

INDEPENDENT CONTRACTOR DECLARATION

Definition

In this declaration, except where a different interpretation is necessary in the context, the words and expressions set out below shall have the following meanings:

"I" means the independent contractors/partners who have signed the service agreements with **HUNGRYPANDA AU PTY LTD**

"Client" means **HUNGRYPANDA AU PTY LTD**

Declaration

The Fair Work Act 2009 and The Independent Contractors Act 2006 are the main legislation governing the majority of independent contractors in Australia. The Independent Contractors Act 2006 in conjunction with the Fair Work Act 2009 protect the rights and entitlements of independent contractors. The distinction between employees and independent contractors in Australia is determined at common law by applying Multi – factor test (listed on appendix A). For an individual to be considered an independent contractor, he/she must meet only those criteria that are appropriate to the situation. He/she does not need to meet all of the criteria.

It is the responsibility of our company to verify independent contractor status. Please read the following statements. Client will accept this declaration only when it is initialled where applicable, signed, and notarized by both parties. If you do not understand this form, do not sign it.

I certify UNDER PENALTY OF PERJURY, I declare that I work as an independent contractor,

1. I confirm that I have legal certificates/rights required by the local government to work as an independent contractor.
2. I confirm that I perform the Delivery service for client.
3. I am aware that I have the right to freely choose my working time, turn on/off the work APP at any time anywhere, and reject my client's orders at any time.
4. I am aware that I have the right to freely work for any other company like UberEATS, etc at the same time during the period of my service agreement with my client.
5. I am aware that I must rectify poor work at own cost and effort and bears commercial risk of loss incurred by client due to my poor work.
6. I am aware that I am responsible for all the expenses accrued during the service period including vehicle, gas fee, tax, insurance, delivery box, parking, tickets, and it may incur a profit or loss for my business.
7. I am aware I am responsible for all taxes associated with the income.
8. I am aware my client **DOES NOT** responsible for my pension, insurance or vacation pay.
9. I am aware that I have the right to terminate the partnership with my client anytime without notice or reminder.
10. I am aware that I have the right to choose transportation/vehicles, and I have the right to choose whether to use the equipment from my client or not.
11. I am aware that I am responsible for all the expenses accrued during the service period including vehicle, gas fee, tax, insurance, delivery box, parking, tickets, and it may incur a profit or loss for my business.

12. I am aware that I need to send invoices to my client periodically and my client has the right to pay me after receiving invoices.
13. I am aware that I am **NOT entitled** to minimum wages or conditions such as annual leave, sick leave that are in the National Employment Standards or an award.

This declaration shall be governed by and construed in accordance with the laws of the Australia.

IN WITNESSETH WHEREOF the parties hereto have executed this declaration by their authorized representatives as of the date below written.

Independent Contractor Information:

Name:

Address:

Phone:

Performing (type of tasks): Food Delivery

Australia Business Number (ABN):

Sign: _____

Date: _____

Client's Information:

Company: HUNGRYPANDA AU PTY LTD

Address: MELBOURNE VIC 3000

Type of Service: Online Food Delivery Platform

Sign: _____

Date: _____

Appendix A Common Law Test is known as the 'multi-factor' test

Feature	Employee	Independent contractor
Measure of control exercised by the principal/employer	Employer usually has the right to control how, when and where a worker performs their duties. Tasks are usually performed at request of employer.	Contractor works at own initiative to achieve a stated result. Contractor maintains discretion and flexibility as to how work is completed, although contract may specify some terms as to materials used and methods of performance.
Exclusivity	Employee usually works exclusively for employer.	Contractor is free to provide services to multiple clients.
Right to delegate	Employee is personally engaged to perform the role and has no inherent right to delegate performance of the role to another employee, unless authorised by employer.	Contractor may delegate all, or some, tasks to another person and may employ other persons to perform the services (although this may be subject to the principal's consent).
Risk, rectification of faults	Employee bears little or no responsibility to rectify poor work. Employer is responsible to others for poor work of employee.	Contractor must rectify poor work at own cost and effort, and bears commercial risk of loss incurred by principal due to contractor's poor work.
Tools and equipment	Employee generally performs work using tools and equipment provided by employer, at employer's place of work. Employee is generally reimbursed for expenses personally incurred by them in performing work, as long as they are authorised by the employer.	Contractor generally provides their own tools and equipment. Contractors are not usually reimbursed for expenses they incur in providing the services.
Hours of work	Employee has hours of work set by employer.	Contractor can set their own hours of work, as long as they perform the services.
Leave entitlements	Employee is entitled to annual leave, long service leave and sick leave, and this is usually provided for in written contract.	Contractor is not entitled to leave, and a written contractor agreement would not usually provide for these things.
Payment	Employee is generally paid for their time, e.g. hourly, weekly, annual salary.	Contractor is generally paid for providing services or completing units of work. Contractor usually issues tax invoices.
Method of engagement	Employees are always personally engaged.	If an individual is engaged through a trust, partnership or company, this usually indicates a contractor relationship.
Part of the business	The work of an employee is usually essential to the business carried on by the employer. Employee is working in the business of the employer	Contractor carries on their own business, independently of the employer and as distinct from the employer's business.

