

LRC Research Training

Contract Drafting (LLMC) Fall 2023

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What we will cover today



- Finding sample contracts and drafting guidance
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- Finding books and treatises on contract law

Finding sample contracts & guidance



Your client—a local cleaning company—is planning to offer on-demand disinfecting services via a new mobile app. To that end, they've identified a software developer they'd like to hire as an independent contractor to write the program. They've asked you to draft the terms of this agreement.

You've never written such a contract before and don't know how to get started.

Where to begin?

Finding sample contracts & guidance



A common scenario:

- You are asked to draft a brand-new contract or clause
- You have never written a contract like the one you have been asked to draft

You might be tempted to...



independent contractor agreement

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But there are better tools!



Fee-based sources of forms/sample contracts and guidance

- Bloomberg Law (forms & analysis)
- Lexis Practical Guidance (forms & analysis)
- Thomson Reuters (Westlaw)—
Practical Law (forms & analysis)
- CEB OnLaw Pro (CA-specific; forms & analysis)
- Other fee-based legal websites
(often include forms only)

Quality free sources

- State websites have free forms (but no analysis)
- Print books at the LRC (and other law libraries) have forms and analysis

Issues to think about

- Author/creator
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Bloomberg Law

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☐ 1. [Independent Contractor Agreement](#)[Clean Version](#)

Sample Agreement, Employment

Independent Contractor Agreement **Independent Contractor Agreement** **Editor's Note:** This agreement can be used when a corporate client seeks advice about retaining **independent contractors** and avoiding employee-status claims.

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Sample Agreement, Employment

For purposes of determining whether a worker is an employee or truly an **independent contractor** under the Fair Labor Standards Act (FLSA), courts apply a multifactor test focused on the economic realities of the work arrangement. Workers who are economically dependent on the employer, regardless of skill level, are employees covered under the FLSA. **Independent contractors**, in contrast, are workers who are economically **independent** and who operate a business of their own.

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Sample Agreement, Employment

Practical Guidance

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Employment, Sample Agreement - Independent Contractor Agreement

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Independent Contractor Agreement

Editor's Note:

This agreement can be used when a corporate client seeks advice about retaining independent contractors and avoiding employee-status claims. Plaintiff's counsel also can use this model to compare with an agreement that a client might have been asked to sign. Additional or different terms can be added depending upon the client's goals and protected interests. Always check state law to determine if additional or different terms are required. See also Checklist: Independent Contractor or Employee?

Contributed by Kevin P. Hishta, a shareholder in Ogletree, Deakins, Nash, Smoak & Stewart, P.C.'s Atlanta office.

ARTICLE I: PARTIES AND TERM OF AGREEMENT

1.01. This Independent Contractor Agreement ("Agreement") is entered into by and between [insert company name and address] ("Company") and [insert contractor name and address] ("**Contractor**"), an independent contractor, this _ day of ___, 20___, in consideration of mutual promises made herein as follows:

Employment, Sample Agreement - Independent Contractor Agreement

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2.01. The services that Contractor agrees to perform are as follows: *[describe contractor services in as much detail as possible and in quantifiable measure]*

2.02. Contractor will determine the method, details, and means of performing the above described services.

2.03. Contractor enters into this Agreement, and shall remain without interruption throughout the term of this Agreement, an independent Contractor. Contractor agrees that Contractor is not and will not become an employee, partner, agent, or principal of Company while this Agreement is in effect and the parties hereby signify their express intention to this effect. Contractor shall not be controlled by Company as to the specific details or manner of the services, it being understood that Company's intent is the results achieved by Contractor. Contractor is not entitled to the rights and privileges of employment that are extended to Contractor's employees, including sick leave, annual leave, holiday leave, disability or unemployment insurance, medical insurance, workers' compensation, severance, or any other employment benefit. In the event Contractor becomes eligible to participate in any Company benefit program or plan, Contractor hereby waives any right to participate in any such program or plan. Such waiver is not dependent on Contractor status as an independent contractor.

2.04. Contractor retains the right to provide services to others.

ARTICLE III. FEE FOR SERVICES

3.01. In consideration for the services to be performed by Contractor, Company agrees to pay Contractor the sum of ____dollars (\$____) upon completion of the work to be performed. Contractor bears any and all liability for employment taxes on any fees received under this Agreement.



Practice Pointer: Avoid payment by the hour, day, or week. Pay by the project or task.

ARTICLE IV. CONTRACTOR EXPENSES

4.01. The Contractor shall bear all expenses incurred by the need for and hiring of assistants, employees, or subcontractors that Contractor deems necessary to perform services that Contractor has agreed to perform under this Agreement. Company will not control, direct, or otherwise supervise Contractor's assistants, employees, or subcontractors in the performance of such services.

4.02. Contractor is responsible for providing, at Contractor expense, disability insurance, unemployment insurance, medical insurance, workers' compensation, and/or workers' compensation insurance for Contractor's employees and agents.

