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National Law Firm

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Why are Service Trust Agreements called Independent Contractors Agreements?

A Service Trust Agreement is a type of Independent Contractors Agreement.

Monday, 26 February 2020

Professionals Consolidate
193 Sky Place
Bellingen NSW 2454
Australia

Do not use the expression 'Service Agreement' in any of your documents. Rather, the Service Agreement needs to look and feel like an independent business. It must truly be a standalone business.

Independent Contractor Agreement

Dear Principal,

Thank you for instructing

How to print your document

When you are satisfied that

1. Download the PDF
 2. Print the PDF
 3. Print single sided
 4. Once signed keep
- (However, do not

This Agreement is between

Support Holdings Pty Ltd
123 Beach Street, Port M

(Contractor)

- Press the **START FOR FREE** button to build this Independent Contractors Agreement (including a Service Trust Agreement): <https://legalconsolidated.com.au/service-trust-agreement-intro/>
- Answer the questions. Read the hints. Educates and Empowers.
- Telephone us to review your answers. But start the building process. It answers most questions.
- Select **LOCK AND BUILD**. Enter your credit card details.
- Within seconds, you get our cover letter and finished document.

Liability limited by a scheme approved under Professional Standards Legislation

and

Professionals Consolidated Pty Ltd ACN 123 456 789
193 Sky Place, Bellingen NSW 2454, Australia

(Principal)

Read through the document to ensure it complies with what you want to achieve.
When you are satisfied with the document, print out two copies of the document:

1. Present them to the Contractor to sign.
2. The Contractor and you sign and retain a copy for your records.

Who do we act for?

We confirm that Legal Consolidated only acts for the Principal. And when there is more than one Principal, we only act for the first named Principal as appearing in the Agreement. Further, we only act for the Principal in their personal capacity. Where the Principal is acting for another person or as a trustee then we expressly do not act for that person or trust.

All such persons, including the Contractor, need to seek their own independent legal advice, from another law firm.

No legal advice

The laws on employment law and contractors change on an ongoing basis. We are not providing you with any advice, including employment law, contract law, taxation, Fringe Benefit Tax, Workers Compensation or superannuation advice. Further, we have performed no due diligence or given advice as to the nature of your relationship with the Contractor, or your obligations or the work to be performed by the Contractor.

You need to seek your own advice on such matters.

The information below is of a general nature only. You should speak with your lawyer, accountant and financial planner before you sign this agreement.

What is the difference between an Independent Contractor/Agent and an employee?

An independent contractor acts on behalf of the principal. This is pursuant to a contract for services. In contrast, an employee is employed in the business of the employer, under a contract of service. An employee is subject to the direction and control of the employer.

In practice it is often difficult to distinguish between a contractor and an employee. This is especially where the contractor's business is wholly or principally concerned with your business. It is easier to prove an Independent Contractor's relationship where the contractor contracts to many principals. Also, various statutes extend the strict definition of 'employee' to include legitimate independent contracts.

The classic test for the existence of an employment relationship was stated by Bramwell LJ in *Yewens v Noakes*: 'A servant is a person subject to the command of his master as to the manner in which he shall do his work.'

This 'control' test was adopted by the High Court in *Humberstone v Northern Timber Mills* and in *Federal Comm of Taxation v J Walter Thompson (Aust) Pty Ltd*:

“The duties to be performed may depend so much on special skill or knowledge or they may be so clearly identified or the necessity of the employee acting on his own responsibility may be so evident, that little room for direction or command in detail may exist. But that is not the point. What matters is lawful authority to command so far as there is scope for it. And there must always be some room for it, if only in incidental or collateral matters.”

Multi-factor (Common Law) test

Telling the difference between an independent contractor and an employee is complex. There's no single rule that determines the question. The courts have adopted a multi-factor test to determine whether a person is an employee or independent contractor. We seek to comply with the multi-factor test in *Hollis v Vabu Pty Ltd* [2001] HCA 44 and *Joshua Klooger v Foodora Australia Pty Ltd* [2018] FWC 6836.

