Agreements for Construction Contractors

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The agreements in this chapter are for construction services. Use the first agreement if you’re hiring a construction contractor. Use the second agreement if you’re working as a construction contractor.

CAUTION
Do not use these forms if you are working as or hiring a subcontractor. Subcontractor agreements require special provisions that are beyond the scope of this book.

Agreement for Use by Hiring Firm

Use this agreement if you are hiring a construction contractor. It can be used for all types of construction projects.

CAUTION
Special state rules apply to construction workers. Workers in the construction industry have historically been misclassified as independent contractors more often than workers in most other industries. To help prevent this practice, several states have adopted special worker classification rules for construction workers. These may require a hiring firm to provide unemployment compensation and/or workers’ compensation coverage for a construction worker, even though the worker qualifies as an IC under federal tax law or other law.

You need to be aware of, and follow, these state laws or you could end up getting fined by your state unemployment insurance agency and/or workers’ compensation agency. Moreover, if you don’t provide workers’ compensation when required by your state, you could also be held liable for the cost of a worker’s job-related injuries.

The states with special rules for construction workers include:

California
A person who hires an unlicensed worker or unlicensed subcontractor to perform work requiring a contractor’s license is automatically deemed the worker’s or subcontractor’s employer for all state payroll tax purposes, including unemployment compensation and state income tax. For details, see the California Employment Development Department’s Construction Industry Information Sheet, at www.edd.ca.gov/pdf_pub_ctr/de231g.pdf.

Illinois
In Illinois, a person performing services for a construction contractor or subcontractor is presumed to be an employee for unemployment insurance purposes. Such people qualify as independent contractors only if they (1) pass a three-factor test (often called the “ABC test”) or (2) work as sole proprietors or partners in a partnership and pass a special 12-factor test. In addition, starting in 2014, Illinois construction contractors must report to the Illinois Department of Labor various information about all individuals, sole proprietors, or partnerships who receive payments for construction services. For more information, visit the Illinois Department of Labor website at www.illinois.gov/idol.

Maine
Individuals working in construction in Maine are presumed to be employees unless they pass a special 12-factor test or own construction equipment weighing more than 7,000 pounds. For more information, see http://maine.gov/labor/miscl/reclass/legal.shtml. For more information, see www.dllr.state.md.us/workplace/wcpcomplying.shtml.

Maryland
People working in construction or landscaping services are presumed to be employees in Maryland. A worker overcomes this presumption and qualifies as an IC only if he or she can satisfy a special six-factor test. For more information, see www.dllr.state.md.us/workplace/wcpcomplying.shtml.

Minnesota
All ICs performing construction services in the state must register with the Department of Labor and Industry (unless exempt) and pass a nine-factor test. For details, see the Department of Labor and Industry’s website at www.dli.mn.gov/CCLD/Register_nine_factors.asp.
Nebraska

In Nebraska, construction contractors and sub contractors are presumed to be employees of the hiring firm unless they (1) pass the ABC test, (2) are registered as contractors, and (3) are registered to pay or are exempt from paying unemployment insurance taxes. For more information, see https://dol.nebraska.gov/LaborStandards/Compliance/EmployeeClassificationAct.

New York

In New York, workers in the construction industry are presumed to be employees for unemployment insurance purposes. They qualify as independent contractors only if they (1) pass the ABC test or (2) work as sole proprietors, partners in a partnership, or owners of a corporation or another entity and pass a special 12-factor test. To learn more, see https://www.labor.ny.gov/legal/construction-industry-fair-play-act.shtm.

Pennsylvania

In Pennsylvania, workers in the construction industry are presumed to be employees for unemployment insurance purposes. They qualify as independent contractors only if they:

- have a written IC agreement
- pass the AC test, and
- satisfy a special six-factor test.

For details, see "UCP 32: Employee or Independent Contractor?" available at www.dli.state.pa.us.

Washington

Washington has a special seven-part IC test for construction and electrical contractors. The first three parts comprise the ABC test. In addition, the individual must have a contractor’s license and be registered with the Washington Department of Revenue. (For details, see the Washington Employment Security Website at https://esd.wa.gov/employer-taxes/independent-contractors.)

FORM

Finding and using the Agreement for Construction Contractor. You can download the Independent Contractor Agreement for Construction Contractor for use by the hiring firm (and all other forms in this book) from Nolo.com (for details, see Appendix A). You can also find a copy in Appendix B.

