Chapter 1

How to Use This Book

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This chapter explains how to use this book to put together agreements that will serve your business needs, legally and efficiently.

If you need some legal background on hiring independent contractors, refer to Chapter 2. If you would like an introduction to the legalities of working as a consultant or IC, refer to Chapter 3.

**Oral Agreements Are Legal But Dangerous**

Most contracts need never be written down to be legally valid. (For exceptions to this general rule, see “Some Agreements Must Be in Writing,” below.) For example, a client and an IC can enter into a contract over the phone or during a lunch meeting at a restaurant. No magic words need be spoken, and nothing has to be written on a piece of paper. They just have to agree that the IC will perform services for the client in exchange for something of value—usually money. Theoretically, most oral agreements are as valid as a 50-page contract drafted by a high-powered law firm.

**EXAMPLE:** Gary, a freelance translator, receives a phone call from a vice president of Acme Oil Co. She asks Gary to translate some Russian oil industry documents for $2,000. Gary says he’ll do the work for the price. Gary and Acme have a valid oral contract.

In the real world, however, using oral agreements is like driving without a seatbelt—there’s no problem as long as you don’t have an accident, but if you do have an accident, you’ll wish you had buckled up. An oral IC agreement can work just fine provided that you and the other party remember the contract’s terms in the same way and fulfill them as expected by the other party.

Unfortunately, things don’t always work so perfectly. Courts are crowded with lawsuits filed by people who entered into oral agreements with each other. Costly misunderstandings can develop if an IC performs services without a clear written description of what he or she is supposed to do and what will happen if it isn’t done. Such misunderstandings may be innocent—you and the other party may have misinterpreted each other or failed to listen carefully. Or they may be purposeful—without a written document to prove otherwise, the other side can claim that you orally agreed to anything.
Some Agreements Must Be in Writing

Some types of agreements must be in writing to be legally enforceable. These are agreements dealing with important transactions that are likely to lead to misunderstandings or even deception. Each state has a law, usually called the "statute of frauds," that lists the types of contracts that must be written to be valid. A typical list includes:

- any contract that cannot possibly be performed in less than one year
  
  **EXAMPLE:** Denise is hired to perform consulting services for the next two years for $2,000 per month. Since the agreement cannot be performed in less than one year, it must be in writing to be legally enforceable.

- contracts for the sales of goods—that is, tangible personal property, such as a computer or car—worth $5,000 or more
  
  **EXAMPLE:** John is hired to perform consulting services for Acme Corporation. John is worried he won’t be paid on time, so Sheila, Acme’s president, personally guarantees John's payment—that is, she promises to pay John out of her own pocket if Acme Corporation doesn't. The guarantee must be in writing to be legally enforceable.

- a promise to pay someone else's debt
  
  **EXAMPLE:** John is hired to perform consulting services for Acme Corporation. John is worried he won’t be paid on time, so Sheila, Acme’s president, personally guarantees John's payment—that is, she promises to pay John out of her own pocket if Acme Corporation doesn't. The guarantee must be in writing to be legally enforceable.

- contracts involving the sale of real estate
- real estate leases lasting more than one year, and
- any transfer of copyright ownership. (Copyright issues are covered in Chapter 11.)

A few states, including California, require contracts between buyers and sellers on the one hand and real estate brokers and agents on the other to be in writing, but most states don’t.

A good written IC agreement is your legal lifeline. If properly drafted, it will help prevent disputes by making clear exactly what’s been agreed to. If problems develop, it will provide ways to solve them. If you and the other party end up in court, it will establish your legal duties to each other.

**Advantages of Written Agreements**

Written agreements do more for you than help to avoid misunderstandings or dishonest dealings. There are important practical reasons why you should always sign a written IC agreement before work begins.

**Defining projects**

The process of deciding what to include in an agreement forces both the IC and the client to think carefully, perhaps for the first time, about exactly what the IC is supposed to do. Hazy or ill-defined expectations stand out when they’re reduced to writing. After further discussion and negotiation, you can develop a specific description of the work that the IC will perform. This gives both sides a yardstick by which to measure the IC’s performance and is the best way to avoid later disputes.

**Establishing IC status**

A well-drafted IC agreement will also help establish that the worker is an IC, not the client’s employee. This is vital both for the client and the IC. (See Chapter 2 for a detailed discussion of the importance of distinguishing employees from independent workers.) However, a written IC agreement is not a magic legal bullet. It will never by itself turn an employee into an IC. What really counts is how the worker is actually treated, not a formality like signing an agreement. See Chapter 2 for information on how to treat a worker like an IC.

