

This agreement dated _____, sets forth that _____ (Therapist) provides massage and bodywork services to _____ (Business) clients as an independent contractor in accordance with the Department of Labor's current interpretation that independent contractors are workers who, as a matter of economic reality, are in business for themselves as opposed to being economically dependent on the Business for work.

The terms of this agreement were analyzed against the Department of Labor's five factors as stated in the Proposed Rule by the Wage and Hour Division on September 25, 2020 and it has been determined that the terms of this agreement give adequate importance to the most heavily weighted factors (the nature and degree of the Therapist's control over the work and the worker's opportunity for profit or loss.) ***This agreement may be amended prior to the contract end date if necessary due to the Department of Labor's final determination on this rule.***

Therapist's Phone: _____ **Therapist's Email:** _____

Terms of the Agreement

The Therapist is one of two **Lead Therapists** at the Business, not including the Business owner.

The Business will pay to the Lead Therapist **\$0.78 for every minute of service** purchased by the clients who are served by the Therapist. This amount is based on 52 percent of the current fee for the most utilized treatment offered by the Business. This payment per minute applies to all advertised services regardless of the fee charged to the client. The payments to the Therapist will be as follows:

- \$23.40 for providing a 30-minute service
- \$35.10 for providing a 45-minute service
- \$46.80 for providing a 60-minute service
- \$58.50 for providing a 75-minute service
- \$70.20 for providing a 90-minute service
- \$93.60 for providing a 120-minute service

The Business will pay the Therapist **100 percent of any gratuity** and **100 percent of the out-call fee** that is collected by the Business or the Therapist from the client.

Of the remaining 48 percent, **\$25 per each service** provided by the Therapist will be kept by the Business as payment from the Therapist for office rent, utilities, use of equipment, supplies, scheduling, marketing, and other overhead and administrative costs incurred by the Business.

The **balance of the service fee** paid by the client will be held by the Business in an account separate from the Business checking account and will be utilized to partially or completely pay for special projects, new equipment, Continuing Education courses attended in the current fiscal year of the Business by therapists that are under contract at the time of the course, bonuses to therapists under contract at the end of the Business' fiscal year in June each year, and other such investment opportunities as may be decided and as allowed by the total amount accrued in that account.

This agreement runs from **October 15, 2020** through **May 14, 2020**, at which time a new contract may be negotiated.

The Therapist:

1. Will provide the following services to clients of the Business:
 - a. Therapeutic Massage (deep tissue, Swedish massage, etc)
 - b. Couple's Massage
 - c. Prenatal Massage
 - d. Temporomandibular Joint Syndrome Massage
 - e. Prior-approved services for which the therapist is trained and/or certified
2. Will provide their own music to be played during the service.
3. Will provide their own oils, linens, and laundry service if the Therapist prefers to use oils during treatment as opposed to the lotions provided by the Business.
4. Will arrive in advance of the scheduled appointment to prepare the treatment room for the service, including gathering necessary forms and paperwork, setting up the massage table and linens, and implementing any steps dictated in the current iteration of the Business' COVID-19 protocol.

5. Will stay after the appointment to write any notes related to the client and the service provided and to implement any steps dictated in the current iteration of the Business' COVID-19 protocol.
6. May use their own equipment and supplies when the Therapist provides an out-call service or the Therapist may coordinate with the Business to utilize equipment and supplies owned by the Business.
7. Will set their own schedule of availability. The Therapist must inform the Business of the maximum number of hours and/or treatments that the Therapist is willing or able to provide at the Business in a week. The Therapist must provide to the Business the days and the start and end times for the Therapist's general hours of availability. Every **Sunday**, the Therapist must confirm, update, and/or communicate any changes to their schedule of availability for the upcoming Monday through Sunday and any other future changes to the Therapist's schedule of availability.
8. May accept or decline any request for service.
9. Must communicate with the Business and the client immediately if the Therapist will be up to 10 minutes late for a scheduled service and must extend the time of the service beyond the scheduled end time so as to provide the client with the full service as long as this does not interfere with another scheduled service.
10. Must communicate with the Business and the client immediately if the Therapist will be more than 10 minutes late for a scheduled service and must let the client decide if the service's end time will be extended if it does not interfere with another scheduled service or if the service must be rescheduled or if the service must be canceled and the fee refunded to the client by the Business. If the client chooses to cancel, the Business may choose to require the Therapist cover any fees refunded to the client and any costs associated with processing the refund.
11. Must communicate with the Business and the client with a minimum of 24-hours advance notice if the Therapist must cancel or reschedule a scheduled service and must assist with securing a replacement therapist if the client requests to keep the scheduled appointment.