How do I reduce the chance of an “employment” relationship?

To help reduce the chance of an employment relationship:

1. the independent agent should not be subject to the principal's control to such a degree to make the principal a 'master';
2. the contract should be inconsistent with its being a contract of service (your Independent Contractor Agreement is designed to do this);
3. the contract should be framed so as to require the contractor to produce a result, rather than to provide personal service;
4. the contractor should be permitted to delegate (once again this is built into your Independent Contractor agreement);
5. where the principal is concerned as to the manner in which the contractor may perform the services, the contract should operate by way of restrictive covenants, rather than by direction or control;
6. the contractor should be required to take out and pay for insurance and tax payment arrangements (your Independent Contractor Agreement is designed to do this); and

Additional circumstances where Independent Contractors are deemed “employees”

Legislation deems even legitimate independent contractors to also be 'employees'. This imposes obligations upon the principal who is “deemed” an “employer”:

Workers Compensation

Workers Compensation, unlike certain other areas of industrial law, does not rely on the existence of an employment relationship at law. Therefore, while there is a legitimate principal/contractor relationship you are still deemed an employer for Workers Compensation purposes. State and Territorial legislation vary. However, a common element of such legislation is to deem a contractor to be an employee

of the principal. This is where such work carried out by the contractor is not incidental to a trade or business regularly carried on by the contractor on his or her own behalf. Secondly, State and Territorial legislation deem some contract salespersons to be 'employed' when they are paid on commission.

If any such "employer" has not taken out Workers Compensation insurance, then the Independent Contractor Agreement should expressly require your contractor to take out the necessary insurance.

Our Independent Contractors agreement expressly states that the Contractor must have sufficient Workers Compensation

Pay-roll tax

Each State has pay-roll tax. At some point your business grows so large that you are employing so many people that the relevant State law applies a tax on the total amount of payroll that you pay. This is getting too big. Often a business will decide not to grow and pay this unpopular State tax.

To avoid pay-roll tax the business may start a separate business. The second business may be in the form of an Independent Contractor. The State law may intervene and still "group" the Principal Contractor's businesses together as one combined employer. They can be grouped on a variety of bases, including:

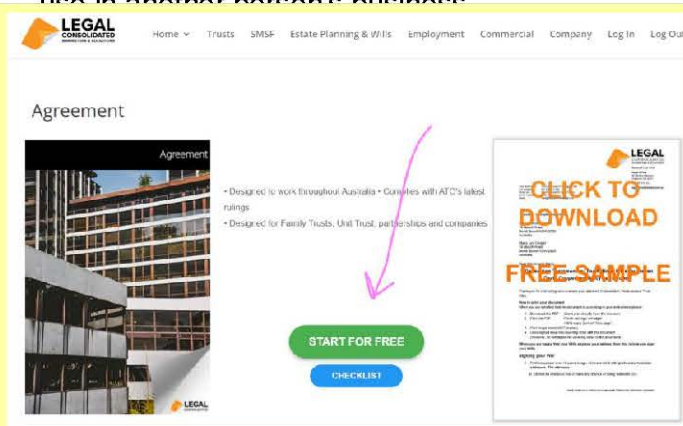
1. related corporations within the meaning of the *Corporations Law*;
2. persons who carry on businesses subject to common control; and
3. employers who provide or agree to provide the services of employees for use in another person's business.



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Depending how you answer the questions our cover letter and the legal document change.

