

SAMPLE POLICY

Independent Contractor Agreement

DISCLAIMER

This sample template is not legal advice or a substitute for consultation with knowledgeable and qualified legal counsel.

Baker McKenzie assumes no responsibility or liability for the contents of this generic template, the only purpose of which is to illustrate some of the potential provisions and considerations pertaining to independent contractor agreements in the U.S.

The laws applicable to independent contractors may vary based on jurisdiction. Federal, state, and/or local law may apply depending on the location of the company, its operations, and its contractors. While these laws are often similar, their differences can be material. The following sample template does not account for the differences in applicable federal, state, and/or local law. This sample template also does not account for changes in legislation, judicial and administrative precedent, or other developments and/or interpretations of applicable law.

Additionally, what are considered "best practices" for Company A may not be "best practices" for Company B. To be effective, an independent contractor agreement should not be a "cookie cutter" or a "one size fits all" agreement. It should be tailored to the organization and the contractor's work assignment, account for the company's specific workforce, operations, and industry, and reflect the specific aspects of the work arrangement between the company and the contractor.

THIS SAMPLE TEMPLATE SHOULD NOT BE RELIED ON OR IMPLEMENTED AS A LEGALLY-COMPLIANT AGREEMENT WITHOUT CONSULTATION FROM LEGAL COUNSEL.

INDEPENDENT CONTRACTOR AGREEMENT

THIS INDEPENDENT CONTRACTOR AGREEMENT (this "Agreement") is entered into as of the ___ day of _____, 20__ (the "Effective Date"), by and between [contractor name] ("Independent Contractor"), and [company name] ("Company"). This Agreement may sometimes refer to the Company or Independent Contractor singularly as a "Party" or collectively as the "Parties."

ARTICLE I

SERVICES AND OBLIGATIONS OF INDEPENDENT CONTRACTOR

- 1. Scope of Services.** Independent Contractor shall perform the following duties and requirements [describe Independent Contractor services] (the "Services").
- 2. Relationship as Independent Contractor, Not Employee.** Independent Contractor acknowledges that on and after the Effective Date, the Independent Contractor shall at all times be deemed to be an independent contractor of the Company. Independent Contractor is not an employee, servant, partner or agent of the Company for any purpose whatsoever.
- 3. Method of Performing Services.** The Company understands and agrees that Independent Contractor shall render Services in whatever manner deemed appropriate by Independent Contractor.

4. **Professional/Ethical Behavior.** Independent Contractor agrees to conduct business so as to maintain and to increase the goodwill and reputation of the Company, and Independent Contractor agrees to act in an ethical manner and to conform to and abide by all applicable laws, rules, and regulations. Independent Contractor agrees to indemnify and hold the Company harmless from any claims, lawsuits, allegations, or liability, including costs of court and attorney fees, arising out of Independent Contractor's failure to comply with any applicable international, federal, state or local law, regulation, or statute.
5. **Inability to Bind the Company.** The Independent Contractor shall not, under any circumstances, have any authority to act for or to bind the Company or enter into any agreements, written or otherwise, on behalf of the Company, or to sign the name of the Company or to otherwise represent that the Company is in any way responsible for his/her acts or omissions, unless expressly agreed to by the Company.

ARTICLE II

COMPENSATION

1. **Compensation for Services.** In consideration for the Services to be performed by the Independent Contractor, the Company agrees to pay Independent Contractor [describe compensation structure].
2. **Taxes and Indemnification of the Company.** The Parties agree that the Company will not withhold, deduct, or pay income tax, social security or other taxes or amounts for the Independent Contractor's benefit. Independent Contractor is solely responsible for and assumes full responsibility for (as applicable) the payment of FICA, FUTA and income taxes and compliance with any other international, federal, state, or local law, rules and regulations. Independent Contractor will be responsible for all statutory insurance required by law.

ARTICLE III

TERMINATION

1. **Termination.** This Agreement is an at-will independent contractor agreement with no specified term, meaning that either Independent Contractor or the Company may terminate Independent Contractor's independent contractor relationship with the Company at any time, for any reason, with or without prior notice.
2. **Returning the Company's Property.** Independent Contractor agrees that, on termination of this Agreement, Independent Contractor shall return to the Company all Confidential Information (as set forth in Article V) and will deliver to the Company (and will not keep in his/her possession, recreate or deliver to anyone else) any and all Company property.

ARTICLE IV

TERMINATION

1. **Property of the Company.** Independent Contractor agrees that all inventions, patents, formulas, processes, designs, copyrightable works, mask works, trademarks, service marks, trade dress, and other things of value conceived, reduced to practice, made or learned by Independent Contractor while performing Services for the Company under this Agreement that relate to the Company's business and/or the business of affiliates of the Company using the Company's time, data, facilities and/or materials (hereinafter collectively referred to as the "Intellectual Property") belong to and shall remain the sole and exclusive property of the Company forever. Independent Contractor hereby assigns to the Company all of Independent Contractor's right, title, and interest to all such Intellectual Property.