CAUTION

When possible, download and edit the agreement on a computer. A contract where you’ve filled in the blanks by hand is the least persuasive form of contract if you want to convince a government agency that you are an IC and not an employee of the hiring firm. The best way to create your agreement is to download it from Nolo.com and tailor it to your needs. Or retype the agreement in Appendix B, tailoring it as you go.

Call up the agreement on your computer or take a look at the form in Appendix B and read it along with the following instructions and explanations.

Title of agreement. You don’t need to have a title for the agreement, but if you want one you should call it “Independent Contractor Agreement.” Do not use “Employment Agreement” as a title.

Names of IC and hiring firm. For guidance on what names to use, see the beginning of Chapter 5.

Clause 1. Services to Be Performed

Contractor will furnish all labor and materials to construct and complete the project shown on the contract documents contained or specified in Exhibit A, which is attached to and made part of this Agreement.

The agreement should describe in as much detail as possible what the contractor is expected to do. Word the description carefully to show only the results the IC is expected to achieve. Don’t tell the IC how to achieve those results—that would indicate that you have the right to control how the IC performs the agreed-upon services. Such a right of control is the hallmark of an employment relationship. (See Chapter 2 for a discussion of why this is important.)

It’s perfectly all right for you to establish very detailed specifications for the IC’s finished work product and to require the IC to comply with all applicable building code requirements. But the
specs should describe only the end results the IC must achieve, not how to obtain those results.

Construction projects usually involve detailed specifications or project descriptions. You should attach these to the agreement and label them as Exhibit A. This way, they become a part of the agreement. If the construction plans are too lengthy or bulky to attach, you can refer to them in detail in Exhibit A. For example, you can say: “The full set of construction plans for the remodel of the Quakers Restaurant at 1800 Mariposa Street approved by the City Planning Department on August 31, 20xx.”

Clause 2. Payment

[Choose Alternative A or B.]

[Alternative A]
Owner will pay Contractor for all labor and materials the sum of $ ____________ .

[Alternative B]
Owner will pay Contractor $ ____________ for labor. Materials will be paid for by Owner upon delivery to the worksite or as follows: ____________ ____________ ____________ ____________ ____________ .

Two options for payment are provided in this agreement. You can either:

- pay the IC for all labor and materials, or
- pay for materials directly and pay the IC just for labor.

Paying for materials yourself upon delivery to the worksite avoids the possibility that the IC will fail to pay for them and that the materials provider will file a lien for payment against your property. (See the discussion in the “Liens and Lien Waivers” clause, below, for more about this issue.) However, this requires additional time and effort on your part. Use whichever clause applies and delete the other.

Clause 3. Terms of Payment

[Choose Alternative A, B, or C.]

[Alternative A]
Upon completing Contractor’s services under this Agreement, Contractor will submit an invoice. Owner will pay Contractor within ______ days from the date of Contractor’s invoice.

[Alternative B]
Contractor will be paid $ ______ upon signing this Agreement and the remaining amount due when Contractor completes the services and submits an invoice. Owner will pay Contractor within ______ days from the date of Contractor’s invoice.

[Alternative C]
Contractor will be paid according to the schedule of payments set forth in Exhibit ____________ , attached to and made part of this Agreement.

This clause refers to how and when you’ll pay the IC. Three payment options are provided. Choose whichever one applies and delete the others.

Payment upon completing services

For brief projects, you may pay the IC in full after the work is completed. Choose Alternative A for this form of payment.

Down payment required

Choose Alternative B if you’ll provide the IC with a down payment before starting work. Many ICs will insist upon a down payment. Obviously, it’s in your interest to pay as little as possible in advance. This is a matter for negotiation.

Payment according to schedule

For longer projects, a payment schedule is typically used—for example, you pay the IC a specified amount when the agreement is signed, progress payments while the project is under construction, and the rest when the project is completed. Choose Alternative C
to use this type of arrangement and attach the payment schedule to the agreement as an exhibit.

Clause 4. Time of Completion

The work to be performed under this Agreement will commence on _____________ and be substantially completed on or before ___________.

State when the work will begin and end in the spaces provided. Be sure to give the IC adequate time to complete the project.

