

# Independent Contractor Agreement

🔊 This sample contract is for both the Company and the Independent Contractor

## About the Independent Contractor Relationship

### Contractor vs. Employee

First, you should verse yourself with the nuances and requirements about working with and claiming that a worker is indeed an Independent Contractor. The distinction between an independent contractor and an employee may be blurry. Companies have used this ambiguity to avoid paying taxes to workers by reporting them as independent contractors when they are really regular employees. State and federal tax authorities are now auditing companies to find abuses and, as a result, heavy fines have been collected.

Independent contractors are often described as persons engaged in occupations who contract to perform work according to their own methods, without being subject to control of the employer except for the result. A nationwide survey reveals the basic view of an independent contractor as someone with an independent occupation and a sole responsibility for finishing the project for which he/she has been hired to complete; this is the extent of the employer / contractor relationship.

The IRS rules determine if a worker is an independent contractor, not company written agreements. The trap that many businesses fall into is the belief that if the business and the worker agree that the worker is an independent contractor, then the worker cannot be an employee. This is not true. In essence, workers may be considered independent contractors only if they:

- Offer services to the general public.
- Supply their own tools and work place.
- Control the methods used to accomplish the work; the hiring firm only controls the results of the work.

Problems arise because some workers may fall into a gray area, creating the danger of misclassifying employees as independent contractors. If there are some indications of an independent contractor relationship, and a borderline area exists, the law often will presume the worker is an employee and not an independent contractor.

### The IRS 20 Factors

These are the people you must please, so pay close attention to the details here. The IRS has developed twenty (20) common law factors (summarized below) which are to be used on a case by case basis to determine whether a worker is an independent contractor or an employee. In general, an individual is an employee (instead of an independent contractor) if the person for whom the services are performed directs the individual not only as to the result to be accomplished by the work but also as to the details and means by which that result is to be accomplished.

Not all of the following twenty (20) common law factors must be satisfied. However, most of the factors must be on the independent contractor's side of the scale if we were to weight each factor. Court cases have revealed judges to be subjective in their decisions in weighing the scale.

#### 1) No instructions

Contractors are not furnished with instructions to accomplish a job. They can, however, be provided with job specifications or requirements by the company. If the employer has the power to direct the means and manner of performance of the work, the contractor is not independent.

## 2) **No training**

Contractors typically do not receive training by the hiring firm. They use their own methods to accomplish the work.

## 3) **Services don't have to be rendered personally**

Contractors are hired to provide a result and usually have the right to hire others to do the actual work, or at least a percentage of it. The amount of work a contractor may hire out to others is usually stated in the written agreement between the employer and the contractor.

## 4) **Work not essential to the hiring firm**

A company's success of continuation should not depend on the service of outside contractors. An example violating this would be a law firm which called their lawyers independent contractors.

## 5) **Own work hours**

Contractors set their own work hours.

## 6) **Not a continuing relationship**

Usually contractors don't have a continuing relationship with a hiring company. The relationship can be frequent, but it must be at irregular intervals, usually whenever work is available.

## 7) **Control their own assistants**

Contractors shouldn't hire, supervise, or pay assistants at the direction of the hiring company. If assistants are hired, it should be at the contractor's sole discretion.

## 8) **Time to pursue other work**

Contractors should have time available to pursue other gainful work, as their services are offered and made available to the general public, not limited to one firm at a time.

## 9) **Job location**

Contractors control where they work. If they work on the premises of the hiring company, it is not under that company's direction or supervision.

## 10) **Order of work set**

Contractors determine the order and sequence that they will perform their work.

## 11) **No interim reports**

Contractors are hired for the final result, and therefore, should not be asked for progress or interim reports.

## 12) **Payment timing**

Contractors are paid by the job, not by time. Payment by the job can include periodic payments based on a percentage of job completed. Payment can be based on the number of hours needed to do the job times a fixed hourly rate. However, this should be determined before the job commences.

## 13) **Working for multiple firms**

Contractors can, at their discretion, work for more than one (1) firm at a time.

## 14) **Business expenses**

Contractors are generally responsible for their incidental expenses.

### **15) Own tools**

Usually contractors supply the materials for the job and furnish their own tools and equipment.

### **16) Significant investment**

Contractors should be able to perform their services without the hiring company's facilities (equipment, office furniture, machinery and so on). The contractor's investment in his trade must be real, essential, and adequate (see Factor 15).

### **17) Services available to the general public**

Contractors make their services available to the general public in several different ways. This may include having an office and assistants, business signs, a business license, listing services in a business directory, and advertising their services.

### **18) Possible profit or loss**

While permanent employees cannot suffer losses, contracted employees can make profits or losses. Certain circumstances indicate that a profit or loss is possible. Specifically, if the contractor hires, directs and pays assistants; if the contractor has his/her own office, equipment, materials or facilities; if the contractor has continuing and curring liabilities; if the contractor has agreed to perform specific jobs for prices agreed upon in advance; and if the contractor's services affect his/her own business reputation, including ultimate profit or loss.

