



INDEPENDENT CONTRACTOR AGREEMENT

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1. Overview

From an accounting perspective, hiring an independent contractor is cheaper than employing someone full time. In addition to the obvious expenses of salaries, bonuses, and other compensation, employees can cost a company in more subtle ways, requiring further outlays for benefits, payroll taxes, insurance premiums, office space, and equipment. These fixed costs don't apply to independent contractors: companies can use such individuals for specific tasks as the business requires, and avoid the legal minefields of hiring and firing staff according to the ebb and flow of the market. Organizations can choose experts to perform the necessary work at the time it's needed, and can avoid the cost and hassle of providing additional education or training to current employees.

There are risks, of course, for a business using independent contractors, the most dangerous of which is that those individuals will be reclassified as employees. If this happens, the company that used those contractors will be required to reimburse the IRS or state tax authority for delinquent employment taxes, interest, and penalties. Although a business cannot insulate itself absolutely from reclassifications or contract audits, a written independent contractor agreement can offer a certain amount of protection from such charges. Indeed, the IRS has itself said that written independent contractor agreements may provide dispositive evidence that individuals have not been working as employees.

The enclosed document should provide a good starting point for your contracting arrangement. Both parties must continue to discuss the terms of their agreement, settling questions about work parameters, payment, and responsibilities. Once you have agreed on contract terms and have signed the attached form, each party can focus on its area of expertise: the company on the development of its business and the contractor on the tasks assigned.

2. Dos & Don'ts Checklist

- An independent contractor should **never** fill out an employee application. Each applicant should be provided with a separate document that clearly indicates it is for independent contractor use only. A completed employee application may be used as later evidence that an independent contractor was, in fact, an employee of the organization for which it worked.
- The enclosed agreement is designed to protect the parties' rights during the contract term. It does not, however, describe what tasks will be performed or the rates applicable to any such work. The specific work to be completed and the means of compensating that work should be discussed by the parties, drafted, and attached to the enclosed document as [Exhibit A](#).
- Before sitting down to draft [Exhibit A](#), decide exactly what your goals are for the agreement. It can contain any agreed-on terms but should, at a minimum, include a description of the contractor's tasks, the amount to be paid, the terms of payment, deadlines for completion, and the specific end products expected (if any). Take a moment to clarify the terms and conditions of your agreement before memorializing them in written form.
- Allow each party to spend some time reviewing the agreement and (once drafted) [Exhibit A](#). This will reduce the likelihood, or at least the efficacy, of a claim that a party did not understand any terms or how those might affect the agreement as a whole.

- The enclosed document is drafted in a way that elevates the company's interests over those of the contractor. If you believe this agreement is too imbalanced for your purposes, or too restrictive to allow the contractor to perform his or her duties, consider revising or restructuring certain provisions to fit your organizational goals.
- Both parties should review the completed agreement carefully to ensure that **all relevant deal points** have been included. It is better to be over-inclusive than under-inclusive. Do not assume that certain expectations or terms are agreed to if they are not stated expressly in the document.
- Having a written agreement is only the first step in protecting a company from claims that its independent contractor is an employee. Once signed, both you and the other party should follow its terms exactly to make sure that such independent contractor status is maintained.
- Review your state's laws governing independent contractors. In recent years, many states have made it more difficult for individuals to qualify as such, imposing absolute requirements about the freedom the contractor must have from company control. Certain provisions in the enclosed agreement may need to be strengthened or adapted to fit your state's rules.
- Sign two copies of the agreement, one for you and one for the other party.
- Keep your copy of the signed agreement for your records. At the end of its term, you and the other party can revisit its provisions and consider whether to renew.
- Depending on the nature of its terms, you may decide to have your agreement witnessed or notarized. This will limit later challenges to the validity of a party's signature.
- If your agreement is complicated, do not use the enclosed form. Contact an attorney to help you draft a document that will meet your specific needs.

3. Independent Contractor Agreement Instructions

The following provision-by-provision instructions will help you understand the terms of your agreement.

The numbers below (e.g., Section 1, Section 2, etc.) correspond to provisions in the form. Please review the document in its entirety before starting the step-by-step process.

- **Introduction.** Identifies the document as an independent contractor agreement. Write in the date on which the agreement will become effective (often the date on which it is signed). Name each party and their type (e.g., individual, corporation, partnership, etc.).
- **Recitals.** States the intent and ability of the parties to hire the independent contractor to perform the agreed-on services.
- **Section 1: Responsibilities.** Lists each party's responsibilities under the Agreement.