Clause 5. What Constitutes Completion

The work specified in Clause 1 will be considered completed upon approval by Owner; however, Owner’s approval will not be unreasonably withheld.

This clause makes clear to the contractor that the work is not completed until you say it is. However, you can’t be unreasonable in withholding your approval of the work. If the contractor believes you’re being unreasonable, the contractor can invoke the dispute resolution remedies set forth in Clause 21 below.

Clause 6. Permits and Approvals

[Choose Alternative A or B.]

[Alternative A]
Owner will be responsible for determining which state and local permits are necessary for performing the specified work and for obtaining and paying for the permits.

[Alternative B]
Contractor will be responsible for determining which state and local permits are necessary for performing the specified work and for obtaining and paying for the permits.

Building permits or other government approvals are typically required for construction projects. It’s up to you and the IC to decide who will be responsible for obtaining and paying for any required permits.

Use one of the two clauses provided. The first clause requires you to obtain and pay for all permits and approvals. The second clause makes this the IC’s responsibility.

Clause 7. Warranty

Contractor warrants that all work will be completed in a good workmanlike manner and in compliance with all building codes and other applicable laws. Contractor agrees to correct any defective work at no cost to Owner. This warranty will be in effect for one year from the date of completion of the work.

A warranty is a promise or statement regarding the quality, quantity, performance, or legal title of something being sold. If the IC makes and fails to live up to a warranty, you can sue for breach of contract and obtain damages.

This agreement includes an express warranty that the work will be completed in a good workmanlike manner in compliance with all building codes. Moreover, the contractor promises to fix any defects you discover free of charge. This warranty lasts for one year after the work is completed. Such a warranty is fairly standard in the construction industry.

Even if your agreement doesn’t include this type of warranty, the contractor would still have a legal duty to complete the work in a good and workmanlike manner. This does not mean that the construction work must be perfect. Rather, it means that the contractor must use appropriate and reasonable skill and care in the construction. Defects that a reasonably skilled contractor would not leave in the finished work must be fixed.
Because the law implies this warranty in all construction contracts, this warranty will protect you even if it is not written explicitly in the contract. The purpose of including it is simply to remind a contractor of the legal duty.

Most states also recognize an implied warranty on the part of a builder of a new home or other residence that the structure will be suitable for human habitation. This means that a residential structure must be a fit place for a person to live. It should comply with local building code requirements for residential housing and have, for example, adequate ventilation, light, heating, and sanitary facilities.

**Clause 8. Liens and Lien Waivers**

Contractor represents and warrants that there will be no liens for labor or materials or appliances against the work covered by this Agreement and agrees to protect and hold Owner free and harmless from and against any and all liens and claims for labor, materials, services, or appliances furnished or used in connection with the work.

To protect Owner against liens filed by Contractor, subcontractors, and materials providers, Contractor agrees that final payment to Contractor under the payment clause will be withheld by Owner until Contractor presents Owner with lien waivers, lien releases, or acknowledgment of full payment from each subcontractor and materials supplier.

While doing the job, the contractor will probably order materials from suppliers and may hire subcontractors (other ICs) to do some of the work. These people all have to be paid. Sometimes, contractors fail to pay subcontractors or materials suppliers. If this happens, the supplier or subcontractor can make a claim against your property, even though you weren’t the one who failed to pay.

An unpaid supplier or subcontractor can place a lien on your property, called a mechanic’s lien or materials lien. A lien is a claim for payment made against your property that is recorded with the county recorder’s office. If you want to sell your property, you can’t pass good title to the buyer without clearing all such liens. To do so, you might have to pay off the unpaid subcontractors or materials suppliers yourself, even though you’ve already paid the contractor for the work or supplies.

This clause is designed to protect you from such liens. First, the contractor warrants (promises) that no such liens will be recorded. In other words, the contractor promises timely payment to suppliers and subcontractors.

But what if the contractor breaks the promise? Here’s where the second part of this clause comes into play. It tells the contractor that you won’t make a final payment until you learn in writing from each supplier and subcontractor that they’ve been satisfactorily paid. In construction law lingo, the last payment is contingent on the contractor giving you the following things in writing:

- lien waivers or releases, in which subcontractors and suppliers promise that they will not record a lien on your property, or
- acknowledgments of full payment, in which subcontractors and suppliers state that they have been paid by the contractor and so have no grounds for filing a lien against you.