2. **Written Records.** Independent Contractor agrees to keep daily, written, and witnessed records of the conception and reduction to practice of all inventions Independent Contractor directly participates in developing. Further, Independent Contractor agrees to promptly and fully disclose all Intellectual Property in writing to the Company.
3. **Cooperation.** Independent Contractor agrees, without additional compensation, to cooperate and do all lawful things requested by the Company to protect Company ownership rights in all Intellectual Property. After termination of this Agreement, the Company shall compensate Independent Contractor at a reasonable rate for the time actually spent by Contractor in response to such requests. If the Company is unable for any reason to secure Independent Contractor's signature on any document needed, Independent Contractor hereby irrevocably designates the Company and its duly authorized officers and agents as Independent Contractor's agent to act for and on Independent Contractor's behalf to do all lawfully permitted acts to further the purposes of this Paragraph with the same legal force and effect as if executed by Independent Contractor.
4. **No Prior Intellectual Property.** Independent Contractor warrants that no Intellectual Property has been conceived, reduced to practice, made, or learned by Independent Contractor prior to the execution of this Agreement.
5. **Survival.** The provisions of Article IV shall survive any termination or expiration of this Agreement (for whatever cause or reason).

ARTICLE V

CONFIDENTIAL INFORMATION

1. **Definition of Confidential Information.** During the term of this Agreement, the Company shall provide to Independent Contractor confidential, proprietary, and trade secret information regarding the Company that Independent Contractor has not previously had knowledge of before the execution of this Agreement ("Confidential Information"). In exchange for the Company's promises to provide Independent Contractor with Confidential Information, Independent Contractor shall not during the period of this Agreement or at any time thereafter, disclose or use any Confidential Information or Intellectual Property, except as properly required in the ordinary course of the Company's business or as directed and authorized by the Company.
2. **Nonuse/Nondisclosure of Confidential Information.** Independent Contractor shall use his/her best efforts and diligence both during and after termination of this Agreement to protect the confidential, trade secret, or proprietary character of all Confidential Information and shall not disclose or use for his/her own purposes or those of any other person, company, or other organization, and agrees to hold in confidence any Confidential Information, except when given express permission to do so by the Company. Independent Contractor will not disclose the Company's Confidential Information to any individual, corporation, entity, or other third party without the prior written consent of the Company and shall not use any such information in any manner other than in connection with his/her performance of Services for the Company under this Agreement, unless required by law to disclose such information, in which case Independent Contractor shall provide the Company with written notice of such requirement as far in advance of such anticipated disclosure as possible.
3. **Public Information.** Independent Contractor's confidentiality duty does not apply to information that is (i) in the public domain or becomes part of the public domain through no fault of Independent Contractor or (ii) was known by Independent Contractor prior to Independent Contractor's association with the Company, as evidenced by written records existing at that time.
4. **Defend Trade Secrets Act.** Pursuant to the Defend Trade Secrets Act of 2016, independent contractors shall not be held criminally, or civilly, liable under any Federal or State Trade secret law for the disclosure of a trade secret that is made in confidence either directly or indirectly to a Federal, State, or local government official, or an attorney, for the sole purpose of reporting, or investigating, a violation of law. Moreover, independent contractors may disclose trade secrets in a complaint, or other document, filed in a lawsuit, or other proceeding, if such filing is made under seal. Finally, an independent contractor who files a lawsuit alleging retaliation by the Company for reporting a suspected violation of the law may disclose the trade secret to the attorney of the independent contractor and use the trade secret in the court proceeding, if the independent contractor: files

any document containing the trade secret under seal and does not disclose the trade secret, except pursuant to court order. No Company policies or practices, including the sections addressing confidentiality obligations, is intended to or shall limit, prevent, impede or interfere in any way with an independent contractor’s right, without prior notice to the Company, to provide information to the government, participate in investigations, testify in proceedings regarding the Company’s past or future conduct, or engage in any activities protected under whistle blower statutes.

5. **Survival.** The provisions of Article V shall survive any termination or expiration of this Agreement (for whatever cause or reason).

ARTICLE VI

GENERAL PROVISIONS

1. **Assignment; Severability.** This Agreement may not be assigned by Independent Contractor. If any provision of this Agreement is held invalid or otherwise unenforceable, the enforceability of the remaining provisions shall not be impaired thereby.
2. **Governing Law.** This Agreement and all matters arising out of or relating to the performance of this Agreement shall be construed in accordance with the laws of the State of [insert appropriate state], without regard to or application of [insert state] choice of law or conflict of law principles.
3. **Entire Agreement.** This Agreement represents the entire understanding of the Parties and supersedes any and all other agreements, if any, either oral or in writing, between the Parties with respect to the Services of Independent Contractor.
4. **Amendments or Modifications to Agreement.** This Agreement may only be amended or modified by written mutual consent of the Parties by written instrument.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date set forth above.

[Company]

By: _____

Date: _____

[Independent Contractor]

By: _____

Date: _____

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