**Assuring payment terms**

If you’re an IC, a written agreement clearly setting out your fees will help ward off disputes about how much the client agreed to pay you. If a client fails to pay and you have to sue for your fee, the written
agreement will be proof of how much you’re owed. Relying on an oral agreement with a client can make it very difficult for you to get paid in full or at all. Conversely, clients will want a clear fee understanding to avoid claims of underpayment.

**Agreements Contained in This Book**

This book contains a number of consultant and independent contractor agreements you can adapt to fit your needs. It includes:

- two general-purpose IC agreements that can be used by almost anyone who hires an IC or works as one (see Chapter 5), and
- several different agreements tailored to specific kinds of work ICs commonly perform, including:
  - independent consulting (see Chapter 6)
  - household work (see Chapter 7)
  - sales, including real estate sales (see Chapter 8)
  - accounting and bookkeeping (see Chapter 9)
  - computer software consulting (see Chapter 10)
  - creative work, such as writing, illustrating, graphic design, and composing music (see Chapter 11)
  - construction (see Chapter 12), and
  - messenger, courier, and delivery services (see Chapter 13).

You’ll find two different agreements for most of the above categories—one for use by the hiring firm and another for use by the IC. This was done so that each agreement could best protect the interests of the person or firm using it. However, none of the agreements are unduly one-sided.

Each chapter contains a detailed description of all the provisions in the agreement it covers. Many of the provisions contain alternatives you may choose from, such as whether the IC will be paid by the hour or with a fixed fee. Or they may require you to provide additional information, such as an address. Be sure to read the instructions carefully as you complete your agreement.

**Putting Your Agreement Together**

Make sure your agreement is properly signed and put together. If it isn’t, it might not be legally valid. This is not difficult if you know what to do. This section provides all the instructions you need to get it right.

**Signatures**

Although it is not always legally required, it is best for both parties to sign the agreement and to do it in ink. The two of you need not be together when you sign, and it isn’t necessary to sign at the same time. There’s no legal requirement that the signatures be located in any specific place in a business contract, but they are customarily placed at the end of the agreement—that helps signify that both parties have read and agreed to the entire document.

It’s very important that both parties sign the agreement properly. Failure to do so can have drastic consequences. How to sign depends on the legal form of the business signing.
In this section, we take a look at the possible legal forms and their effects on signature requirements.

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### No Initials Needed

It’s not necessary that both parties initial every page of an agreement. This is sometimes done to make it more difficult for one party to remove a page and add a new one with different terms without the other side knowing about it. If you’re afraid the other side might do something like this, you can insist on initializing the pages. Otherwise, save your ink for the signature page.

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### Sole proprietorships

A person is a sole proprietor if he or she is running a one-person business and hasn’t incorporated or formed a limited liability company. The vast majority of ICs and consultants are sole proprietors, as are many clients.

If you or the other party is a sole proprietor, you can each simply sign your own name and nothing more. That’s because a sole proprietorship, unlike a corporation or partnership, is not a separate legal entity from the person who owns it. Therefore, if Susie Davis runs custom shopping tours for wealthy tourists, for example, her agreements with her clients can be signed “Susie Davis.”

However, if you use a fictitious business name, it’s best for you to sign on behalf of your business.

**EXAMPLE:** Chris Kraft is an IC sole proprietor who runs a marketing research business. Instead of using her own name for the business, she calls it AAA Marketing Research. She should sign her contracts like this:

AAA Marketing Research
By: ____________________________
Chris Kraft

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### Partnerships

If either you or the other party is a partnership, you must sign the agreement on behalf of the partnership, which means that the partnership must be identified in the signature block. Identifying the partnership is very important: If a partner signs only his or her name without mentioning the partnership, the partnership is not bound by the agreement—only the individual partner will be bound. This means that you couldn’t go after the partnership’s money or assets if the signing partner breaches the agreement. Instead, you could obtain only the signing partner’s assets, which will likely be less than the partnership’s.

Conversely, if you’re a partner in a partnership and mistakenly sign an agreement as an individual, you’re setting yourself up as the legal target if something goes wrong and the other side decides to sue. Since the other side won’t be able to sue the partnership, it will look solely to you for legal recourse.

Which partner should sign? If the partnership is a general partnership (every partner invests and participates in managing the business), any partner can sign. But some partnerships are limited partnerships, which means that there is at least one general partner, but also some partners who invest in but don’t participate in the business. Limited partners should never sign agreements—by law, they have no authority to bind the partnership. The agreement should always be signed by a general partner.

