START\_STATUTE23-1603.  Qualified marketplace contractors; definitions

A.  A qualified marketplace contractor shall be treated as an independent contractor for all purposes under state and local laws, regulations and ordinances, including employment security laws prescribed in chapter 4 of this title and workers' compensation laws prescribed in chapter 6 of this title, if all of the following apply:

1.  All or substantially all of the payment for the services performed by the qualified marketplace contractor is related to the performance of services or other output.

2.  The services performed by the qualified marketplace contractor are governed by a written contract executed between the qualified marketplace contractor and a qualified marketplace platform.

3.  The written contract required by paragraph 2 of this subsection provides for all of the following:

(a)  That the qualified marketplace contractor is providing services as an independent contractor and not as an employee.

(b)  That, pursuant to paragraph 1 of this subsection, all or substantially all of the payment paid to the contractor shall be based on the performance of services or other output.

(c)  That the qualified marketplace contractor is allowed to work any hours or schedules the qualified marketplace contractor chooses. If the qualified marketplace contractor elects to work specified hours or schedules, a contract may require the qualified marketplace contractor to perform work during the selected hours or schedules.

(d)  That the qualified marketplace contract does not restrict the contractor's ability to perform services for other parties.

(e)  That the qualified marketplace contractor bears all or substantially all of the qualified marketplace contractor's own expenses that are incurred by the qualified marketplace contractor in performing the services.

(f)  That the qualified marketplace contractor is responsible for the taxes on the qualified marketplace contractor's own income.

(g)  That the contract and the association created by the contract may be terminated without cause by either party to the contract at any time on reasonable notice given to the other party.

B.  For services performed by a qualified marketplace contractor before August 6, 2016, the qualified marketplace contractor shall be treated as an independent contractor for all purposes under state and local laws, regulations and ordinances, including employment security laws prescribed in chapter 4 of this title and workers' compensation laws prescribed in chapter 6 of this title, if both of the following apply:

1.  All or substantially all of the payment for the services performed by the qualified marketplace contractor is related to the performance of services or other output.

2.  The services performed by the qualified marketplace contractor are governed by a written contract executed between the qualified marketplace contractor and a qualified marketplace platform that conforms to the requirements of subsection A, paragraph 3 of this section.

C.  Compliance with this section is not mandatory in order to establish the existence of an independent contractor relationship. The exclusion of any contractor or digital platform from this section does not create any presumptions and is not admissible to deny the existence of an independent contractor relationship.

D.  This section does not apply to:

1.  Service performed in the employ of a state, or any political subdivision of the state, or in the employ of an Indian tribe, or any instrumentality of a state, any political subdivision of a state or any Indian tribe that is wholly owned by one or more states or political subdivisions or Indian tribes, provided that such service is excluded from employment as defined in the federal unemployment tax act (26 United States Code sections 3301 and 3306(c)(7)).

2.  Service performed in the employ of a religious, charitable, educational or other organization that is excluded from employment as defined in the federal unemployment tax act (26 United States Code sections 3301 through 3311), solely by reason of 26 United States Code section 3306(c)(8).

E.  For the purposes of this section:

1.  "Qualified marketplace contractor" means any person or organization, including an individual, corporation, limited liability company, partnership, sole proprietor or other entity, that enters into an agreement with a qualified marketplace platform to use the qualified marketplace platform's digital platform to provide services to third-party individuals or entities seeking those services. Qualified marketplace contractor does not include any contractor when the services performed consist of transporting freight, sealed and closed envelopes, boxes or parcels or other sealed and closed containers for compensation.

2.  "Qualified marketplace platform" means an organization, including, but not limited to, a corporation, limited liability company, partnership, sole proprietor or any other entity, that both:

(a)  Operates a digital website or digital smartphone application that facilitates the provision of services by qualified marketplace contractors to individuals or entities seeking such services.

(b)  Accepts service requests from the public only through its digital website or digital smartphone application, and does not accept service requests by telephone, by facsimile or in person at physical retail locations.

Qualified marketplace platform does not include any digital website or smartphone application where the services facilitated consist of transporting freight, sealed and closed envelopes, boxes or parcels or other sealed and closed containers for compensation. END\_STATUTE