- **Section 2: Nature of Relationship.** Explains that the Contractor is not an employee or partner of the Company. This is an important distinction for legal reasons, including requirements of insurance coverage, liability, and taxes. The agreement seeks to emphasize this divide, but both parties should take care not to blur the line between independent contractor and employee in the performance of their duties. Review your state’s laws governing independent contractors to make sure that the enclosed agreement follows local restrictions.
- **Section 3: Confidential Information.** Provides both a definition of confidential information and a reminder of the Contractor’s duty not to disclose that information.
- **Section 4: Representations and Warranties.** Details the parties’ promises under the Agreement.
- **Section 5: Compensation.**
 - (a) Explains that the payment terms are detailed in Exhibit A.
 - (b) Indicate the amount of time the Company has to forward payments to the Contractor. For many businesses, this will be about 60 days. Depending on the Company’s procedures for accounts receivable, you may want to allow for a longer or shorter time.
 - (c) The circumstances under which no payment will be made.
 - (d) Emphasizes that the payments outlined are the Contractor’s only compensation.
 - (e) Notes that the Contractor will pay for its own expenses. This is another reflection of the fact that the Company and the Contractor are functioning as separate entities (i.e., not as employer and employee).
 - (f) Indicates that the Contractor is responsible for paying its own taxes on the money it receives (i.e., it is not receiving a “salary” as an employee of the Company and the Company will not withhold those amounts).
- **(Optional) Section 6: Reporting.** An optional provision that requires the Contractor to provide periodic reports on its progress. You can designate a contact person at the Company to receive these reports, indicate how frequently they should be provided, and specify the type of information to be supplied. If you remove this section, correct the section numbers and internal references in the agreement.
- **Section 7: Work for Hire.** Grants ownership of all work performed by the Contractor under the Agreement to the Company.
- **Section 8: No Conflict of Interest; Other Activities.** The Contractor’s promise that it is not currently working with any other company or product that competes with the Company. This section also expressly permits the Contractor to contract with other companies to the extent its responsibilities under those contracts don’t damage the Company or its interests.
- **Section 9: Term.** Indicates that the agreement will last until termination or until the listed services are completed. The bracketed sentence is optional, and allows the parties to set a deadline by which all services must be finished. Delete this provision if you do not want to set an expiration date for your agreement.

- **Section 10: Termination.** Explains that certain actions or events, including written notice or material breach, will cause the agreement to end out of time. Write in the number of days advance notice a party must give of its intent to terminate or of a breach.
- **Section 11: Return of Property.** This is an extremely important provision, and although it may seem obvious to you that property should be returned after the end of the agreement, this paragraph makes that plain. Enter the time period in which the Contractor must return this property after termination.
- **Section 12: Indemnification.** Protects each party from the consequences of the other's negligent or intentional conduct.
- **Section 13: Use of Trademarks.** States the Contractor will not use the Company's trademarks inappropriately or acquire a trademark of its own that is similar to the Company's. For example, an independent contractor for XYZ can not apply for a trademark on Sam's XYZ Products. It also notes that the Contractor may not continue to use the Company's trademarks after the agreement terminates.
- **Section 14: Modification.** Indicates that any changes to the Agreement are ineffective unless they are made in writing.
- **Section 15: Assignment.** Explains that each party must obtain the other's written permission before assigning its obligations and interests.
- **Section 16: Successors and Assigns.** States that the parties' rights and obligations will be passed on to successor organizations (if any), or organizations to which rights and obligations have been permissibly assigned.
- **Section 17: Force Majeure.** Releases a party from its obligations if its performance is precluded by an event beyond its control (e.g., flood, earthquake, etc.). This release is effective only as long as circumstances continue to prevent that party's completion of its tasks.
- **Section 18: No Implied Waiver.** Explains that even if one party ignores or allows the other to break an obligation under the agreement, it does not mean that party waives its future rights to require the other party to fulfill those obligations.
- **Section 19: Notice.** Lists the addresses to which all official or legal correspondence should be delivered. Write in a mailing address for both the Company and the Contractor. If you want to allow for other avenues of notice (e.g., e-mail), write in the means that are acceptable to you and the other party.
- **Section 20: Governing Law.** Allows the parties to choose those laws that will be used to interpret the contract if there is ever a dispute. Note that this is not a venue provision: the included language will not impact where a potential claim can be brought. Write in the state's law that you would like to govern the agreement (usually the state in which you reside or operate your business.)
- **Section 21: Counterparts / Electronic Signatures.** The title of this provision sounds complicated, but it is simple to explain: it says that even if the parties sign the agreement in different locations, or use electronic devices to transmit signatures (e.g., fax machines or computers), all of the separate pieces will be considered part of the same agreement. In a modern world where signing parties are often not in the same city - much less the same room - this provision ensures that business can be transacted efficiently, without sacrificing the validity of the agreement as a whole.

- **Section 22: Severability.** Protects the terms of the agreement as a whole, even if one part is later invalidated.
- **Section 23: Entire Agreement.** The parties' agreement that the agreement they're signing is "the agreement" about the issues involved. Unfortunately, the inclusion of this provision will not prevent a party from arguing that other enforceable promises exist, but it will provide you some protection from these claims.
- **Section 24: Headings.** Notes that the headings at the beginning of each section are meant to organize the document, and should not be considered operational parts of the note.
- **Exhibit A: Duties, Specifications, and Compensation.** The form of [Exhibit A](#) provided is meant as an example only. You and the other party should restructure and revise this exhibit to fit your situation and agreement. Note that there are two types of compensation arrangements provided. You can choose either, or come up with a third structure to fit your situation.

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Form Sample

SAMPLE INDEPENDENT CONTRACTOR AGREEMENT

This Independent Contractor Agreement (the "Agreement") is entered into as of _____, 20____ (the "Effective Date") by and between _____, a _____ [individual/corporation/partnership/etc.] (the "Contractor"), and _____, a _____ [corporation/partnership/etc.] (the "Company," and together with the Contractor, the "Parties").

RECITALS

WHEREAS, the Company wishes to engage the Contractor as an independent contractor for the Company for the purpose of completing certain specified tasks on the terms and conditions set forth below; and

WHEREAS, the Contractor wishes to provide the Services (as defined below) in accordance with the terms of this Agreement; and

WHEREAS, each Party is duly authorized and capable of entering into this Agreement.

NOW THEREFORE, in consideration of the above recitals and the mutual promises and benefits contained herein, the Parties hereby agree as follows:

1. RESPONSIBILITIES.

- (a) Of the Contractor. The Contractor