Either document assures you that you won’t have any problems with liens. Of course, it’s up to you to keep tabs on which suppliers and subcontractors are working on the job and to make sure you get these releases or acknowledgments from each of them.
Clause 9. Site Maintenance

Contractor agrees to be bound by the following conditions when performing the specified work:

• Contractor will remove all debris and leave the premises in broom-clean condition.
• Contractor will perform the specified work during the following hours: ____________________________ ________________ .
• Contractor agrees that disruptively loud activities will be performed only at the following times: __ .
• At the end of each day’s work, Contractor’s equipment will be stored in the following location: ____________________________ .

You may wish to require the construction work to take place at specific times, that equipment be stored in a specific location, or that cleanup be daily and thorough. Use the provisions in this clause that apply.

Clause 10. Subcontractors

Contractor may at its discretion engage subcontractors to perform services under this Agreement, but Contractor will remain responsible for proper completion of services under this Agreement.

Few contractors have the expertise necessary to perform all of the many jobs required in a construction project. For this reason, it’s a common practice in the construction industry for contractors to subcontract out some of the work to other contractors, called subcontractors. For example, the contractor may hire an electrician to install electrical wiring. This clause provides that the contractor may engage such subcontractors to help perform the services, but the contractor remains ultimately responsible for making sure that all of the work is completed properly.

Clause 11. Independent Contractor Status

Contractor is an independent contractor, not Owner’s employee. Contractor’s employees or subcontractors are not Owner’s employees. Contractor and Owner agree to the following rights consistent with an independent contractor relationship:

[Keep the bullets that apply; delete the rest.]

• Contractor has the right to perform services for others during the term of this Agreement.
• Contractor has the sole right to control and direct the means, manner, and method by which the services required by this Agreement will be performed.
• Contractor or Contractor’s employees or subcontractors will perform the services required by this Agreement; Owner will not hire, supervise, or pay any assistants to help Contractor.
• Owner will not require Contractor or Contractor’s employees or subcontractors to devote full time to performing the services required by this Agreement.
• Neither Contractor nor Contractor’s employees or subcontractors are eligible to participate in any employee pension, health, vacation pay, sick pay, or other fringe benefit plan of Owner.

One of the most important functions of an independent contractor agreement is to help establish that the worker is an IC, not your employee. The key to doing this is to make clear that the IC, not you, has the right to control how the work will be performed.

The language in this clause addresses most of the factors the IRS and other agencies consider in determining whether an IC controls how the work is done. (See Chapter 2 for further discussion of this topic.)
CAUTION
Keep all that apply. When you draft your own agreement, include only those provisions that apply to your particular situation. The more that apply, the more likely the worker will be viewed as an IC.

Clause 12. Business Permits, Certificates, and Licenses
Contractor represents and warrants that Contractor has complied with all federal, state, and local laws requiring business permits, certificates, and licenses required to carry out the services to be performed under this Agreement.
Contractor’s license or registration is for the following type of work ________________________ and carries the following number: ____________.

The IC should have all business permits, certificates, and licenses needed to perform the work. For example, the IC should have a contractor’s license if your state’s law requires one. A worker who lacks such licenses and permits looks like an employee, not an IC running an independent business. The IC should obtain such licenses and permits; you should not pay for them. This provision includes a space where you can insert the contractor’s license number.

Clause 13. State and Federal Taxes
See the first half of Chapter 5 for a discussion of this clause.

Clause 14. Fringe Benefits
See the first half of Chapter 5 for a discussion of this clause.

Clause 15. Workers’ Compensation
See the first half of Chapter 5 for a discussion of this clause.

Clause 16. Unemployment Compensation
See the first half of Chapter 5 for a discussion of this clause.

Clause 17. Insurance
See the first half of Chapter 5 for a discussion of this clause.

Clause 18. Terminating the Agreement
See the first half of Chapter 5 for a discussion of this clause.

Clause 19. Exclusive Agreement
See the first half of Chapter 5 for a discussion of this clause.

Clause 20. Modifying the Agreement [Optional Clause]
See the first half of Chapter 5 for a discussion of this clause.

Clause 21. Resolving Disputes
See the first half of Chapter 5 for a discussion of this clause.