(Information from Fair Work Government)

INDEPENDENT CONTRACTOR AGREEMENT

THIS AGREEMENT (the "Agreement") dated this MAY day of 31 ,
 2020

BETWEEN:

1) Hungrypanda AU Pty Ltd of Suite 2-4, 321 Chapel Street, Prahran, Victoria, Australia
("HungryPanda")

- AND -

2) _____ of _____,
_____, Australia, _____ (the "Contractor").

BACKGROUND:

A. HungryPanda wishes to engage the Contractor to provide certain services.

B. The Contractor is agreeable to providing such services to HungryPanda on the terms and conditions set out in this Agreement.

IN CONSIDERATION OF the matters described above HungryPanda and the Contractor (individually the "Party" and collectively the "Parties" to this Agreement) agree as follows:

1. Services Provided

1.1 HungryPanda hereby agrees to engage the Contractor to provide the services described in the Schedule to this Agreement (the "Services").

2. Term of Agreement

2.1 The term of this Agreement (the "Term") will begin on the date of this Agreement and will remain in full force until terminated as provided in this Agreement.

2.2. Subject to clause 12 below, and Hungry Panda's absolute right to block the Contractor from the platform at any time, Hungry Panda may terminate this Agreement by providing five days' written notice to the Contractor. The Contractor may terminate this Agreement by providing Hungry Panda with 10 days' written notice.

3. Performance

3.1 The Contractor must provide the Services in good faith towards and in a manner which promotes the interests, reputation and profitability of HungryPanda, and not do anything (or omit to do anything) which may damage the interests, reputation or profitability of HungryPanda.

3.2 The Contractor must provide the Services in accordance with all policies, requirements, rules, instructions, systems, methods and procedures of HungryPanda.

3.3 If the Contractor is unable to provide the Services due to illness or injury, on a day on which the Contractor has previously notified HungryPanda that they would be able to provide Services to HungryPanda, the Contractor shall notify HungryPanda as soon as reasonably practicable.

3.4 The Contractor may appoint a suitably qualified substitute to perform the Services on the Contractor's behalf, provided that the substitute shall be required to enter into specified direct undertakings with HungryPanda, including with regard to confidentiality.

3.5 HungryPanda will continue to pay the Payment to the Contractor as provided in this Agreement and the Contractor shall be responsible for the remuneration of (and any expenses incurred by) the substitute. The Contractor will not be paid for any period during which neither HungryPanda nor any substitute provides the Services. For the avoidance of doubt, the Contractor will continue to be subject to all duties and obligations under this Agreement for the duration of the appointment of the substitute.

3.6 The Contractor shall have no authority (and shall not hold itself out as having authority) to bind HungryPanda, unless HungryPanda has specifically permitted this in writing in advance.

3.7 The Contractor may undertake any appointment, position or work, and engage in any other business activities whatsoever as it may wish during the course of this Agreement, provided such activities do not conflict with HungryPanda's interests.

3.8 Indeed, the Contractor warrants and agrees that during the Term it will offer and provide services that are the same as or similar to the Services to persons, businesses or organisations other than HungryPanda (**Third Party Services**).

3.9 If the Contractor operates in Victoria, the Contractor warrants and agrees that it will derive at least 20% of its gross income each year from parties other than HungryPanda for such Third Party Services.

4. Currency

4.1 Except as otherwise provided in this Agreement, all monetary amounts referred to in this Agreement are in Australian currency.

5. Payment

5.1 In accordance with its usual scheduling practices, the Contractor will notify HungryPanda of which hours it is free to provide the Services for each week, one week in advance. HungryPanda will then contact the Contractor, to advise which days (if any) the Services are requested.