12. Must cover the cost to refund a client and any costs associated with processing the refund if the Therapist does not arrive for a scheduled service and does not communicate in advance about their need to cancel or reschedule. In such instances, the Business may issue a monetary fine to the Therapist or may limit the number of hours the Therapist is available for service on the schedule for a period of time deemed appropriate by the Business.
13. Must use all booking systems utilized by the Business throughout the time of this agreement.
14. Must follow policies, procedures, and protocols set forth by the Business to maintain client relations, provide a safe environment, meet government standards and requirements, etc. For example, the Therapist may choose what clothing to wear while providing the service but the clothing must be clean, not over worn or frayed, be professional in appearance, and does not inhibit their ability to provide the service.
15. Will customize each client's treatment using any of the modalities in which the Therapist has been trained or certified and has been prior approved by the Business to administer and which will help address the client's stated needs and wellness goals and is acceptable to the client.
16. Will listen to the clients stated needs during a service and will adjust pressure or modalities being implemented as requested. If the client exhibits non-verbal cues that indicate physical, mental, or emotional discomfort or distress, the Therapist will verbally inquire if the client needs a change in pressure or modality, and the Therapist will use their judgment to determine if they should inquire if the client needs to take a brief pause, reschedule, or cancel the service, as appropriate.
17. Must maintain client confidentiality.
18. Will provide to the Business important information about the client as requested by the Business for the client's confidential file and for tracking the client's involvement for use in determining future marketing efforts.
19. Will decide the method and manner of communication with each client as long as it is in a method and manner that is acceptable by the client and which respects the client's

background and culture and which is in line with the voice of the Business. The Therapist must do some method of follow up with the client within the week following the implementation of service.

20. May terminate a service at any point if the client does, says, or requests anything of a sexual nature. If at any point the Therapist feels the situation has become unsafe, the Therapist should feel empowered to do what is appropriate and necessary to become safe.
21. May provide services at a different location from that of the Business to clients that the Therapist recruits and secures separate from the Business and who are not current clients of the Business.
22. Will not solicit current clients of the Business for services that are provided at the Business but which the Therapist would provide separate from the Business.
23. Will not provide services under the name of the Business if the scheduling for that service was not done through the Business.
24. Will actively promote the services that the Therapist provides at the Business and the Business' perspective that massage is preventative care and a tool for improving health and wellness.
25. Will maintain the accuracy of the Therapist's bio on the Business' website.
26. Will provide the URLs for the Therapist's business website and social media accounts used to promote the Therapist's work so the Business can cross promote on the Business' website and social media accounts.
27. Is authorized to use the Business' payment processing system to collect payment for service from the client. The Therapist may not collect cash as payment for service from clients, except for cash gratuity, unless the Therapist has prior approval from the Business.

28. Will be responsible for payment of all government taxes (City/State/Federal) owed for the portion of the service fee that is paid to the Therapist by the Business **(\$0.78 for every minute of service and out-call fees)** or the client **(gratuity)**.
29. Must provide to the Business proof of **Workers Compensation and/or Unemployment Insurance**, if carried by the Therapist.
30. Must provide to the Business proof of **Professional Liability Insurance, of no less than \$1,000,00.00**, as the Business is not responsible for any Liability Claims made against the Therapist.
31. Must provide to the Business proof of **Property Insurance of no less than \$3,000** as the Business is not responsible for any Property Loss of the Therapists.
32. Must provide to the Business proof of current State licensing and certification status and must report to the Business any changes in licensing or certification status.
33. Will hold the Business harmless from any liability or economic loss arising from services provided under this agreement.

As a Lead Therapist:

34. Will collaborate with the Business on forming, developing, maintaining, and strengthening partnerships with other non-competitor medical and wellness practitioners in the community as a means of recruiting new clients and promoting the mission of the Business.
35. Will collaborate with the Business on the language used to describe existing treatments offered and promoted by the Business and in selecting any new treatments offered and promoted by the Business, including the name, description, length of service time, benefits of the treatment, ideas for promoting the service, prospective partners, etc.
36. May be asked by the Business to mentor other therapists contracted with the Business who have less experience or need assistance in improving their opportunities for profit and lessening their opportunities for loss.

37. Will collaborate with the Business on the options for use of funds available for bonuses or investing in professional development of the therapists.
38. Will collaborate with the Business on developing and implementing initiatives to improve the Therapist's opportunity for profit and lessen the Therapist's opportunity for loss, including but not limited to sharing their business acumen with the Business if it will help reduce expenses and increase revenue at the Business and for the Therapist.

The Business:

1. Will pay the Therapist the pay rate designated for Lead Therapists, which is **\$0.78 for every minute of service paid for by the client**, as well as 100 percent of any out-call fee and 100 percent of any pre-paid gratuity.
2. Will process the client's payment for the scheduled service. The Business will pay the fees associated with processing the client's payment, transferring funds from the processing company to the Business' bank account, and other fees as apply.
3. Will submit payment to the Therapist for services rendered from Monday through Sunday no later than the end of business on the next Friday.
4. Will submit payment for all government taxes (City/State/Federal) owed for the portion of the service fee that is collected as the Therapist's payment for rent, utilities, et cetera **(\$25)** and the remaining balance that is held by the Business for special projects, bonuses, professional development opportunities for therapists, et cetera.
5. Will provide a safe, secure, clean, and sanitized client waiting area, bathroom, and treatment rooms and will ensure adequate signage advertising the location of the office.
6. Will provide access to the Business location and treatment rooms.
7. Will provide equipment and supplies for administering services at the Business location, including massage tables, linens, massage creams and lotions (but not oils), linens, office supplies, client forms, client files, beverages, and other items as necessary for implementing the service. On a case by case basis, the Business may provide equipment and supplies to the Therapist if they are providing an out-call service for the Business.
8. Will ensure adequate and timely laundry service, cleaning and janitorial services, window cleaning services, request for maintenance and repairs by the Landlord, and other services as necessary to provide services to clients.