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Independent Contractor Agreement (Pro-service Recipient)

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Independent Contractor Agreement (Pro-service Recipient) This form is an **Independent contractor agreement** between an **Independent contractor** and the party for whom the **Independent contractor** will perform specified services (the client). This template contains practical guidance, ...

... or customize it for one or more jurisdictions. The terms "**Contractor**" and "Client" are used to help avoid the parties' relationship ...

... determination of whether a worker is characterized as an employee or **Independent contractor** hinges on control. The more a Client controls a **Contractor**, the more likely an employee/employer relationship exists instead of a client **Independent contractor** relationship. The determination of whether a worker is properly classified as an employee or an **Independent contractor** faces different scrutiny and has different considerations in other labor areas ...

... law to ensure compliance with applicable law. For additional guidance, see **Independent Contractor Agreements**: Major Negotiation, Drafting, and Legal Issues and Supply of Services **Agreements** Resource Kit. For more information on **Independent contractor** laws and classification issues, see **Independent Contractor** Tests and Risks of Worker Misclassification, Consulting **Agreement** Negotiation and Drafting, and **Independent** ...

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Independent Contractor Agreement Drafting Checklist

Quick View

Checklist | Non-jurisdictional

Independent Contractor Agreement Drafting Checklist This is a checklist for drafting an **Independent contractor agreement**. For further guidance on **Independent contractor agreements**, see **Independent Contractor Agreements**: Major Negotiation, Drafting, and Legal Issues. For information on **Independent contractor** and employee classification, see **Independent Contractor** Tests and Risks of Worker Misclassification and **Independent Contractor** and Employee Classification: Special Tax Issues, by Lillier Mendelson, P.C. This is a checklist for drafting an **Independent contractor agreement**. For further guidance on **Independent contractor agreements**, see ...

... This is a checklist for drafting an **Independent contractor agreement**. For further guidance on **Independent contractor agreements**, see **Independent Contractor Agreements**: Major Negotiation, Drafting, and Legal Issues. For information on **Independent** ...

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Independent Contractor Agreement (Pro-service Recipient) (CA)

Quick View

Template | Automated Template | California

Independent Contractor Agreement (Pro-service Recipient) (CA) This form is an **Independent contractor agreement** between an **Independent contractor** and the party for whom the **Independent contractor** will perform specified services in California. This template





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Independent Contractor Agreement (Pro-service Recipient) (CA)

► Summary

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This **agreement** for performance of services ("**Agreement**") is made on [date] (the "Effective Date"), between [person or firm engaging **independent contractor**'s services] ("**Client**"), with a principal place of business at [address], and [**Independent contractor**] ("**Contractor**"), an **independent contractor**, with a principal place of business at [address].

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- Termination
- Moral Rights and Non-Solicitation
- Client: Notices
- Contractor: Notices
- Dispute Resolution
- Final Document Notes

This form is an independent contractor agreement between an independent contractor and the party for whom the independent contractor will perform specified services in California. This template includes practical guidance, drafting notes, alternate clauses, and optional clauses.

This form has been drafted with terms that favor the client receiving the services and is intended for private employers. Its language has been customized to comply with California and federal law. As a result, the text of this form differs from the non-jurisdictional [Independent Contractor Agreement \(Pro-Service Recipient\)](#).

The terms "Contractor" and "Client" are used to help avoid the parties' relationship being characterized as an employee/employer relationship. Note, however, that the key determination of whether a worker is characterized as an employee or independent contractor hinges on control. The more a Client controls a Contractor, the more likely an employee/employer relationship exists instead of a client/independent contractor relationship.

The determination of whether a worker is properly classified as an employee or an independent contractor faces different scrutiny and has different considerations in other labor areas such as for unemployment and disability insurance requirements, income tax withholdings, and workers' compensation claims. In general, the basic questions still revolve around the right to control, but there are specific tests in California for specific industries and rebuttable presumptions for certain types of employees. Counsel should therefore consult both relevant federal and state laws to ensure compliance with applicable law.

For additional guidance, see [Supply of Services Agreements Resource Kit](#). For more information on California's independent contractor laws and classification issues, see [Independent Contractors \(CA\)](#). For state-specific independent contractor agreement forms, see the Independent Contractors and Interns column of [Wage and Hour State Expert Forms Chart](#).

For additional guidance on drafting an independent contractor agreement, see [Independent Contractor Agreements: Major Negotiation, Drafting, and Legal Issues](#), [Supply of Services](#), and [General Terms and Conditions for Services \(Pro-Customer\)](#).

For information on independent contractor and employee classification, see [Independent Contractor Tests and Risks of Worker Misclassification](#) and [Independent Contractor and Employee Classification: Special Tax Issues](#).

For tracking of recent case law and agency guidance affecting independent contractor agreements in California and other key federal, state, and local Labor & Employment legal developments, see [Labor & Employment Key Legal Developments Tracker \(Current\)](#).

contractor status. For further guidance, see [Independent Contractor Tests and Risks of Worker Misclassification](#) and [Independent Contractors State Practice Notes Chart](#).