### **19) Limited right to discharge**

Contractors can't be fired as long as they produce a result which meets the contract specifications. Employers, however, may choose not to renew a contractor's agreement or use a particular contractor's services again.

### **20) No compensation for non-completion**

Contractors are responsible for the satisfactory completion of a job or they may be legally obligated to compensate the hiring firm for failure to complete.

Penalties for misclassifying employees include, but are not limited to, exposure to additional taxes, penalties and interest, additional wage and overtime obligations under the Fair Labor Standards Act, workers' compensation and unemployment liabilities and the often overlooked probability of wrongful termination suits. The guidelines set forth above should provide some insight into the most important factors to be considered in making a well-reasoned decision on how to classify workers.

Furthermore, there are several things you can do to help establish the proper classification of independent contractors. First, sign an agreement with the independent contractor which clearly spells out her/his responsibilities and how payment will be determined for each job. Please see the sample Independent Contractor Agreement in the Forms section. In addition, require the independent contractor to supply all or most of the tools, equipment and material needed to complete the job. Also, make it clear that the independent contractor is free to offer services to other businesses. However, ensure the agreement includes a "Consulting for Competitors" clause wherein the consultant agrees not to consult for other companies whose business or proposed business, including goods and services, are determined to be competitive with your company's business. Lastly, payment should be determined by project not by a time-specified rate and payment should be made upon delivery of finished goods. Require the independent contractor to submit invoices for each job or portion of a job based on a milestone schedule before you make payment. It is also recommended to keep a file containing the independent contractor's business card, stationery samples, ads and employer identification number. These items can help show that the contractor has an established business.

🔊 This Memorandum should be completed and given to the Independent Contractor along with the accompanying Independent Contractor's Agreement. Please remember to delete these and other comments in blue below before printing.

Date: **[Date]**

To: **[Name of Contractor]**

From: **[Owner/Founder]**  
**[Company]**

Subject:  **Independent Contractor's Agreement**

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Attached to this memorandum is our Independent Contractor's Agreement.

The Agreement is fairly straight-forward, in that it is brief and only addresses the fact that you will be working for us as an Independent Contractor, not as an Employee.

It also sets forth the task(s) you will be performing, as well as your compensation.

I believe that it embodies everything we discussed.

Please read the agreement carefully.

We recommend that you also have it reviewed by your own qualified legal counsel.

Time is of the essence.

Please sign and return it to me asap.

Thank you very much!

# From JIAN

## NOTICE:

We wish we could provide an agreement that was tailored *exactly* to your business. While this is not always possible, we feel that we've come very close and that this document provides you with the head-start that you need to get your deal moving. Nevertheless, we must make this disclaimer:

- 🚫 **Do Not Use This Agreement 'As-Is.'**
- 🚫 **This Agreement Is Not Legal Advice.**
- 🚫 **Read it Thoroughly and Make All Appropriate Changes to Fit Your Requirements.**
- 🚫 **You Should Have this Agreement Reviewed and Approved by a Qualified Attorney at Law Before Using It.**
- 🚫 **JIAN Accepts No Liability for the Effectiveness of This Document For Your Purposes.**

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We're building a network of business experts who are eager to help you when you need it. They can review your work, make suggestions, handle unique situations and introduce you to influential people. On our website you can search by expertise and location, then e-mail or jump straight to their website. Although they are professionals and charge for their services, most offer an initial consultation free of charge. They're in your area and you can contact them directly.


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- Please visit our website under [Updates](#).
- Remember to bookmark our website: [www.JIAN.com](http://www.JIAN.com)

## Editing Your Sample Contract

Since this entire agreement is formatted in Word, you can edit it like any other Word document. You can jump from variable to variable by clicking the above  green arrows (JIAN Menu) which will take you forward / backward and highlight the entire sample text identified within the “[ ]” brackets – simply edit / type-over with your information.

To make sure you have filled in all the variables, use Word's 'FIND' function to locate any “[ ]” which may contain an unedited variable.

- Click the  icon in the JIAN menu above to turn the expert comments on/off.
- Upon completion, delete any unnecessary blank lines that remain.
- You may format this document any way you like.
- Delete this page.



3. I will provide my own materials, tools, and equipment, and will expect no reimbursement for any out-of-pocket expenses incurred by me in the performance of my services.

🔊 Section 4 sets the rate of fee that the Independent Contractor will be charging the company.

🔊 State the hourly rate or set fee for the services the Independent Contractor will be providing.

4. I will perform services [describe services] [at the rate of \$xxx per hour / for a set fee of \$xxx / for a not to exceed fee of \$xxx.

🔊 This Agreement is effective until the work is completed or one of the parties gives notice (see brackets below) whichever comes first.

🔊 Insert the required notice to terminate this Agreement.

5. This Agreement is effective as of the Effective Date written above and continues until terminated by either party upon [Enter the period of notice required to terminate] written notice, or upon completion of the job more fully described in Section 1 above.

### **Understood, Approved & Agreed**

Independent Contractor



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[Independent Contractor]

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Title