CAUTION
It’s particularly important for contractors to be licensed in California. Under California law, if you hire an unlicensed worker to perform work requiring a contractor’s license, you’re automatically deemed the worker’s employer for all state payroll tax purposes, including unemployment compensation and state income tax (Cal. Unemp. Ins. Code § 621.5, Cal. Lab. Code § 2750.5). Neither the IRS nor virtually any other state has a rule similar to California’s. If you’re not sure whether the work you want done requires a contractor’s license, contact the California State License Board in Sacramento. If a contractor’s license is required, ask to see one before hiring the IC.
Clause 22. Applicable Law and Jurisdiction
See the first half of Chapter 5 for a discussion of this clause.

Clause 23. Notices
See the first half of Chapter 5 for a discussion of this clause.

Clause 24. No Partnership
See the first half of Chapter 5 for a discussion of this clause.

Signatures
See the first half of Chapter 5 for a discussion of this item.

Agreement for Use by Contractor
Use this agreement if you are a construction contractor. It can be used for all types of construction projects.

FORM
Finding and using the Agreement for Construction Contractor. You can download the Independent Contractor Agreement for Construction Contractor for use by the IC (and all other forms in this book) from Nolo.com (for details, see Appendix A). You can also find a copy in Appendix C.

CAUTION
When possible, download and edit the agreement on a computer. A contract where you’ve filled in the blanks by hand is the least persuasive form of contract if you want to convince a government agency that you are an IC and not an employee of the hiring firm. The best way to create your agreement is to download it from Nolo.com and tailor it to your needs. Or retype the agreement in Appendix C, tailoring it as you go.

Clause 1. Services to Be Performed
Contractor will furnish all labor and materials to construct and complete the project shown on the contract documents contained or specified in Exhibit A, which is attached to and made part of this Agreement.

The single most important part of the agreement is the description of the services you’ll perform for the client. This description will serve as the yardstick to measure whether your performance is satisfactory.

Describe in as much detail as possible what you’re expected to accomplish. However, word the description carefully to emphasize only the results you’re expected to achieve. Don’t describe the method by which you will achieve the results. As an IC, it should be up to you to decide how to do the work. The client’s control should be limited to accepting or rejecting your final results.

It’s perfectly okay for the agreement to establish very detailed specifications for your finished work product. But the specs should only describe the end results you must achieve, not how to obtain those results.

Construction projects usually involve detailed specifications or project descriptions. You should attach these to the agreement and label them as Exhibit A. This way, they become a part of the
agreement. If the construction plans are too lengthy or bulky to attach, you can refer to them in detail in Exhibit A. For example, you can say: “The full set of construction plans for the Wong Family remodel at 1755 Hearst Avenue approved by the City Planning Department on April 15, 20xx.”

Clause 2. Payment

[Choose Alternative A or B.]

[Alternative A]
Owner will pay Contractor for all labor and materials the sum of $______________.

[Alternative B]
Owner will pay Contractor $______________ for labor. Materials will be paid for by Owner upon delivery to the worksite or as follows: ________________ ________________.

Two options for payment are provided in this agreement. The owner can either:

• pay you for all labor and materials, or
• pay for materials directly and pay you just for labor.

Use whichever clause you and the client choose.

A client who wants to pay for materials directly is probably interested in making sure that the materials suppliers actually do get paid and have no reason to file a lien against the property. (Liens are explained above, in the “Liens and Lien Waivers” clause in the “Agreement for Hiring Firm to Use” section.) However, making the client your bill payer at every step of a complex project can be an unwieldy arrangement, because clients will not have accounts at your favorite suppliers, nor are they necessarily on site whenever you need a check. If possible, arrange to pay for materials yourself. Assure the client that you will, indeed, promptly pay all suppliers and subcontractors, and that every charge for supplies and outside labor that appears on your bill will be accompanied by a signed receipt.

Clause 3. Terms of Payment

[Choose Alternative A, B, or C.]

[Alternative A]
Upon completing Contractor’s services under this Agreement, Contractor will submit an invoice. Owner will pay Contractor within ________________ days from the date of Contractor’s invoice.

[Alternative B]
Contractor will be paid $______________ upon signing this Agreement and the remaining amount due when Contractor completes the services and submits an invoice. Owner will pay Contractor within ________________ days from the date of Contractor’s invoice.

[Alternative C]
Contractor will be paid according to the schedule of payments set forth in Exhibit ______, attached to and made part of this Agreement.