Contractor shall devote such working time and attention to the performance of the Services as required to satisfy all duties and responsibilities of **Contractor** in finishing the assignment.

Contractor agrees to devote a minimum of [number] hours per [day/week/month] to performing the Services.

– Drafting Note

Drafting Note to Section 1.2, Second Paragraph

Although **Contractor** is solely in charge of methods and performance of services, the Client can still demand due attention, successful completion, compliance with applicable laws, and compliance with Client's policies while on site or interacting with others on behalf of Client. Clients should be careful to limit site access and interaction with Client constituents to an "as necessary" basis. The IRS and DOL look at location of work as a factor in determining whether there is an employee/employer relationship or **independent contractor** relationship. A **Contractor** should work onsite only if necessary. Although the Client should not require the **Contractor** to work on a particular schedule where it can be avoided, the **Agreement** should require the **Contractor** to dedicate a minimum amount of time to performing the covered services. For further guidance, see [Independent Contractor Tests and Risks of Worker Misclassification](#) and [Independent Contractors State Practice Notes Chart](#).

Clients should make sure that demanding compliance with company policies and regulations does not create an employment relationship in their state. Most states accept that in these limited situations, there is an interest in supporting work policies designed to protect ethics, office conduct, health and safety and other work-related concerns. Clients need to understand to what extent their state laws allow them to enforce policies on a **Contractor**.

Contractor shall perform [his/her/its] obligations hereunder in compliance with the terms of this **Agreement** and any and all applicable laws and regulations. If necessity requires **Contractor** to perform any Services on Client's property or requires **Contractor** to interact with any of Client's employees, customers, vendors, affiliates or members of the general public, **Contractor** shall comply with all of Client's policies and regulations.

ARTICLE II. Term of Contract

2.1. This **Agreement** will become effective on the Effective Date and will continue in effect until the Services provided for in this **Agreement** have been performed to Client's reasonable satisfaction.

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☐ > 1. Independent Contractor/Consultant Agreement (Pro-Client)

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An Independent contractor agreement between an Individual Independent contractor (a self-employed Individual) and a client company for consulting or other services. This Standard Document is drafted in favor of the client company and is based on federal law. State and local law may impose different or additional requirements on Independent...

...For a more detailed discussion of Intellectual property clauses in independent contractor agreements, see Standard Clauses, IP Rights Clauses for Independent Contractor/Consultant Agreements and Practice Note, Intellectual Property: Employees and Independent Contractors: IP Rights Provisions for Employee and Independent Contractor Agreements....

...State and local law may impose different or additional requirements, including language that must be included in independent contractor agreements. Companies engaging independent contractors should consider applicable state and local law with this Standard Document. For more information on state law requirements for independent contractors, see Independent Contractors: State Q&A Tool and Independent Contractor...

☐ > 2. Independent Contractor/Consultant Agreement (Pro-Client) (CA)

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A California-compliant Independent contractor agreement between an Individual Independent contractor (a self-employed Individual) and a client company for consulting or other services. This Standard Document is drafted in favor of the client company. This Standard Document has integrated notes with important explanations and drafting tips.



Independent Contractor/Consultant Agreement (Pro-Client) (CA)

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A California-compliant **independent contractor agreement** between an individual **independent contractor** (a self-employed individual) and a client company for consulting or other services. This Standard Document is drafted in favor of the client company. This Standard Document has integrated notes with important explanations and drafting tips.

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Note: Read This Before Using Document



[**INDEPENDENT CONTRACTOR NAME**]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

[DATE]

Dear [**INDEPENDENT CONTRACTOR NAME**],

This letter **agreement** (this "**Agreement**") sets forth the terms and conditions whereby you agree to provide certain services (as described in Schedule 1) to [CLIENT COMPANY NAME], with offices located at [ADDRESS], a [STATE OF ORGANIZATION] [ENTITY TYPE] (the "**Company**").

1. Services.

1.1 The Company engages you, and you accept such engagement, as an **independent contractor** to provide certain services to the Company on the terms and conditions set forth in this **Agreement**.

1.2 You shall provide to the Company the services listed on Schedule 1 (the "**Services**").



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Independent Contractor/Consultant Agreement (Pro-Client) (CA)

California

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This **independent contractor** or consultant **agreement** is a short-form letter **agreement** between an individual **independent contractor** and a client (assumed to be a corporate entity in this document) for consulting or other services. It is drafted in an informal letter format and may be appropriate for a short-term engagement or specific project. This Standard Document assumes that the **independent contractor** is genuinely self-employed and is not an employee of the client company (see [Drafting Note, Independent Contractor Status](#)).

