

**HARDHATS:**

**CONTRACT**

**TEMPLATE**



**HARDHATS**

**Use subcontractors  
for as long as you  
want, however you  
want & keep HMRC  
happy...**

...without having to use a payroll  
company

# HardHats: **Three Factor Formula**

**1**

*Commercial  
Aspects*

The 'Commercial Aspects' part of our formula looks at the day-to-day relationship you have with the subcontractors

**2**

*Business  
Factors*

'Business Factors' is where our formula will demonstrate your subcontractors are in business in their own right

**3**

*The  
'Tests'*

The 'Tests' are what form the law around self-employment. This factor shows you how to never fail any of them

# Commercial Aspects

The 'Commercial Aspects' of the relationship you have with your subcontractors, is simply, the 'HOW' you are working with them.

To keep HMRC happy, we need to provide a legitimate business reason as to 'WHY' you work with your subcontractors the way you do.

Although each business is unique, more often than not how you work with your subcontractors is similar.

Let's take a look at the Top Three:

## 1 Training

By being self-employed, the subcontractors should incur their own business expenses.

However, if your subcontractor doesn't possess the required skills, you are able to arrange the training on their behalf.

That is, if the cost of the training is reflected within the rate paid to the subcontractor.

## 2 Uniform

To be self-employed, by definition means to be 'in business in your own right.'

That means, your subcontractors should promote their own business, not yours.

But under H&S, you are responsible for the subcontractors whilst they are site and they need to be identifiable.

That's they wear your uniform.

## 3 Motor Vehicles

This is probably the most popular 'benefit' provided to subcontractors. But why?

Could you imagine having to rely on your subcontractors to get themselves to site?

Delivery of projects on time is crucial to maintaining your reputation.

That sounds like a legitimate business reason to me...

***"In order to ensure the smooth delivery of the services and reliability, you as a business may provide vehicle and travel to the subcontractor.***

***In the event any travel or vehicle are provided, any cost of such facilities will be included within the rate paid to the subcontractor."***

...who could misinterpret you giving your subbies a van as an 'employee' benefit now?

# Business

# Factors

---

***"Self-employment, by definition means to be in business in your own right"***

If you were asked to prove you were business, you can do this by:

- having a website
- company branding
- having staff and an office

In other words, you have a PRESENCE.

But if we apply the same questions to your subcontractors, we may not get the same answers.

So what can YOU do and THEY can do which demonstrates you are both in business in your own right?

One way we can do that, is to demonstrate that subcontractors can make a LOSS as well as a PROFIT.

**Holding your subcontractors responsible for their sub-standard works is a clear way of demonstrating they can make a LOSS as well as a PROFIT**

***"The Contractor (you) may impose a requirement on the Subcontractor to rectify any defective work the Contractor reasonably determines has been caused by the Subcontractor, at his own cost or in his own his time."***

*Having the subcontractors rectify their sub-standard works in their own time, is time they would usually spend earning money, therefore making a loss.*

So let me ask you the question again... how would you prove your subcontractors are in business in their own right?



# The 'Tests'

*The 'Tests' are the most important part of any contract.*

*That's because it's these that form the law around employment and self-employment.*

*With there being no legal definition to what is self-employed, it's the outcome of these tests which determine whether a subcontractor is employed or self-employed.*

*So what are the 'Tests'?*

## **Personal Service**

Personal Service looks at whether it is the subcontractor as a person that you require to do the job; or is it just the skills that the subcontractor possess that you require to do the job?

Can your subcontractors send someone in their place if they can't make it to work?

## **Mutuality Of Obligation**

The test of Mutuality of Obligation looks at the level of commitment there is between you and the subcontractor.

Are you obliged to offer them work? Are they obliged to accept it?

## **Control**

The Control test predates the Victorian times and looks at whether the relationship you have with your subcontractors is one of MASTER and SERVANT.

In other words, are you telling your subcontractors what to do, when to do it and more importantly, HOW to do it?

# Personal Service

Allowing your subcontractor to send a substitute in their place clearly demonstrates that it is not the subcontractor you require to do the job, but just the skills that they possess.

But whilst this may maintain their self-employed status, it also leaves you exposed to accepting any substitute on your sites.

But that will never happen with a clause like this:

***“The Subcontractor has the right to send a substitute to perform the Services. The Subcontractor acknowledges that the Contractor has the right to refuse the substitute, only if, in the reasonable view of the Contractor, the substitute does not possess the necessary skills, qualifications and experience to perform the Services.*”**

***No payment will be made by the Contractor in respect of any handover period or training required to ensure a smooth delivery of the Services”***

# Mutuality of Obligation

In practice, this is probably the easiest of the 'tests' to demonstrate.

But with HMRC having a successful argument that MOO must be present in the relationship because you are their main source of income and the relationship is long-term, we need to not only demonstrate, but also have it documented.

To see if MOO is present, ask yourself these 3 questions:

1. Do my subcontractors have the right to down tools and leave today?
2. If I had a down-turn in work, do I have the right to just 'let them go'?
3. Are the subcontractors free to take holiday and days off whenever they want?

Answer YES to all three? MOO isn't present, use this clause:

***“The Contractor is not obliged to offer any work to the Subcontractor, neither is the Subcontractor obliged to accept any work offered.*”**

***The Subcontractor is not obliged to make his Services available at any time.***

***Specifically, both parties agree that they do not intend to create or imply any mutuality of obligations at any time, either during or in between any individual engagement”***

# Control

Predating the Victorian era, the test of 'Control' looks at whether the relationship you have with your subcontractors is one of MASTER and SERVANT.

It's often thought that a master/servant relationship is one where you tell them 'what' to do and 'when' to do it.

Wrong.

It's all about telling them 'HOW' to do it.

