional payment)* for the additional services. The total fee paid under the Contract shall not exceed *(insert the new total amount to be paid under this contract)*.
2. Etc. Both Church Corporation and Contractor agree that paragraph number *(insert number and/or title of Contract's paragraph that is to be amended)* of the Contract is hereby amended, whereby *(insert the change to be made)*
3. Etc.

All other provisions of the Contract shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this First Addendum to be duly executed the date above-stated.

 Insert Name of Contractor
 ("Contractor")

 Insert Name of Church Corporation
 ("Church Corporation ")

 Date

 Date

Request for Services of a Company - Addendum

ADDENDUM

THIS FIRST ADDENDUM is entered into this *(insert Day)* day of *(insert Month)*, 20__ in accordance with that certain Request for Services of a Company contract (hereinafter "Contract") dated *(insert Date)*, 20__ by and between *(insert name of Church Corporation)* of *(insert address)* (hereinafter "Church Corporation") and *(insert Company's name)* of *(insert Company's address)* (hereinafter referred to as "Company").

1. Both Church Corporation and Company agree that paragraph number *(insert number (or letter) of Contract's paragraph that is to be amended)* of the Contract is hereby amended, whereby _____ *(insert the change to be made)*.

- Examples of Changes:

- *Company will provide the following additional services to the Church Corporation:*

- *Company shall complete the work by (insert new date).*

- *Church Corporation shall pay Company up to an additional (insert amount of additional payment) for the additional services. The total fee paid under the Contract shall not exceed (insert the new total fee amount to be paid under this contract).*

2. Etc. Both Church Corporation and Company agree that paragraph number *(insert number and/or title of Contract's paragraph that is to be amended)* of the Contract is hereby amended, whereby _____ *(insert the change to be made)*.

3. Etc.

All other provisions of the Contract shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this First Addendum to be duly executed the date above-stated.

Insert Name of Contractor
("Contractor")

Insert Name of Church Corporation
("Church Corporation ")

Date

Date