On September 4, 2020, Governor Newsom signed A.B. 2257 into law effective immediately. A.B. 2257 repeals A.B. 5's Section 2750.3 of the California Labor Code and both adds several new ABC test exceptions and revises certain preexisting exceptions, including those for business-to-business contracts, referral agencies, and freelance writers and editors (Cal. Lab. Code §§ 2775 to 2787). Effective January 1, 2022, A.B. 1506 and A.B. 1561, which were signed into law on September 27, 2021 and September 30, 2021 respectively, modify and add certain ABC test exceptions. For more information, see:

- Practice Note, Legal Tests for **Independent Contractor** Classification Under California Law.
- Drafting Note, Use Employment Counsel to Customize Independent Contractor Agreement.
- Drafting Note, California Tests for Independent Contractor Classification.

For information on reporting and other payment obligations, see Practice Note, Managing **Independent Contractors** Under California Law.

This Standard Document also assumes that the **independent contractor** is not a labor **contractor** providing workers to the client employer to perform labor that is within the usual course of the client employer's business, which would subject the labor **contractor** and client employer to the requirements of Section 2810.3 of the California Labor Code (for more information, see [Legal Update, California Law to Make Companies Liable for Employment Violations of Independent Labor Contractors](#)).

This Standard Document is intended for the engagement of an individual **independent contractor**. The individual may have organized their business as a sole proprietorship or **limited liability company** (LLC), for example, and may have hired or engaged employees or **contractors** to assist in providing services, but they are treated as an individual for purposes of this **agreement**. For a professional services **agreement** between two business entities, see [Standard Document, Professional Services Agreement](#). For a short-form services **agreement** between entities, see [Standard Document, Services Agreement \(Pro-Customer\)](#).

For jurisdiction-neutral information on the classification of **independent contractors**, see

- Practice Note, **Independent Contractor** Classification.
- Evaluating and Engaging **Independent Contractors** Checklist.
- Standard Document, Questionnaire to Determine **Independent Contractor** Status Under the FLSA.

For information on the impact of **COVID-19** on **independent contractors**, see [Standard Document, Independent Contractor/Consultant Agreement \(Pro-Client\): Drafting Note: Impact of COVID-19 on Independent Contractor Arrangements](#).

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The Aspen Learning Library (formerly the Wolters Kluwer Online Study Aid Library) offers online digital access to over 200 popular law school study aids and added video and audio content to provide an illustration of the legal theory. Includes the *Examples and Explanations* series.

Bloomberg Law Popular

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CALI Lessons Popular

Students: use the authorization code you see after logging into USDOne.

Faculty: contact the  reference desk for the faculty code.

CEB OnLaw Pro Popular

CEB OnLaw Pro provides access to CEB's California practice guides, primary law, case law citator, and continuing legal education materials. New USD users must create their own accounts. [Click here](#) for the law school's registration code, then [create a new law student/faculty/admin account here](#) or [a new paralegal student/faculty/admin account here](#).

HeinOnline Popular

HeinOnline is a premier online database containing more than 178 million pages and 270,000 titles of historical and government documents in a fully searchable, image-based format. HeinOnline bridges an important research gap by providing comprehensive coverage from inception of more than 2,700 law-related periodicals. In addition to its vast collection of academic journals, HeinOnline contains the entire Congressional Record, Federal Register, and Code of Federal Regulations, complete coverage of

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A

Academic Search Premier

Provides full text for over 2,940 scholarly publications including social sciences, humanities, education, computer sciences, engineering, language and linguistics, arts & literature, health sciences, and ethnic studies.

AILALink

AILALink is the go-to resource for immigration law research, providing its subscribers with access to immigration-related statutes, regulations, and important case law (select); agency correspondence and manuals, AILA/government liaison minutes, forms, and a plethora of AILA publications.

Aspen Learning Library (formerly Wolters Kluwer Online Study Aids Library) Popular

The Aspen Learning Library (formerly the Wolters Kluwer Online Study Aid Library) offers online digital access to over 200 popular law school study aids and added video and audio content to provide an illustration of the legal theory. Includes the *Examples and Explanations* series.

Avalon Project - Documents in Law, History and Diplomacy (Yale's)

The Avalon Project will mount digital documents relevant to the fields of Law, History, Economics, Politics, Diplomacy and Government. We do not intend to mount only static text but rather to add value to the text by linking to supporting documents expressly referred to in the body of the text.

The Avalon Project will no doubt contain controversial documents. Their inclusion does not indicate endorsement of their contents nor sympathy with the ideology, doctrines, or means employed by their authors. They are included for the sake of completeness and balance and because in many cases they are by our definition a supporting document.
[more...](#)

B

Bloomberg Law Popular

Bloomberg legal content, integrated into an already powerful system of primary and secondary legal content, company and market information and news. Individual user access is given to USD law students and faculty. You must [register with Bloomberg](#) to gain access to its products and services. Please contact the LRC reference desk to obtain a Bloomberg Law account.