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*Accountants, financial advisers,
lawyers and other professionals can
feature their company logo on our
legal documents.*

Independent Contractor Agreement

Support Holdings Pty Ltd

Professionals Consolidated Pty Ltd

This Agreement of Contract for Services is between
Support Holdings Pty Ltd ACN 123 456 789
123 Beach Street, Port Melbourne VIC 3207, Australia

(Contractor)

AND

Professionals Consolidated Pty Ltd ACN 123 456 789
193 Sky Place, Bellingen NSW 2454, Australia

(Principal)

Background

- A. The Principal carries on the business. In particular, the business is a business of Professional services (**Principal's business**)
- B. The Contractor carries on a business. In particular, the business is a business of Support services (**Contractor's Business**)
- C. The Contractor seeks to provide services to the Principal under this agreement.
- D. The law firm preparing this Agreement only acts for more than one Principal, it only acts for the Principal under this Agreement. Further, the law firm only acts for the said Principal in their personal capacity. Where the Principal is acting for another person or as a trustee then the law firm expressly does not act for that person or trust. All such persons, including the Contractor, need to seek their own independent legal advice, from another law firm.

This agreement states:

1 What is the Contractor to do?

The Contractor performs such Work from the Start Date as is assigned to it from time to time by the Principal in a skilful, expeditious and professional manner for the Remuneration. The Contractor warrants that it is duly qualified to and will perform the Work in a careful, skilful, diligent and efficient manner.

If, from time to time, the Contractor is required to be licensed, registered, hold a practice certificate or have insurance specific to them, or their trade or profession before they can undertake certain work, then they will not undertake any such work, or hold out to be available for such work, until they obtain such licence, registration, practice certificate and insurance.

A Service Trust Agreement is an Independent Contractors Agreement.

The service trust is contractually bound to provide services to the 'main' business.

As you start the building process you will see how the Independent Contractors Agreement becomes a dedicated Service Trust Agreement.

Q: Are all Service Trust Agreements a type of Independent Contractors Agreement?

A: Correct. By their very nature, the Contractor (service trust business) provides products and services to another business called the Principal.

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A: Correct. By their very nature, the Contractor (service trust business) provides products and services to another business called the Principal.

2 Work

To undertake the following tasks and to time by the Principal, its agents or

1. To provide service support to support
2. Accounting services
3. Preparation of financial statements and
4. Preparation of financial statements and
5. Planning and advice.
6. Produce and
7. Provide training and support to the
8. Provide ph
9. Leasing.
10. Marketing, corporate design and i
11. Liaison with printing companies to
12. Stationary (with the ability to do p
13. Industrial relations and advocacy.
14. Plant and equipment and telephor
15. time to time.
16. Secretarial, administrative and oth
17. Stationery and other consumables
18. Premises (premises) as provided
19. Debt collection services (debt coll
20. to time.
21. Such other facilities and services
22. exchange of emails.

Independent Contractors Agreement vs Service Trust Agreement

A Service Trust Agreement is an Independent Contractors Agreement ('contract for services').

The principal (business) requests and pays for the services. The person providing the services is the contractor (service trust). The agreement between the principal and contractor is the Service Trust Agreement.

The contractor is 'independent'. The contractor is not an employee of the principal (business).

Like all independent contractors, the service trust business is a separate standalone business. As a Contractor, it provides services and products to a separate business (the Principal).

3 Who maintains the Contractor's equipment

Where the Contractor is required to provide or utilise equipment, the Contractor warrants that such equipment is suitable for the Work and is maintained by the Contractor in good working condition. All costs are borne by the Contractor.

4 Who controls the Contractor and its employees?

The Contractor supplies the Work as an independent contractor. The Contractor is not in partnership, or in a joint venture or an employee, servant or agent of the Principal.

Nothing in this agreement is construed as to constitute the Principal to be an employer and the Contractor (or its own employees and agents) to be an employee. It is the express intention of the parties that such a relationship is denied.

Nothing in this agreement is construed as to constitute either party to be the agent of the other. It is the express intention of the parties that such a relationship is denied.

Upon written notice to the Contractor, the Principal can demand that any of the Contractor's employees and agents cease to perform the Work. In such event the Contractor provides the services of an alternative person. The parties acknowledge that the Contractor only (not the Principal):

- 4.1 Is able to delegate duties for the contracted services
- 4.2 Is required to make its own insurance and tax payments
- 4.3 Controls and is responsible for itself and its employees, and does not transfer an employer/employee obligation onto the Principal. The Contractor assumes all such obligations and pays all such costs and expenses, which are not to be harmful. Further, the Contractor states that it has no liability (such as Workers Compensation) for itself and any of its employees or agents connected with the Principal's business. The Contractor provides all insurance to the principal at the Principal's request and the Contractor indemnifies the Principal and pays any additional costs or expenses arising from grouping.