If you are using subcontractors and telling them 'WHAT' to do and 'WHEN' to do it only to keep them in line with the site progress and programme. That's ok.

If you are using subcontractors and NOT telling them 'HOW' to do the job. That's even better. Control isn't present.

***“As an independent business the Subcontractor is free to decide how he provides the Services.*”**

***Neither the Contractor, nor any other person will, or has the right to supervise, direct or control the manner in which the Services are provided by the Subcontractor, or any person engaged by the Subcontractor”***

# Important bits to **include** before we bring it all together

---

## Length of Engagement & Rates of Pay

It is generally believed that subcontractors should not be used on an on-going or permanent basis. They can, however, be moved to another site or project should the current one come to an end.

It is not essential to include a rate of pay within the agreement. Sometimes it is better to leave out if the subcontractors can earn varying amounts dependant on what works they are undertaken.

However, by including the agreed rate within the agreement, it removes any potential disputes with the subcontractor should the relationship become strained. A 'he said, she said' argument is a lot more difficult to defend than one that has been agreed.

Also include that if the subcontractors are to (or not in some cases) provide an invoice.

For example:

*"The Subcontractor will/ is not obliged to provide an invoice. The Contractor will provide a pay statement to the Subcontractor in accordance with the requirements of the Construction Industry Scheme when payment is made"*

## Status of the Relationship

It is important that early on within the agreement you outline the working relationship between you and your subcontractors. For the avoidance of doubt, it needs to be clearly stated that they are providing their 'services' on a self-employed basis, and that they are in business in their own right.

For example:

*"You are engaged as a self-employed (ENTER TRADE HERE) to provide (ENTER TRADE HERE) services. It is the attention of both parties that when the Subcontractor provides services to the Contractor, he is engaged as an independent business in his own right; under this contract for services and not a contract of employment or any other kind of contract"*

---

## Tax & NI Responsibilities

Although a CIS deduction will be made from the subcontractor (for those verified at 20%/ 30%), the subcontractor is responsible for their own Tax & National Insurance affairs.

This must be included.

In addition, in order to maintain their genuine self-employment status you need to clarify within the agreement that the sub contractors are not due any holiday entitlement, sick/holiday pay and or any other payments that could be expected of an employee.

For example:

*"As an independent business, the Subcontractor agrees that he is not entitled to holiday or sick pay or any other payment for periods when the services are not provided"*

# HardHats: Contract Template

When you started out, was the dream to be where you are now?

This will help you achieve it.

But don't be FOOLED.

Putting something like this together isn't going to take a couple of minutes.

This will take weeks.

Broken down into small 2-hour blocks.

First you need to lay out how you are working with your subcontractors.

Then you need to think carefully about the reasons why you are working with your subcontractors the way you are.

Is there a business reason behind why you do it that way?

Yes?

Let's bring it all together then.

## SELF-EMPLOYED CONTRACT FOR SERVICES

THIS CONTRACT FOR SERVICES dated (insert date) is made between:

(insert company name) whose Registered Office is situated at, (insert address) and ("the Contractor")

address) and

(insert name and address of subcontractor) ("the Subcontractor")

### BACKGROUND

- A. HERE DOCUMENT THE WORKING RELATIONSHIP (AS PER 'STATUS OF THE RELATIONSHIP')
- B. USE THIS CLAUSE FOR LENGTH OF ENGAGEMENT AND IF THE SUBCONTRACTOR IS TO BE AT JUST ONE SITE OR MULTIPLE

### OPERATIVE PROVISIONS

1. THIS CLAUSE IS FOR MUTUALITY OF OBLIGATION (AS PER THE 'TESTS')
2. THIS CLAUSE IS FOR CONTROL (AS PER THE 'TESTS')
3. USE THIS CLAUSE IF THE SUBCONTRACTORS ARE LABOUR-ONLY
4. USE THIS CLAUSE FOR PERSONAL SERVICE (AS PER THE 'TESTS')

### PAYMENT FOR THE SERVICES

5. USE THIS CLAUSE IF AN AGREED RATE OF PAY IS TO BE INCLUDED
6. USE THIS CLAUSE IF AN INVOICE IS/ ISN'T REQUIRED (AS PER 'RATES OF PAY')
7. USE THIS CLAUSE IF YOU PAY FOR TRAINING
8. USE THIS CLAUSE TO DEMONSTRATE FINANCIAL RISK (AS PER 'BUSINESS FACTORS')
9. USE THIS CLAUSE IF THE SUBCONTRACTOR ARE RESPONSIBLE FOR THEIR OWN INSURANCE POLICIES AND OR DOCUMENTED ON YOURS
10. USE THIS CLAUSE IF COMPANY VEHICLES ARE USED BY SUBCONTRACTOR (AS PER 'COMMERCIAL ASPECTS')
11. USE THIS CLAUSE TO DEMONSTRATE THE RELATIONSHIP IS SUBJECT TO CIS DEDUCTIONS
12. USE THIS CLAUSE TO CLARIFY THE SUBCONTRACTORS ARE NOT DUE ANY PAYMENTS EXPECTED OF AN EMPLOYEE (AS PER 'TAX & NI RESPONSIBILITIES')

### HEALTH & SAFETY

13. USE THIS CLAUSE IF THE SUBCONTRACTORS ARE TO COMPLY WITH SITE WORKING HOURS
14. USE THIS CLAUSE IF YOUR SUBCONTRACTORS WEAR UNIFORMS TO BE EASILY IDENTIFIED ON SITE

>>>CLICK ON THE IMAGE TO ACCESS <<<





# HARDHATS

**Tel:** 0203 146 2188

**Email:** [info@hardhats.co.uk](mailto:info@hardhats.co.uk)