Only one partner needs to sign. The signature block for the partnership should state the partnership’s name and the name and title of the person signing on the partnership’s behalf.

**EXAMPLE:** The Argus Partnership contracts with Sam for marketing research. Randy Argus is one of the general partners. He signs the contract on the partnership’s behalf like this:
The Argus Partnership
A Michigan Partnership
By: ________________________________
Randy Argus, a General Partner

It’s possible for a person who is not a partner to legally sign on behalf of a partnership. In this circumstance, the signature should be accompanied by a partnership resolution stating that the person signing the agreement is authorized to do so. The partnership resolution is a document signed by one or more of the general partners stating that the person named has the authority to sign contracts on the partnership’s behalf. Attach the resolution to the end of the agreement.

Corporations
If either you or the other party is a corporation, the agreement must be signed by someone who has authority to sign contracts on the corporation’s behalf. The corporation’s president or chief executive officer (CEO) is presumed to have this authority.

If someone other than the president or CEO of a corporation signs—for example, the vice president, treasurer, or other corporate officer—ask to see a board of directors’ resolution or corporate bylaws authorizing that individual to sign. If the person signing doesn’t have authority, the corporation won’t be legally bound by the contract. Attach the resolution to the end of the agreement.

Keep in mind that if you own a corporation and you sign personally instead of on your corporation’s behalf, you’ll be personally liable for the contract. It’s likely that the main reason you’ve gone to the trouble to form a corporation is to avoid such liability. So signing improperly is self-defeating.

The signature block for a corporation should state the name of the corporation and the name and title of the person signing on the corporation’s behalf.

EXAMPLE: Emma Steinberg is the president of Kiddie Krafts, Inc. Since she is the president, any contracts signed by her need not be accompanied by a corporate resolution showing she has authority to bind the corporation. The signature block for contracts she signs should look like this:

Kiddie Krafts, Inc.
A California Corporation
By: ________________________________
Emma Steinberg, President

Limited liability companies
The owners of limited liability companies are called members. Members may hire others, called managers, to run their company for them. An agreement with a limited liability company should be signed by a member or manager.

EXAMPLE: AcmeSoft LLC, a limited liability company, hires Sally to perform freelance programming services. The contract is signed on AcmeSoft’s behalf by Edward Lee, the company’s manager. The signature block should appear in the contract like this:

AcmeSoft LLC
A California Limited Liability Company
By: ________________________________
Edward Lee, Manager

Dates
When you sign an agreement, include the date and make sure the other party does, too. You can simply put a dateline next to the place where each person signs—for example:

Jamie Alvarez Date
You and the other party don’t have to sign on the same day. Indeed, you can sign weeks apart. However, unless the agreement provides a specific starting date, it goes into effect on the date it’s signed. If the parties sign on different dates, the agreement begins on the date the last person signed. Until the agreement is signed by both parties, neither is bound by it.

**Attachments or Exhibits**

An easy way to keep an agreement focused on the essential aspects of your arrangement is to use attachments, also called exhibits, to list lengthy details such as performance specifications. (You can also use attachments when someone who normally wouldn’t have authority to sign has been given that power by the partnership or corporation, as explained above.) Putting practical details in a separate but attached document makes the main body of the contract shorter and easier to follow.

If you have more than one attachment or exhibit, they should be numbered or lettered—for example, Attachment 1 or Exhibit A. The attachments don’t have to be dated or signed. Be sure that the main body of the agreement mentions that the attachments or exhibits are included as part of the contract.

**Altering the Agreement**

Sometimes it’s necessary to make last-minute changes to a contract just before it’s signed. If you use a computer to prepare the agreement, it’s best to make the changes on the computer and print out a new agreement.

However, it’s not legally necessary to prepare a new contract. Instead, the changes may be handwritten or typed onto all existing copies of the agreement. If you use this approach, be sure that all those signing the agreement also sign their initials as close as possible to the place where the change is made. If both people who sign the entire document don’t also initial each change, questions might arise as to whether both parties really agreed to the change.

**Copies of the Agreement**

Prepare at least two copies of your agreement. Make sure that each copy contains all the needed exhibits and attachments. Both you and the other party should sign both copies—and each should keep one signed original. Each copy constitutes an original contract.

Be sure to keep your copy of the agreement in a safe place. If you’re hiring an IC, set up a separate vendor file for the IC. In this file, keep the IC agreement, the IC’s invoices, copies of IRS Form 1099, and any other information that shows the worker is operating an independent business. Don’t keep independent contractor records with your employee personnel records.