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There is a direct client relationship between us and your client.

5 Start Date

As mutually agreed by the parties including via an exchange of emails.



6 Remuneration

As agreed by both parties from time to time.

7 Mode of Payment

The Remuneration is paid calendar monthly in arrears unless agreed otherwise.

8 What does the Contractor keep confidential

Except as authorised by the Principal in writing or required for the performance of the Work, the Contractor does not (directly or indirectly) disclose to any third party such confidential information (reasonably regarded as confidential information not in the public domain or known to the Contractor's clients).

- 8.1 technical data, research and development information, any trade secrets, confidential dealing, operation or process
- 8.2 any information concerning the organisation, business, financial affairs of the:
 - 8.2.1 business records, client records, information, notes, products, know how, trade secrets, other data and secret information
 - 8.2.2 Principal or any related corporation or associate of the Principal
 - 8.2.3 names and details of clients, suppliers and agents or employees and employees details

For example, the hiring of staff, accounting, nurses, receptionist and marketing can be profit centres for another business. This other business is called a Service Trust.

- 8.2.4 clients of any related corporation or associate of the Principal
- 8.2.5 accounting procedures or financial information

(collectively **Confidential Information**)

The Contractor keeps with complete secrecy all Confidential Information and does not use (or attempt to use) any Confidential Information. The Contractor does not use (or attempt to use) any Confidential Information (directly or indirectly) cause injury to the Principal (or the Principal's agents) or may be likely to do so. This restriction continues after the Work Agreement terminates. This restriction continues after this agreement terminates.

The Principal and its agents agree to keep confidential the Contractor's Confidential Information (**Contractor's Confidential Information**) being all information, including current or future business interests, methodology or affairs of the Contractor, or related parties or any person or entity with which it deals or is connected, without limitation, all:

- 8.3 technical data;
- 8.4 research and development information;
- 8.5 business records, compliance processes and procedures, trade secrets, procedures, copyright documents, electronic communications, software supplied under the agreement, client records, information, know how, trade secrets, or other data;
- 8.6 accounting procedures or financial information;
- 8.7 names and details of clients, suppliers and agents;
- 8.8 employee details; and
- 8.9 secret information

reasonably regarded as confidential, being information not in the public domain or known to competitors' Contractor(s).

9 Employees, suppliers and clients are not to be interfered with

No party will through itself or another person under the direction of that party (such as a family member or company under that parties' control)

- 9.1 solicit, canvass, induce or encourage any person or agent of another party to leave the employment of the other party;
- 9.2 solicit, canvass or approach any person or agent of the other party, with a view to establishing a custom of that person or entity in a business of a similar or related nature to the other party's business;
- 9.3 interfere or seek to interfere, directly or indirectly, with the other party and its clients, employees and agents of the parties' business

A service trust is often a:

1. Family Trust
2. Unit Trust
3. Company

Build these 3 types of service trusts on our website.

<https://legalconsolidated.com.au/service-trust-agreement-intro/>



Principal business owners, often, cannot share profit with their spouse and children.

However, there is plenty of work in the business that does not necessarily relate to its operation.

This is where the Service Trust Agreement can help.

10 Does the Principal retain ownership of records and intellectual property?

All records and documents (paper, electronic or otherwise) made, created, invented or acquired by the Contractor, in the Work, are the Principal's property. The Contractor collects up and documents to the Principal when the agreement is terminated on demand.

Further, all intellectual property (including software) created pursuant to or in satisfaction of this agreement or the Work by such intellectual property using the Contractor's resources are the exclusive property of the Principal.