9. Will monitor state requirements and best practices in response to COVID-19 and will update the Business' COVID-19 protocol, as necessary.
10. Will provide to the Therapist the current list of services promoted by the Business, including prices and descriptions for each service.
11. Will provide to the Therapist the name and contact information for all other therapists currently contracted to provide services at the Business, as well as a list of the Business' services that each are authorized to schedule and each therapist's preferred modalities and any special training or certifications each therapist may have.
12. Will design and print business cards for use by the Therapist to promote the services they offer at the Business.
13. Will incorporate the mutually-agreed upon services to be provided by the Therapist in the Business' comprehensive and detailed marketing plan which will be developed to broaden the Business' reach in the community, grow the Business' customer base, increase the Therapist's scheduled services, increase return clients, and contribute to increasing the Therapist's opportunities for profit and lessening the Therapist's opportunities for loss. This marketing plan will include but is not limited to a well-maintained website, continued SEO research, networking, and developing, maintaining, and strengthening partnerships with non-competitor medical and wellness practitioners.
14. Will manage the initial communications from clients requesting a service and will reference the Therapist's submitted schedule of availability to schedule a service with a client for the Therapist.
15. Will maintain the schedule of availability for all therapists. The Business will use the schedule of availability and the maximum hours and/or services that each therapist is willing and able to provide in a given week in order to maintain an equitable and balanced distribution of scheduled services among all therapists.
16. The Business cannot guarantee a specific number of scheduled services.
17. Will do general follow up with the client to help increase the likelihood of them becoming a returning client.

As pertains to Lead Therapists:

18. Will collaborate with the Lead Therapist on forming, developing, maintaining, and strengthening partnerships with other non-competitor medical and wellness

practitioners in the community as a means of recruiting new clients for the Therapist and promoting the mission of the Business.

19. Will collaborate with the Lead Therapist on the language used to describe existing treatments offered and promoted by the Business and in selecting any new treatments offered and promoted by the Business, including the name, description, length of service time, benefits of the treatment, ideas for promoting the service, prospective partners, etc.
20. May ask the Lead Therapist to mentor other therapists contracted with the Business who have less experience or need assistance in improving their opportunities for profit and lessening their opportunities for loss.
21. Will collaborate with the Lead Therapist on the options for use of funds available for bonuses or investing in professional development of the therapists.
22. Will collaborate with the Lead Therapist on developing and implementing initiatives to improve the Therapist's opportunity for profit and lessen the Therapist's opportunity for loss, including but not limited to listening to and considering the Therapist's viable business suggestions if it will help reduce expenses and increase revenue at the Business and for the Therapist.

Either party shall have the right to cancel the agreement by providing written notice to the other party at least 30 days prior to a proposed termination. The agreement may be terminated immediately in such case as:

1. Misconduct or Breach of Ethical Standards
2. Violation of any part of the agreement
3. Loss of License
4. Loss of Insurance
5. Non-payment
6. Exposure by either party to liability because the other party has failed to live up to the requirements of this agreement.

Both parties agree that unresolved disputes about the terms or enforcement of this agreement shall be resolved through arbitration. The non-prevailing party shall be responsible for paying all arbitration costs, unless the arbitrator finds partially for both parties, in which all the parties shall each be responsible for half the costs of arbitration.

This agreement must include the signatures of the Therapist, the Business, and a Witness in order to be valid and binding. Due to restrictions in place from COVID-19, the three parties may discuss the agreement via video conference. First the Therapist will sign using a digital signature and then will submit a copy that includes their signature to the Business. The Business will sign the copy provided to them using a digital signature and will then submit a copy that includes the Therapist's signature and the Business' signature to the Witness. The Witness will sign the document provided to them using a digital signature and will then send a copy of the agreement which includes all three signatures to the Therapist and the Business and will save a copy in their files.

The discussion between the Therapist, the Business, and the Witness must take place no later than **Wednesday, October 21, 2020**. The Witness must provide a copy of the final signed agreement to both the Therapist and the Business no later than **Thursday, October 22, 2020**. This copy must include all three signatures (the Therapist, the Business, and a Witness).

This constitutes the entire agreement between the parties and replaces any and all prior verbal or written agreements between the Business and the Therapist. Should any part of this agreement be considered unenforceable by a court of competent jurisdiction, the remainder of the agreement remains in force. This agreement is governed by the laws of New Mexico.

Signature _____ **Date** _____
(Name), therapist

Signature _____ **Date** _____
(Owner's Name), (Business Name)

Witness Name _____
Name

Signature _____ **Date** _____
Witness