5.2 The Contractor will charge HungryPanda for the provisions of the Services at the rate set out in the Schedule to this Agreement (the "Fee").

5.3 HungryPanda shall provide the Contractor with a weekly fee statement setting out the relevant fee information.

5.4 HungryPanda will pay the Contractor weekly, subject to receipt of a valid tax invoice from the Contractor for the correct fee amount each week.

5.5 Notwithstanding any other provision of this Agreement, HungryPanda is entitled to deduct from any sums payable to the Contractor any sums that the Contractor may owe HungryPanda at any time.

6. Confidentiality

6.1 Confidential information (the "Confidential Information") refers to any data or information relating to the business and affairs of HungryPanda and which would reasonably be considered to be proprietary to HungryPanda including, but not limited to, accounting records, financial information, business processes, computer software, marketing strategies, and client records.

6.2 The Contractor agrees that they will not disclose, divulge, reveal, report or use, for any purpose other than the provision of the Services, any Confidential Information which the Contractor has obtained or become aware of, except as authorised by HungryPanda or as required by law. The obligations of confidentiality will apply during the term of this Agreement and will survive indefinitely upon termination of this Agreement.

6.3 For the avoidance of doubt, all documents, manuals, hardware and software provided for the Contractor's use by HungryPanda, and any data or documents (including copies) produced, maintained or stored on HungryPanda's computer systems or other electronic equipment (including mobile phones if provided by HungryPanda), remain the property of HungryPanda.

7. Ownership of Intellectual Property

7.1 The Contractor hereby assigns to HungryPanda absolutely and beneficially the whole of the Contractor's right, title and interest in and to any Intellectual Property Rights acquired, developed or created by the Contractor in the course of providing the Services under this Agreement.

7.2 The Contractor will promptly disclose to HungryPanda any such Intellectual Property Rights upon acquisition, creation or development.

7.3 The Contractor hereby agrees to promptly execute all documents, forms and authorisations and do all things and acts that HungryPanda considers to be reasonably necessary or desirable to absolutely vest in HungryPanda full right, title and interest in and to all Intellectual Property Rights acquired, developed or created by the Contractor in the course of providing the Services under this Agreement.

7.4 For the purposes of this Agreement, Intellectual Property Rights means all present and future intellectual and industrial property rights conferred by statute, at common law or in equity, including (without limitation), patents, designs, copyright, rights in circuit layouts, trademarks, know how, brand names, domain names, inventions, product names, trade secrets, the right to have confidential information kept confidential and other results of intellectual effort in the scientific, technological, bio-technological, industrial, and commercial fields, whether or not registered or capable of registration, and any application or right to apply for registration of any of those rights.

7.5 The provisions of this clause 7 shall continue to apply indefinitely after the termination of this Agreement.

8. Capacity/Independent Contractor

8.1 In providing the Services under this Agreement it is expressly agreed that the Contractor is acting as an independent contractor and not as an employee or a partner of HungryPanda. The Contractor and HungryPanda acknowledge that this Agreement does not create a partnership or joint venture between them and is exclusively a contract for service.

8.2 The Contractor shall be fully responsible for and indemnify HungryPanda as a continuing indemnity and hold HungryPanda harmless against any liability, assessment or claim for:

- (a) any wilful or negligent act or omission of the Contractor;
- (b) any breach by the Contractor of any applicable laws;
- (c) any breach or non-performance of this Agreement by the Contractor;
- (d) any damage to property or injury or death of any person caused or contributed by the Contractor;
- (e) taxation or insurance or superannuation contributions, whatsoever arising from or made in connection with the performance of the Services, where such recovery is not prohibited by law (subject to any provisions in this Agreement to the contrary);

- (f) any employment-related claim or any claim based on worker or employment status (including reasonable costs and expenses) brought by the Contractor or any substitute against Hungry Panda arising out of or in connection with the provision of the Services, including but not limited to any claim for annual leave entitlements, personal leave entitlements, long service leave entitlements, paid public holidays, minimum wages, overtime, penalty rates, loadings and allowances.

Independent Hungry Panda may satisfy such indemnity (in whole or in part) by way of deduction from any payment due to the Contractor. The indemnity obligations of the Contractor under this clause 9.2 shall survive the termination of this Agreement (howsoever occurring).

9. Data Protection

9.1 The Contractor shall comply with the applicable privacy legislation as well as HungryPanda's data protection policy when handling personal data in the course of their engagement, including personal data relating to any employee, worker, contractor, customer, client, supplier or agent of HungryPanda.