Further, the Contractor assigns, under this agreement, to the Principal, including, without limitation, copyrights, patents, trade secret rights and other property rights associated with any ideas, concepts, techniques, inventions, works of authorship, confidential information or trade secrets:

- (i) developed or created by the Contractor, solely or jointly with the Principal, in the course of performing the Work for or on behalf of the Principal;
- (ii) that the Contractor conceives, develops, discovers or makes during that relate to the Work and the actual or demonstrated or development of the Principal; and
- (iii) that the Contractor conceives, develops, discovers or makes during or after the termination of the agreement that are made use of any of the equipment, facilities, supplies, know how or trade secrets of any work the Contractor performs for the Principal

11 How does the Contractor protect the

The Contractor:

11.1 Acts with the utmost good faith in all of its dealings with the Principal

11.2 Does not intentionally do anything which is or may be harmful to the Principal

11.3 Reports promptly all reasonable information, explanations and details of any matter the Principal requires or as to which the Principal should properly be advised

The Contractor is responsible for and indemnifies the Principal for any damage or injury to persons or property caused by the Contractor. All claims, damages, costs and expenses payable, suffered or incurred by the Principal in connection with any such loss, damage or injury is made good at the Contractor's expense. Such loss, damage or injury is deducted from the value of Remuneration due or becoming due to the Contractor.

Any additional expenses are to be advised by the Contractor before they are incurred and are to be mutually agreed upon.

Service Trust Agreements are also popular for:

- 1. Professionals such as engineers, dentist, lawyers and accountants that cannot otherwise share profit easily.*
- 2. Asset protection – one entity holds the high-risk activities (employees, tenancies & advice) the other keeps all the 'good' assets (land, intellectual property) in a low-risk entity.*
- 3. Companies wanting to liberate wealth and move profit into a trust structure. The service trust often holds appreciating assets. These include real estate, franchises, copyright and 'leased out' business names.*

12 Bound by the law?

The Contractor complies at its own cost and expense with all laws, ordinances or orders as it affects or applies to the Contractor performed by the Contractor. Further, the Contractor indemnifies against all actions, costs, charges, claims and demands arising from non-compliance.

This agreement is subservient to any compulsory or binding laws or mandatory awards that apply. If any laws force the Principal to work or pay for Workers Compensation or any other requirements, the Contractor complies. However, all additional costs, as far as the law allows, are borne by the Contractor. Further, the Contractor, as far as the law allows, shall keep the Principal harmless in all such matters.

The service trust then distributes the 'profit' it makes. This profit is from running the business (service trust).

The profit goes to the non-working spouse, children and other taxpayers at a lower tax rate.

13 How much notice is needed to end this agreement?

This agreement continues in force until the Termination Date, or until the other one month's notice in writing.

*Build service trust agreement
<https://legalconsolidated.com.au/service-trust-agreement-intro/>*

14 Can the Principal end the agreement without notice?

The Principal may terminate this agreement at any time and without prior notice. This is the case if the Contractor is guilty of any dishonesty, serious misconduct or serious neglect of duty. This is also the case if the Contractor is in breach of any of the terms of this agreement or refuse to comply with any reasonable instructions or directions given by the Principal.

15 What happens if one of the parties becomes insolvent?

Either party may end the agreement in writing if any of the following:

Service Trust Agreement is a type of Independent Contractors Agreement

15.1 For a corporation:

- 15.1.1 an application is made to a court for an order or an order is made that the corporation can be wound up
- 15.1.2 an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of that corporation or one of them is appointed, whether or not under an order
- 15.1.3 a meeting is convened or a resolution is passed to appoint an administrator for that corporation
- 15.1.4 the corporation proposes or enters into an agreement of company arrangement with or for the benefit of all or any class of its creditors without the consent of the other party

- 15.1.5 a resolution is passed to wind up or dissolve that corporation
- 15.1.6 the corporation is dissolved
- 15.1.7 the corporation is or becomes insolvent within the meaning of that expression in subsection 95A(2) of the *Corporations Law* or any of the events mentioned in paragraphs (a) to (f) inclusive of subsection 459C(2) of the *Corporations Law* occurs in respect of the corporation
- 15.1.8 the appointment of an administrator in respect of that corporation or a receiver or manager or receiver and manager of the whole part of the assets and undertaking of the corporation

15.2 For an individual:

- 15.2.1 the individual proposes or enters into a agreement of arrangement, agreement of assignment or an assignment for the benefit of its creditors or any class of creditors
- 15.2.2 the individual commits an act of bankruptcy

16 Can the Contractor assign its rights under this agreement?

The Contractor may not assign its rights under this agreement without the written consent.