The terms of payment describe how you will bill the client and be paid. Before you are paid for your work, you should submit an invoice to the client setting out the amount due. An invoice doesn’t have to be fancy. It should include:

• an invoice number
• the dates covered by the invoice
• the hours expended (if you’re being paid by the hour), and
• a summary of the work performed.

Payment upon completing services

For brief projects, you may be paid in full by the client after you complete the work. Choose Alternative A for this form of payment.

Down payment required

Choose Alternative B to require the client to provide you with a down payment before you start work.
Payment according to schedule
For longer projects, a payment schedule is typically used—for example, you may be paid a specified amount when the agreement is signed, progress payments while the project is under construction, and the rest when the project is completed. Choose Alternative C to use this type of arrangement and attach the payment schedule to the agreement as an exhibit.

Clause 4. Late Fees [Optional Clause]
See the second half of Chapter 5 for a discussion of this clause.

Clause 5. Time of Completion
The work to be performed under this Agreement will commence on ____________ and be substantially completed on or before ____________.

State when the work will begin and end in the spaces provided. Be sure to give yourself adequate time to complete the project.

Clause 6. Permits and Approvals

[Choose Alternative A or B.]

[Alternative A]
Owner will be responsible for determining which state and local permits are necessary for performing the specified work and for obtaining and paying for the permits.

[Alternative B]
Contractor will be responsible for determining which state and local permits are necessary for performing the specified work and for obtaining and paying for the permits.

Typically, building permits or other government approvals are required for construction projects. It’s up to you and your client to decide who will be responsible for obtaining and paying for any required permits. Because the permit process can be lengthy and permit fees can be difficult to estimate, it is usually best for you to have the owner be responsible for obtaining and paying for all necessary permits.

Clause 7. Warranty
Contractor warrants that all work will be completed in a good workmanlike manner and in compliance with all building codes and other applicable laws.

A warranty is a promise or statement regarding the quality, quantity, performance, or legal title of something being sold. When you make an actual promise about these things, you are making an express, or stated, warranty. A warranty can be created by using words such as guarantee, affirm, or warrant in a contract. However, no magic words are necessary to create a warranty. Promises you make in proposals and contractual specifications can also serve as express warranties. This can be true even where you did not intend to create a warranty. Depending on the circumstances, express warranties can last for any period of time, ranging from a few months to many years.

If your work fails to live up to your warranties, the client can sue you in court for breach of warranty and obtain damages. The client doesn’t have to prove that you were negligent—that is, that you failed to do your work properly. All the client has to show is that you didn’t perform the way you said you would. This makes it much easier for the client to obtain damages.

It’s up to you to decide if you want to make any warranties in your agreement. This agreement includes a limited warranty that the work will be completed in a good workmanlike manner in compliance with all building codes. Such a warranty is fairly standard in the construction industry.
Besides, even in the absence of such a warranty in your agreement, you would still have a legal duty to complete the work in a “good and workmanlike manner.” This does not mean that the construction work must be perfect. Rather, it means that you must use appropriate and reasonable skill and care in the construction. Defects that a reasonably skilled contractor would not leave in the finished work must be fixed. Because the law implies this warranty in all construction contracts, this warranty will obligate you even if it is not written explicitly in the contract.

Most states also recognize an implied warranty on the part of a builder of a new home or other residence that the structure will be suitable for human habitation. This means that a residential structure must be a fit place for a person to live. It should comply with local building code requirements for residential housing and have, for example, adequate ventilation, light, heating, and sanitary facilities. Because this warranty is implied, it will obligate you, even though it is not written explicitly in your contract.

Clause 8. Site Maintenance

Contractor agrees to be bound by the following conditions when performing the specified work:

- Contractor will remove all debris and leave the premises in broom-clean condition.
- Contractor will perform the specified work during the following hours: _________________________________.
- Contractor agrees that disruptively loud activities will be performed only at the following times: ___.
- At the end of each day’s work, Contractor’s equipment will be stored in the following location: _________________________________.

Some clients may require that the construction work occur at specific times, that equipment be stored in a specific location, or that work be commenced or finished at a particular time each day. Use the provisions in this clause that apply.

Clause 9. Subcontractors

Contractor may at its discretion engage subcontractors to perform services under this Agreement, but Contractor will remain responsible for proper completion of services under this Agreement.