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[Set practice areas to customize your News](#)Parking Minimums Reconsidered:
Housing Against a Ubiquitous
California Feature

Thomas Lee January 17, 2023

In the last few years, and especially with the COVID-19 pandemic, the housing crisis in California has grown. Fortunately, this has finally spurred a series of measures aimed to curb this crisis, and both residents and legislators are taking increasingly drastic and once-unthinkable actions to do so. This space has discussed legislation and policies which have changed and or taken on some of California's most important issues in the name of affordable housing: Sports stadium construction, environmental regulation, labor policies. But now legislators have taken aim at one of California's most ubiquitous features: Parking and parking lots.

Environmental, Land Use & Natural Resources

California Sues Drug Companies Over
Cost of Insulin, Alleging Artificially
High Prices

Katherine Proctor January 13, 2023



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PRACTICE GUIDES

[show results from Internet Law and Practice in California](#)**§17.38 I. Form: Social Media Influencer Independent Contractor Agreement**

Comment: If the Social Media Influencer Independent Contractor Agreement is directly with an individual talent, as opposed to a media agency, then this release is not necessary.

This Statement of Work ("SOW") is entered into as of the date of the last signature below (the "SOW Effective Date") by and between _ [name of company] _ ("Company") and _ [name of consultant] _ ("Consultant"), and is subject to the terms of the Social Media Influencer Independent Contractor Agreement entered into by the parties on _ [date] _ , 2020 ("Agreement").

PRACTICE GUIDES

[show results from Working With Independent Contractors, Leased Workers, and Outsourcing](#)**STEP 30. Draft Agreement Between Principal and Independent Contractor**

AGREEMENT BETWEEN PRINCIPAL AND INDEPENDENT CONTRACTOR

Draft an agreement that increases the defensibility of an independent contractor relationship:

PRACTICE GUIDES

[show results from Drafting Employment Documents for California Employers](#)**§4.33 I. Form: Preamble, General Conditions**

INDEPENDENT CONTRACTOR CONSULTING AGREEMENT

This Independent Contractor Agreement (hereinafter "Agreement") is made as of _ [date] _ , between _ [contractor's name] _ , an independent contractor ("Contractor"), and _ [principal's name] _ ("Company").

PRACTICE GUIDES

[show results from Drafting Employment Documents for California Employers](#)**§4.23 f. Form: Trade Secrets and Confidential Information: Confidentiality Obligation**

To protect trade secrets and confidential information, it is essential to include a comprehensive confidentiality provision, such as the one above, in the independent contractor agreement.

d. After termination of this Agreement, Sales Agent shall not directly or indirectly, or by action in concert with others, use unlawful or unethical means to induce or influence, or seek to induce or influence, any person who is engaged by

Secondary Sources

Employment Law

- ▶ Advising California Employers and Employees
- ▶ California Wage and Hour: Law and Litigation
- ▼ Drafting Employment Documents for California Employers

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- ▶ A. Sample Commissioned Sales Agent Agreement

- ▼ B. Sample Independent Contractor Consulting Agreement

§4.33 1. Form: Preamble, General Conditions

§4.34 2. Form: Contractor's Scope of Work

4 Independent Contractors

§4.1 I. INTRODUCTION TO INDEPENDENT CONTRACTORS

In California, a person who performs services for compensation for another (the principal) can be either an employee or an independent contractor. The principal-independent contractor relationship differs in both nature and consequences from an employer-employee relationship. An employer has certain control rights and a multitude of obligations regarding an employee that are not part of a principal-independent contractor relationship. Further, although employees are entitled to a variety of benefits and protections afforded by various laws, such as unemployment benefits, workers' compensation, and unpaid leave, independent contractors are not entitled to any such benefits based on the performance of services for the principal.

Whether a person is an employee or independent contractor is determined under three primary tests: the common law control test (see §§4.2–4.3), the ABC test (see §4.3A), and the economic realities test (see §§4.4–4.5). The common law control test (also referred to as the usual common law rules) is used for federal tax purposes as well as for statutes that do not expressly apply a different standard. The ABC test is used for wage and hour, workers' compensation, and state unemployment tax purposes in California. The economic realities test is used for most federal employment laws that are intended to protect workers' rights, such as the Fair Labor Standards Act of 1938 (FLSA) (29 USC §§201–219) and the Family and Medical Leave Act of 1993 (FMLA) (29 USC §§2601–2654), or laws intended to prevent discrimination, such as Title VII of the Civil Rights Act of 1964 (42 USC §§2000e—2000e–17). As a practical matter, however, all tests look at the same general facts and circumstances to determine the scope of the relationship and the nature of the worker's services. See

California wage and hour: Law and Litigation

▼ Drafting Employment Documents for California Employers

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§4.34 2. Form: Contractor's Scope of Work

§4.35 3. Form: Compensation

§4.36 4. Form: Termination, Dispute Resolution

§4.37 5. Form: Miscellaneous Provisions, Signatures

▶ C. Sample Confidentiality and Intellectual

4 Independent Contractors

Drafting Employment Documents for California Employers

§4.33 1. Form: Preamble, General Conditions

[Click to Download Form](#)

For your convenience, the form text in §4.33 through §4.37 is contained in a single file. Downloading any one of the included sections will download all these sections.