17 How is the agreement varied?

This agreement is the entire agreement, excepting any conditions, terms, annexures, or any terms which may be agreed by all parties to this agreement:

- writing, signed and witnessed by the parties; or
- by an exchange of emails

18 What happens if part of this agreement is held to be unenforceable?

If the whole or part of a provision of this agreement is held to be invalid or unenforceable in any jurisdiction it is severed from this agreement. It is severed to the extent of such invalidity or unenforceability. However, this does not affect the validity and enforceability of the remainder of the agreement.

19 How can one party give notice to the other?

Any notice given for any purpose under this agreement is served on the Contractor or Principal if delivered or posted to the respective addresses or by email.

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There is a direct client relationship between us and your client.



20 Are the Contractor's staff and assigns also bound?

A reference to a party to this agreement includes its agents, employees and assigns.

21 What law applies to the agreement?

This agreement is governed and construed according to the laws of the state in which the Principal resides in, as evidenced by the Principal's address in this agreement. Each party irrevocably submits unconditionally to that jurisdiction and of all courts competent to hear appeals for any legal action, suit of proceeding arising from this agreement.

SIGNED on the day of 20

As Contractor

Signed by an authorised officer of

Support Holdings Pty Ltd ACN 123 456 789
123 Beach Street, Port Melbourne VIC
3207, Australia



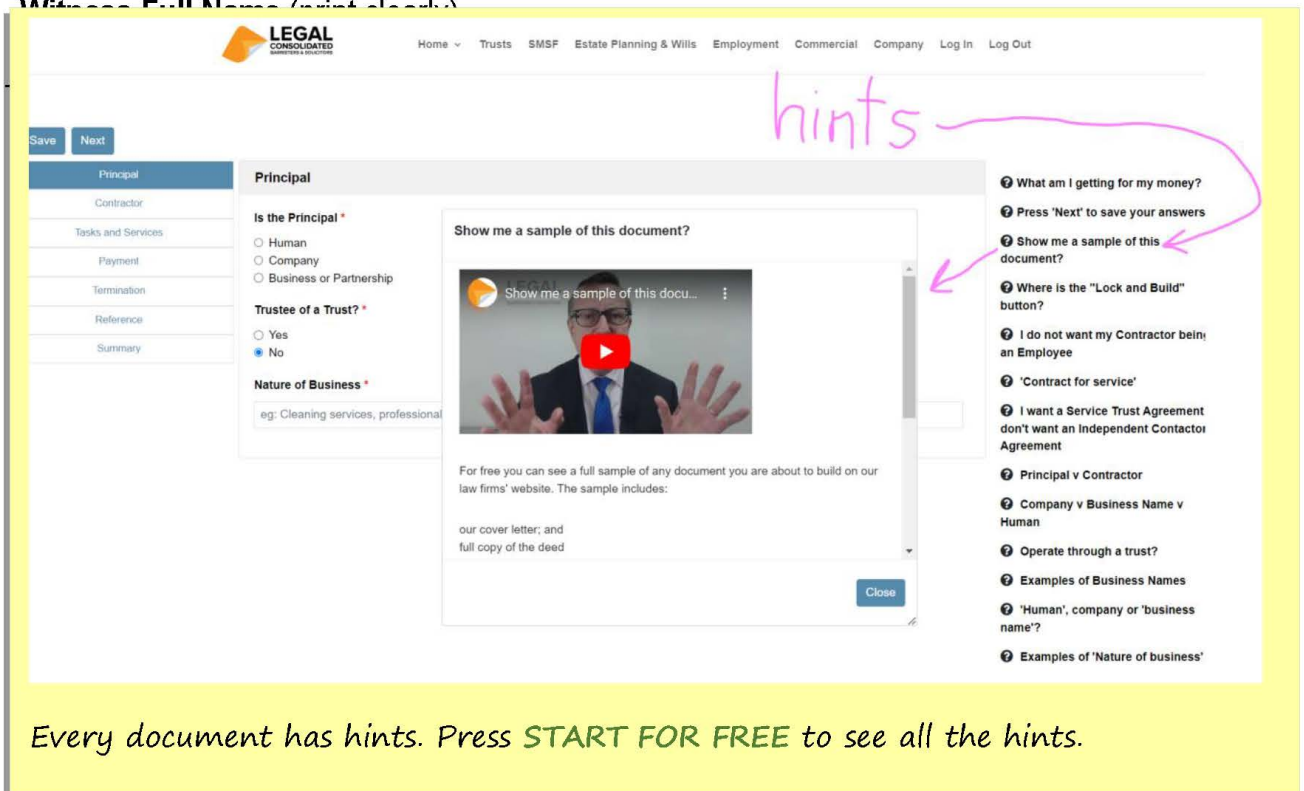
in front of:



