

# Master Onerous Services Agreement

WHEREAS, the party of the first part (“Y’all”) are sitting and waiting for your next Compliance and Ethics Institute session to begin, and

WHEREAS, the undersigned party of the endless part (“Us Guys”) are about to talk about how to negotiate commercial contract clauses with compliance in mind, and

WHEREAS, Y’all have nothing particularly better to do at this moment, but review the clauses we will use as examples, AND consider how you would want to negotiate them and revise them if you were either:

- (A) Counsel for a big prime contractor; or
- (B) Counsel for a smaller subcontractor or vendor,

Such activity helping Y’all to, like, get really to the forthcoming discussion notwithstanding that it is being presented by Us Guys,

NOW THEREFORE, here are some clause we will use as examples in Session 405:

**Code of Conduct.** Vendor hereby represents and agrees to adopt and act in a manner consistent with the ethical and professional standards set forth in the Client’s Code of Business Ethics, as well as obligations identified therein, including prompt reporting of fraudulent or unlawful conduct.

**Training.** Vendor will be required to certify that its employees, sub-distributors, representatives, and agents have completed all anti-corruption and anti-bribery training requirements, consistent with Client’s standards, whether by taking advantage of access to trainings provided by Client or by separately arranging for comprehensive training by area experts. Trainings should be provided in the appropriate language(s) for the recipient.

**Sales Incentives.** Vendor agrees not to implement any sales incentives programs, bonus programs or structures, or performance incentives for employees which reward financial returns under this Agreement without a quantifiable measurement of compliant and ethical conduct in the achievement of the financial return. Vendor agrees to provide information to Client on any formula or criteria used to calculate bonus payments.

**Auditing Rights.** Client may audit the records of Vendor to ensure compliance with this Agreement. Vendor agrees that it will retain such records for a minimum of three (3) years after Termination. Except for audits based on alleged violation of ethics or laws where no notice is required, Client will notify Vendor in writing at least ten (10) business days prior to any such audit. Any such audit will be conducted during Vendor’s regular business hours at Vendor’s offices and will not interfere unreasonably with Vendor’s business activities. Client may audit Vendor no more than once in any six (6) month period...

**Investigations.** Vendor agrees to cooperate and participate fully in investigations initiated by Client. Upon Client request, Vendor agrees to

promptly provide any and all documents, including any information stored digitally, and to make available for interviews any Vendor employees Client deems necessary for internal Client investigations. Vendor further agrees to immediately notify Client if any employee, director, officer or agent of the Vendor comes under investigation for conduct arising out of or related to performance under this Agreement and shall promptly share all internal investigative findings, conclusions, recommendations and corrective action plans with Client.

**Quality.** Notwithstanding anything in this Agreement, Client is ultimately responsible for approving or rejecting the Products, and is further responsible for the release of Products or other finished goods for distribution to the public and consumers and any and all liability arising therefrom.

**Davis-Bacon Act.** WHEREAS, because the relevant prime construction contract is in excess of \$2,000, Contractor is required to include provisions for compliance with the Davis-Bacon Act and DOL regulations...

THEREFORE, Subcontractor is required to pay wages to laborers and mechanics, not less than once a week, at a rate not less than the Prevailing Wages. Subcontractor shall report all suspected or reported violations. Subcontractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which they are otherwise entitled.

**Indemnification.** Vendor shall defend, indemnify and hold Client and Client's franchisees, affiliates and licensees harmless from and against all claims... arising in connection with (i) the failure of the Products to meet label claims or Client's quality control standards, or (ii) the promotion, sale or use of the Products or any litigation or threatened litigation based thereon. Such right of indemnity shall exist in favor of Client, even though the negligence, gross negligence, strict liability, common law or statutory fault of Client was the sole cause, a producing clause or the concurring cause of the claim...

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