INDEPENDENT CONTRACTOR CONSULTING AGREEMENT

This Independent Contractor Agreement (hereinafter "Agreement") is made as of _ _ [date] _ _ , between _ _ [contractor's name] _ _ , an independent contractor ("Contractor"), and _ _ [principal's name] _ _ ("Company").

Company and Contractor mutually agree to the following terms and conditions:

I. GENERAL CONDITIONS

A. *Term of Agreement.* Unless sooner terminated in accordance with this Agreement, the term of this Agreement shall be from _ _ [date] _ _ , to _ _ [date] _ _ . This term may be renewed for not more than 2 additional periods of _ _ [state length of renewal periods, e.g., 3 months] _ _ by agreement of the parties in accordance with Section VI.B. below. This Agreement is terminable on 30 days' written notice by either Contractor or Company.

B. *Governing Law.* This Agreement shall be construed under the laws of the State of California.

Books and Treatises on Contract Drafting

Books



KENNETH A. ADAMS, A MANUAL OF STYLE FOR CONTRACT DRAFTING (4th ed. 2017); LRC Reading Room [KF807 .A33 2017](#)

LENNÉ EIDSON ESPENSCHIED, CONTRACT DRAFTING: POWERFUL PROSE IN TRANSACTIONAL PRACTICE (3d ed. 2019); LRC Reading Room [KF807 .E84 2019](#)

GEORGE W. KUNEY & DONNA C. LOOPER, LEGAL DRAFTING IN A NUTSHELL (5th ed. 2021); LRC Reference Reserve Materials [KF250 .H343 2021](#); also available electronically via [West Study Aids](#)

TINA L. STARK, DRAFTING CONTRACTS: HOW AND WHY LAWYERS DO WHAT THEY DO (2d ed. 2014); LRC Reading Room [KF807 .S73 2014](#)

Treatises and practice guides



DAVID C. BURGESS ET AL., DRAFTING BUSINESS CONTRACTS: PRINCIPLES, TECHNIQUES, & FORMS (2021); LRC Reading Room [KF801 .D72](#); also available electronically via [CEB OnLaw Pro](#)

ROBERT A. FELDMAN & RAYMOND T. NIMMER, DRAFTING EFFECTIVE CONTRACTS: A PRACTITIONER'S GUIDE (2022, [Westlaw](#))

VLADIMIR R. ROSSMAN & MORTON MOSKIN EDS., COMMERCIAL CONTRACTS: STRATEGIES FOR DRAFTING & NEGOTIATING (2022, [Westlaw](#))

PETER SIVIGLIA, COMMERCIAL AGREEMENTS: A LAWYER'S GUIDE TO DRAFTING AND NEGOTIATING (2021, [Westlaw](#))

TINA L. STARK ED., NEGOTIATING AND DRAFTING CONTRACT BOILERPLATE (2020, [Lexis](#))

Example of a practice guide



CEB

Secondary Sources

Q drafting business contract

Search

▼ Drafting Business Contracts: Principles, Techniques & Forms

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▶ §1.3 III. INVESTIGATE FACTUAL AND LEGAL SETTING

§1.8 IV. PREPARE TIME AND RESPONSIBILITY CHART

§1.9 V. REVIEW CLIENT'S RELATED DOCUMENTS

§1.10 VI. REVIEW DOCUMENTS FROM SIMILAR TRANSACTIONS

§1.11 VII. PREPARE CHECKLIST OR OUTLINE

▼ VIII. DRAFTING THE AGREEMENT

§1.12 A. Tactical Advantage of Adopting the Drafting Role

§1.13 B. Approaching the Task of Drafting

1 Mechanics of Document Drafting

Drafting Business Contracts: Principles, Techniques & Forms

PRINT

addition, experienced counsel can usually predict how most issues will be resolved.

§1.13 B. Approaching the Task of Drafting

Approaches. Few attorneys sit down with a blank screen or a piece of blank paper to draft a document from scratch. Most attorneys refer to form documents from their files and make changes necessary to create a new document that reflects the current agreement of the parties. Other attorneys adopt a "cut and paste" approach, adding language from a variety of samples or sources. See [§§1.9–1.10](#).

Consider expected audience. The attorney should draft a document that can be understood by the expected audience—the parties who will sign it and others who may be affected by it. The document may be technically perfect, but if the parties cannot understand or apply its terms, counsel will have failed. Indeed, retail installment sale contracts and other consumer contracts are subject to very specific statutory drafting and content requirements so that they will be readily understandable by consumers. See, e.g., [CC §§1803.1–1803.11](#). See generally [California Law of Contracts, chap 6 \(Cal CEB\)](#).

Final takeaways

Don't start from scratch—there are many resources that can provide excellent starting points for drafting.

Google is *not* the best tool to find sample contracts.