Witness Signature



Witness Full Name (print clearly)



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Save Next

Principal

Contractor

Tasks and Services

Payment

Termination

Reference

Summary

Principal

Is the Principal *

Human

Company

Business or Partnership

Trustee of a Trust? *

Yes

No

Nature of Business *

eg: Cleaning services, professional

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our cover letter; and
full copy of the deed

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hints

- What am I getting for my money?
- Press 'Next' to save your answers
- Show me a sample of this document?
- Where is the "Lock and Build" button?
- I do not want my Contractor being an Employee
- 'Contract for service'
- I want a Service Trust Agreement don't want an Independent Contactor Agreement
- Principal v Contractor
- Company v Business Name v Human
- Operate through a trust?
- Examples of Business Names
- 'Human', company or 'business name'?
- Examples of 'Nature of business'

Every document has hints. Press **START FOR FREE** to see all the hints.

As Principal
Signed by an authorised officer of

Professionals Consolidated Pty Ltd ACN
123 456 789
193 Sky Place, Bellingen NSW 2454,
Australia



In front of:



Witness Signature

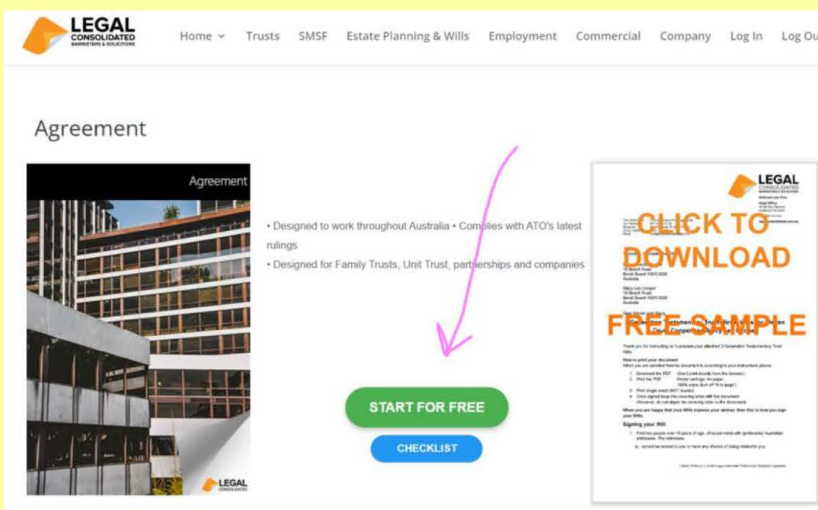


Witness Full Name (print clearly)



Witness Address

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