The agreement provides that you may engage subcontractors to help you perform your services, but you remain ultimately responsible for making sure that the work is completed properly.

Clause 10. Independent Contractor Status

Contractor is an independent contractor, not Owner’s employee. Contractor’s employees or subcontractors are not Owner’s employees. Contractor and Owner agree to the following rights consistent with an independent contractor relationship:

[Keep the bullets that apply; delete the rest.]

- Contractor has the right to perform services for others during the term of this Agreement.
- Contractor has the sole right to control and direct the means, manner, and method by which the services required by this Agreement will be performed.
- Contractor or Contractor’s employees or subcontractors will perform the services required by this Agreement; Owner will not hire, supervise, or pay any assistants to help Contractor.
- Owner will not require Contractor or Contractor’s employees or subcontractors to devote full time to performing the services required by this Agreement.
- Neither Contractor nor Contractor’s employees or subcontractors are eligible to participate in any employee pension, health, vacation pay, sick pay, or other fringe benefit plan of Owner.
One of the most important functions of an independent contractor agreement is to help establish that you are an independent contractor, not your client’s employee. The key to doing this is to make clear that you, not the client, have the right to control how the work will be performed.

You will need to emphasize the factors the IRS and other agencies consider in determining whether a client controls how the work is done. Of course, if you merely recite these factors but fail to live up to them, agency auditors won’t be fooled. Think of this clause as a reminder to you and your client about how to conduct your business relationship.

**Clause 11. Local, State, and Federal Taxes**

Contractor will pay all income taxes and FICA (Social Security and Medicare taxes) incurred while performing services under this Agreement. Owner will not:

- withhold FICA from Contractor’s payments or make FICA payments on Contractor’s behalf
- make state or federal unemployment compensation contributions on Contractor’s behalf, or
- withhold state or federal income tax from Contractor’s payments.

The payments specified in Clause 2 do not include taxes. If Contractor is required to pay any federal, state, or local sales, use, property, or value added taxes based on the services provided under this Agreement, the taxes will be billed separately to Owner. Owner will be responsible for paying any interest or penalties incurred due to late payment or nonpayment of any taxes by Owner.

The agreement should address federal and state income taxes, Social Security taxes, and sales taxes.

**Income taxes**

Your client should not pay or withhold any income or FICA taxes on your behalf. Doing so is a very strong indicator that you are an employee, not an independent contractor. Indeed, some courts have classified workers as employees based upon this factor alone. Keep in mind that one of the best things about being an independent contractor is that you don’t have taxes withheld from your paychecks.

This straightforward provision tells the client that you’ll pay all applicable taxes due on your compensation and that, therefore, the client should not withhold taxes from your payments. You need not insert any information here.

**Sales taxes**

A few states require independent contractors to pay sales taxes, even if they provide only services to their clients. These states include Hawaii, New Mexico, and South Dakota. Many other states require sales taxes to be paid for certain specified services.

Whether or not you’re required to collect sales taxes, include this provision in your agreement to make clear that the client will have to pay these and similar taxes. States change sales tax laws constantly and more are beginning to look at services as a good source of sales tax revenue. So this provision could come in handy in the future even if you don’t really need it now.

**Clause 12. Insurance**

Contractor agrees to obtain adequate business liability insurance for injuries to its employees and others incurring loss or injury as a result of the acts of Contractor or its employees or subcontractors.
The agreement requires you to obtain adequate business liability insurance to provide coverage for injuries to your employees or others. This is a standard provision.

Clause 13. Terminating the Agreement
See the second half of Chapter 5 for a discussion of this clause.

Clause 14. Exclusive Agreement
See the second half of Chapter 5 for a discussion of this clause.

Clause 15. Modifying the Agreement
[Optional Clause]
See the second half of Chapter 5 for a discussion of this clause.

Clause 16. Resolving Disputes
See the second half of Chapter 5 for a discussion of this clause.

Clause 17. Notices
See the second half of Chapter 5 for a discussion of this clause.

Clause 18. No Partnership
See the second half of Chapter 5 for a discussion of this clause.

Clause 19. Applicable Law and Jurisdiction
See the second half of Chapter 5 for a discussion of this clause.

Signatures
See the second half of Chapter 5 for a discussion of this item.
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