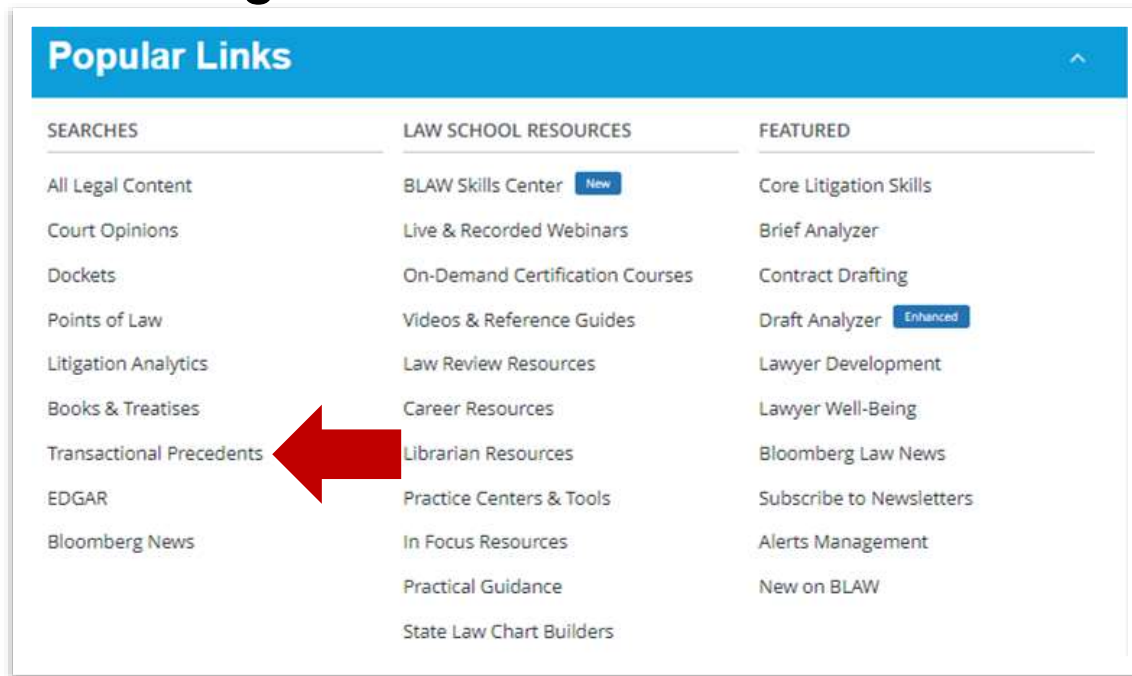
Recommended sources: Bloomberg Drafting Tools, Bloomberg Precedent Document Collection, TR Practical Law (Westlaw), Lexis Practical Guidance, CEB OnLaw Pro

Contact a reference librarian for help!

Bloomberg Transactional Precedents



- Actual contracts signed by public companies and pulled from the SEC's public database
- Over 1.5 million documents available
- Over 600 categories of documents



Transactional Precedent SearchResults: 1000+

All 600+ Document TypesM&A DealsEquity OfferingsCredit & Loan Agreements

KEYWORDS ?

Q Enter your keywords

DOCUMENT TYPE

> Select Document Types

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☐ Select All

☐ Combined M&A Transaction Documents

i☆

☐ Account Control Agreements

i☆

☐ Acknowledgements & Reaffirmations

i☆

☐ Administration Agreements

i☆

☐ Affiliate Agreements

i☆

☐ Agency Agreements

i☆

☐ Asset Purchase Agreements

i☆

☐ Asset Purchase Agreements (Aircraft, Ships & Vehicles)

☆

☐ Asset Purchase Agreements (Energy & Natural Resources)

☆

☐ Asset Purchase Agreements (Intellectual Property)

☆

☐ Asset Purchase Agreements (Purchase of Business)

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☐ Asset Purchase Agreements (Real Property)

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☐ Asset Purchase Agreements (Section 363)

☆

☐ Asset Purchase Agreements (Specific Assets)

☆

☐ Asset Purchase Agreements (Other)

☆

☐ Assignments & Assumptions

i☆

TRANSACTION TYPE

> Select Transactions

Browse Full List ^Browse My Favorites ^

RESULT TYPE

☒ Whole Documents☐ Single Clauses

DOCUMENT NAME

Search documents by title

Create AlertAdd Search to DashboardClear AllSearch

Asset Purchase Agreement

CLAUSE OUTLINE



Run Draft Analyzer

EXHIBIT 2.1

EXECUTION COPY

Certain identified information has been excluded from the exhibit because it is both (i) not material and (ii) is the type of information that the registrant treats as private or confidential. Double asterisks denote omissions.

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this "Agreement") is made and entered into as of September 6, 2022 (the "Execution Date"), by and between Cardurion Pharmaceuticals, Inc., a Delaware corporation ("Cardurion") and Imara Inc., a Delaware corporation ("Imara"). Cardurion and Imara are sometimes referred to herein individually as a "Party" and collectively as the "Parties".