**Using Electronic IC Agreements**

You don’t necessarily have to create and sign an agreement on paper to create a valid IC agreement. Many hiring firms and contractors use electronic IC agreements. An electronic agreement is a contract created and “signed” in electronic form; no paper or other hard copies are used. For example, you draft an IC agreement on your computer and email it to the other party, who then emails it back with an electronic signature indicating acceptance. Electronic contracts and electronic signatures are just as legal and enforceable as paper contracts signed in ink—indeed, their validity is guaranteed by a federal law known as the E-SIGN Act.

Of course, a traditional ink signature isn’t possible on an electronic contract. However, there are several different ways you can “sign” an electronic agreement:

- Type your name on the signature line.
- Paste a scanned version of your handwritten signature on the signature line.
Consultant & Independent Contractor Agreements

- Click an “I Accept” button.
- Use cryptographic “scrambling” technology to ensure that the electronic signature really belongs to you—many software packages are available for this purpose.

Any of these methods is perfectly legal so long as the party electronically signing the agreement did so to indicate acceptance of the agreement.

Cover Letter

Although not necessary, it can be helpful to include a cover letter when you send the agreement to the independent contractor to sign. You can see a sample of such a letter below. It reminds the independent contractor that he or she is not entitled to unemployment or other employee benefits and should never refer to himself or herself as your employee. Ask the independent contractor to sign the letter along with the independent contractor agreement and return both to you.

Form

If you’re reading a print copy of this book, you’ll find the cover letter on the CD-ROM. A tear-out copy is included in Appendix B.

If you’re using an ebook version, the cover letter can be downloaded from the Nolo website; the link is included in Appendix A.

Changing the Agreement After It’s Signed

No contract is engraved in stone. You and the other party can always modify or amend your contract if you both agree to the changes. You can even agree to call the whole thing off and cancel your agreement.

The key to changing a contract is cooperation. Neither party is ever obligated to accept a proposed modification to a contract. Either of you can say no to the proposed change and accept the consequences—for example, the other side may go ahead with a unilateral change or stop performing altogether. Either way, you may end up with a court battle over breaking the original contract. You’re usually better off reaching some sort of accommodation with the other side, unless the person is totally unreasonable.

An amendment doesn’t replace the whole original contract, just the part that’s changed by the amendment (for example, the delivery date or payment terms). If your agreement requires extensive changes, it’s generally wiser to create an entirely new agreement. The new agreement should include language indicating that the new agreement replaces the old agreement in its entirety.

Oral Amendments

Unless your contract is one that must be in writing to be legally valid—for example, an agreement that can’t be performed in less than one year—it can usually be modified by an oral agreement. In other words, you need not write down the changes.

Example: Art signs a contract with Zeno, who will build an addition to his house. Halfway through the project, Art decides that he wants Zeno to do some extra work not covered by their original agreement. Art and Zeno have a telephone conversation in which Zeno agrees to do the extra work for extra money. Although nothing is put in writing, their change to their original agreement is legally enforceable.

Written Amendments

ICs and their clients change their contracts all the time and never write down the changes. The flexibility afforded by such an informal approach to contract amendments might be just what you want. However, written amendments—like written agreements in general—have many advantages over
Sample Cover Letter to Independent Contractor

August 1, 20xx
Joe Contractor
123 Main St.
Anytown, TX 12345

Dear Mr. Contractor:

Enclosed, please find the independent contractor agreement for your services. The agreement makes clear that you are an independent contractor (self-employed) and not an employee of Widget Company. Please read it carefully. If you have any questions about your work status please do not hesitate to contact me.

Because you are an independent contractor, Widget Company will not withhold any taxes from your pay. You must pay all your state and federal taxes yourself. You’ll likely have to pay estimated taxes four times a year.

In addition, Widget Company will not provide you with unemployment insurance coverage. When your services end, you will not be legally entitled to apply for unemployment benefits based on your term of service with Widget Company.

Failure to preserve your independent contractor status could prove costly not only to Widget Company but to you personally because it could result in your loss of valuable tax deductions. To help preserve your status, please do not identify yourself as a Widget Company employee, either orally or in writing on tax or other government forms, your business cards, letterhead, resume, marketing literature, or any other document. If you are asked what your status was while working with Widget Company, please state that you were a self-employed independent contractor.

Please inform Widget Company immediately if the IRS or other government agency contacts you regarding your work status while performing services for us.

Please sign the acknowledgement of this letter, below, and return it with a copy of the signed independent contractor agreement.