10. Delivery Vehicle

10.1 The Contractor must use care and caution in the use of delivery vehicles and comply with all applicable statutory requirements and road rules and regulations when providing the Services.

10.2 Any vehicles or other property provided by HungryPanda should not be used for personal purposes and shall be maintained in good condition at all times. Under no circumstances will alcohol be consumed in the vehicle, and the Contractor must not allow anyone else to drive the vehicle without HungryPanda's consent.

10.3 If the Contractor drives a motor vehicle in providing the Services, the Contractor must hold a valid driver license in the relevant State or Territory in which the Services are provided as well as a valid CTP insurance policy for the vehicle. The Contractor must inform HungryPanda immediately if he/she no longer has a valid driver licence or CTP insurance for any reason.

10.4 For the avoidance of doubt, the Contractor will be solely liable for any traffic, road and parking infringement or penalty incurred whilst providing the Services under this Agreement.

11. Termination

11.1 HungryPanda may at any time terminate this Agreement (and/or block the Contractor from the platform) with immediate effect with no liability to make any further payment to the Contractor (other than in respect of any accrued fees or expenses at the date of termination or blocking) if:

- (a) the Contractor is in material breach of any of their obligations under this Agreement and fails to remedy that breach within 14 days of receiving written notice of the breach;
- (b) in the reasonable opinion of HungryPanda, the Contractor has brought HungryPanda's reputation into disrepute;
- (c) the Contractor commits an act of dishonesty or fraud or is otherwise dishonest or fraudulent in their dealings under this Agreement;
- (d) the Contractor engages in any unlawful conduct in connection with this Agreement.

Any delay by Hungry Panda in exercising its rights to terminate shall not constitute a waiver of those rights.

12. Additional Clauses

12.1 Any amendment or modification of this Agreement or additional obligation assumed by either Party in connection with this Agreement will only be binding if evidenced in writing signed by each Party or an authorised representative of each Party.

12.2 Without prejudice to clause 3.4, the Contractor will not voluntarily, or by operation of law, assign or otherwise transfer its obligations under this Agreement without the prior written consent of HungryPanda.

12.3 It is agreed that there is no representation, warranty, collateral agreement or condition affecting this Agreement except as expressly provided in this Agreement.

12.4 Headings are inserted for the convenience of the Parties only and are not to be considered when interpreting this Agreement.

12.5 Words in the singular mean and include the plural and vice versa. Words in the masculine mean and include the feminine and vice versa.

12.6 This Agreement will be governed by and construed in accordance with the laws of the State of Victoria, Australia. The courts of the State of Victoria shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation.

12.7 Any provision of this Agreement which is invalid in any jurisdiction must in relation to that jurisdiction be read down to the minimum extent necessary to achieve its validity, if applicable. In any other case, the provision must be severed without invalidating or affecting the remaining provisions of this Agreement or the validity of that provision in any other jurisdiction.

12.8 A failure, delay, relaxation or indulgence by a party in exercising any power or right conferred on the party by this Agreement does not operate as a waiver of the power or right. Further, a single or partial exercise of the power or right does not preclude a further exercise of it or the exercise of any other power or right under this Agreement.

SCHEDULE

Services: Collect and deliver orders from restaurants to Hungry Panda's customers in accordance with the customers' instructions from time to time, which are relayed to the Contractor via an internet platform

Fee: The Contractor will be paid at a certain rate including GST per Valid Order

For the purposes of this Agreement, a "**Valid Order**" is an order that is delivered to the customer and marked as "FINISHED" on the Hungry Panda platform, within 60 minutes of the customer making the order in the platform.



Document Details

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File Name	?????.pdf
Document ID	aa4ad491ac114ee4b677bed2c713d60b
Fingerprint	49314bd7dad34fc89f79845d8458988c
Status	Completed

Document History

Document Created	Document Created Fingerprint: 49314bd7dad34fc89f79845d8458988c	Jun 03 2020 06:12AM UTC
Document Sent	Document Sent to	Jun 03 2020 06:12AM UTC
Document Viewed	Document Viewed by IP: 124.171.33.247	Jun 03 2020 10:03AM UTC
Document Signed	Document Signed by IP: 124.171.33.247	Jun 03 2020 10:19AM UTC
Document Completed	This document has been completed. Fingerprint: f206b9d199b9fb9c2a680cc3f6063be5	Jun 03 2020 10:20AM UTC