RECITALS

WHEREAS, Imara and H. Lundbeck A/S ("Lundbeck") are parties to that certain Exclusive License Agreement dated as of April 11, 2016, as amended by amendments dated July 21, 2016, October 9, 2017 and April 29, 2022 (as so amended, the "License Agreement") pursuant to which Lundbeck granted Imara a license to research, develop, make, use, and commercialize certain PDE9 inhibitors and backups thereto; and

WHEREAS, the Parties and Lundbeck have agreed to a transaction pursuant to which (a) Lundbeck and Imara are executing amendments to the License Agreement concurrently with the execution of this Agreement, as set forth in the License Agreement Amendment (as defined below) reflecting such amended terms (as so amended, the "Amended License Agreement"); (b) Imara has agreed to assign to Cardurion all of Imara's rights and obligations, and Cardurion will assume all of Imara's rights and obligations, under the Amended License Agreement, except for certain Excluded Liabilities (as defined below), in accordance with the terms set forth herein; (c) Imara has agreed to assign and/or transfer to Cardurion certain Purchased Assets (as defined below); and (d) Imara has agreed to grant Cardurion an exclusive license under the Licensed Patent Rights and Licensed Know-How (as defined below) to the extent necessary or useful to Exploit Licensed Compounds in accordance with the terms set forth herein.

NOW, THEREFORE, in consideration of the premises and the mutual covenants, representations and warranties herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the Parties hereby agree as follows:

1. DEFINITIONS

As used in this Agreement, the following defined terms shall have the meanings specified below:

"Acceptable Confidentiality Agreement" has the meaning set forth in Section 6.4.3.

"Acquisition Proposal" means any proposal, indication of interest or offer from any Person or group of Persons, other than Cardurion or any of its Affiliates, relating to (a) any direct or indirect acquisition or purchase of any of the Purchased Assets; and (b) direct or indirect acquisition or issuance (whether in a single transaction or a series of related transactions) of fifteen percent (15%) or more of any class of equity or voting securities of Imara (including by tender offer, exchange offer, merger, amalgamation, consolidation, share exchange, business combination, joint venture, reorganization, recapitalization, liquidation, dissolution or similar transaction or series of related transactions); provided that, such proposal, indication of interest or offer shall not be an Acquisition Proposal if Imara's obligations with respect to such acquisition or issuance would not adversely affect Imara's ability to perform Imara's obligations under this Agreement and/or consummate the transactions contemplated by this Agreement.

"Advancement Criteria" means, with respect to the [**], the advancement criteria to be used for the [**]. For clarity, the Advancement Criteria will be disclosed by Cardurion to independent outside counsel designated by Imara ("Independent Counsel") immediately prior to the Closing Date pursuant to the terms of the confidentiality agreement to be mutually agreed and executed by Cardurion and such Independent Counsel (the "Outside Counsel CDA").

"Adverse Recommendation Change" has the meaning set forth in Section 6.4.5.

GENERAL INFO

EDGAR Filing

Drafting Guidance

Asset Purchase Agreements

Industry

Pharmaceutical Preparations [2834]

Document Date

N/A

Governing Law

Delaware

Document Type

Asset Purchase Agreements

Document Subtype

Asset Purchase Agreements
(Intellectual Property)

Transaction Types

Know-How

Patent Deals

GENERAL
INFOPARTY
INFO

NOTEPAD

Legal Drafting in a Nutshell

- Nutshell series: short, paperback guides written by experts. Great reference for quick yet thorough summaries of an area of law, with key cases and statutes. 181 guides on different topics.
- Available online and in print in LRC Reference.



Questions?

In-Class Drafting Tools

Exercise



Your client is opening a new gourmet cookie bakery in San Diego. He wants to lease space in an existing shopping mall to bake and sell his cookies. He is concerned, however, that nearby shopping malls have been losing many of their tenants lately. If too many of the stores in the mall close, fewer shoppers will be at the mall to buy his cookies, and his business could fail.

He asks you to draft a co-tenancy clause to add to the lease that will protect him if more than 50 percent of the stores in the mall close.

In-Class Exercise, continued



Using Bloomberg Law, Westlaw Practical Law, Lexis Practical Guidance, or CEB OnLaw Pro:

1. Locate a standard co-tenancy clause.
2. Use the drafting notes and analysis to understand how co-tenancy clauses work in retail lease agreements, and what landlords and tenants typically negotiate to include.
3. What remedies are typically available in a co-tenancy clause?
4. Be sure to note the jurisdiction of the sample document you choose.

Contact us

Reference Desk hours

Monday–Thursday: 9 a.m.– 6 p.m.

Friday: 9 a.m. – 5 p.m

Sunday: 12 p.m.– 4 p.m

Telephone: (619) 260-4612

E-mail: lrcrefer@sandiego.edu

Chat: www.sandiego.edu/law/library