Very truly yours,
Widget Company
By: ________________________________
   Jennifer Q. Widget

I have read and agree to be bound by the terms of this letter and the independent contractor agreement.

Name of Contractor ________________________________
By: ________________________________
Date: ________________________________
oral amendments. First of all, writing down your amendments helps avoid misunderstandings as to what was agreed to. Moreover, your agreement may include a clause requiring all amendments to be in writing. (This is an optional clause contained in the agreements in this book.) Such clauses are not always enforced by courts, but a party seeking to enforce an oral amendment despite a clause prohibiting them will face an uphill battle in court. For these reasons, it is always best to have some writing showing what you’ve agreed to.

You can put an amendment in writing informally. For example, following a telephone call with the other party, you can simply send a confirming letter or email summarizing the changes you both agreed to make. If the other side doesn’t correct your written confirmation with a letter or email of its own, the existence of your written confirmation creates a legal presumption that your version of the contract change is correct. This will be very helpful if the other side later claims he or she never agreed to the change or that the change is set forth incorrectly in your letter or email. Be sure to keep a copy of your letter or email confirming the amendment for your files.

**EXAMPLE:** Janet, a much sought-after editor, agrees to perform editing services for Steve. Her written agreement with Steve provides that her work will be completed by April 1. However, Janet finds the project more time-consuming than she anticipated. She calls Steve and asks him for an extension. Steve agrees to give Janet until May 1 to complete the work. But in return, Janet agrees to a 5% reduction in her fee for the work. Janet sends Steve the following confirming letter setting forth this contract change:

```
March 15, 20xx
Steve Blair
100 Main Street
Marred Vista, CA 90000

Dear Steve:

This letter serves to confirm our phone conversation of March 14, 20xx. You agree to extend the deadline for completion of my editing work on your book, The History of Sparta, until May 1, 20xx. In return, I shall reduce my fee for the work by 5%. Instead of charging you $1,000, I will charge $950. Thank you for your cooperation in this matter. Like the Spartans, I remain with it or on it.

Janet Swift
```

**Drafting Written Amendments**

If the change involves a contract provision that is very important, it’s wise to insist on a written amendment signed by both parties. The amendment should set forth all the changes and state that the amendment takes precedence over the original contract provision. For example, an amendment specifying that payment will be by the piece instead of by the hour should state that the new arrangement replaces the original understanding.

**FORM**

*If you’re reading a print copy of this book, you’ll find the contract amendment on the CD-ROM. Tear-out copies are included in Appendixes B and C.*

*If you’re using an ebook version, the contract amendment can be downloaded from the Nolo website; the link is included in Appendix A.*
There are three different ways you can draft your amendment using the contract amendment form:

Method #1: Redlines and strikethroughs. With this method, additions and deletions to the contract are shown visually, with additions underlined and deleted text crossed out. (Most word processing programs allow you to choose “strikethrough” as a font style choice.) A statement describing the process used to draft the amendment commonly precedes the amendment itself.

**EXAMPLE 1:**

The parties agree to amend the Agreement by the following additions (indicated by underlining) and deletions (indicated by strikethroughs):

Section 7 is amended to read as follows:

7. Term. The Term of this Agreement shall be from July 31, 2009 to July 31, 2010. The Agreement may be renewed on an annual basis for additional two-year terms following the initial term, upon written agreement of the parties. The parties must mutually inform each other of their intention to renew the Agreement no later than January 31 of each year in which the Agreement is set to terminate.

Method #2: Clause is replaced in its entirety. In this method, when amending a contract you simply state that a whole clause has been replaced, and provide the new clause. Here’s how it looks.

**EXAMPLE 2:**

Section 7 is replaced in its entirety by the following:

7. Term. The Term of this Agreement shall be from July 31, 2009 to July 31, 2011. The Agreement may be renewed for additional two-year terms following the initial term, upon written agreement of the parties. The parties must mutually inform each other of their intention to renew the Agreement no later than June 1 of each year in which the Agreement is set to terminate.

Method #3: Describing the amendment. Using this approach, the changes are described. This is often shorter but requires the parties to check against the existing text of the contract.

**EXAMPLE 3:**

The first sentence of Section 7 is amended by replacing “2010” with “2011.” The second sentence is amended by striking “on an annual basis” and replacing it with “for additional two-year terms.” The date in the last sentence is modified from “January 31” to “June 1.”

You can choose whichever method suits you or combine them if you wish. The important thing, as with all contract drafting, is that your intentions are clear to all parties as well as to third parties reading the amendment. In addition, be sure to change any cross-references, if necessary.