**THIRD-PARTY AGENTS POLICY**

**PURPOSE**

It is the mission of [EMPLOYER'S NAME] to comply with all applicable laws governing our business operations, both foreign and domestic, and to conduct our activities with integrity at all times.

[EMPLOYER'S NAME] will not tolerate the giving or acceptance of bribes of any kind in the conduct of our business, and in the activities of our many business partners worldwide. [EMPLOYER'S NAME] recognizes that customary business practices vary globally and that it is not always clear what payments may be lawfully made in certain jurisdictions. It is often necessary to rely upon the expertise of local agents, consultants, business partners, or other intermediaries to conduct business on [EMPLOYER'S NAME]'s behalf. With potential criminal penalties at stake for violations of United States and international laws[, including the Foreign Corrupt Practices Act], [EMPLOYER'S NAME] must carefully monitor the engagement of any agent hired to conduct business outside of the United States.

This policy for the use of third-party agents outside of the United States sets forth procedures employees must follow when engaging an agent. This policy covers all employees [and members of the Board of Directors] of [EMPLOYER'S NAME] and its subsidiaries. Only authorized employees [and members of the Board of Directors] may engage agents on [EMPLOYER'S NAME]'s behalf.

This policy is designed to comply with all applicable Massachusetts state laws and regulations.

**CONTRACTUAL PROVISIONS**

Any person engaging an agent on behalf of [EMPLOYER'S NAME] should formalize the engagement in writing. This written agreement should include a commitment from the agent to [EMPLOYER'S NAME] that the agent agrees not to engage in improper business conduct, such as bribery, with the intent to improperly influence behaviors or obtain any benefit for [EMPLOYER'S NAME]. This commitment may reduce the risk of a violation and may provide evidence of [EMPLOYER'S NAME]'s intent to comply with anti-bribery laws. [EMPLOYER'S NAME] should not rely upon standard compliance-with-law clauses, as certain laws may not apply directly to the agent.

Depending on the specific facts and circumstances of the services the agent is engaged to provide, [EMPLOYER'S NAME] should carefully consider including certain contractual provisions in the agent's service agreement, such as:

* A detailed description of the scope of the agent's services.
* A clear description of how [EMPLOYER'S NAME] will compensate the agent for its services.
* A formal acknowledgment by the agent that it understands the requirements of local anti-bribery laws and agrees not to violate them.
* An agreement by the agent to certify, on [a periodic/an annual] basis, that it has not violated any anti-bribery laws while conducting [EMPLOYER'S NAME]'s business.
* An agreement that the agent will not sub-contract its services without [EMPLOYER'S NAME]'s written permission.
* Permission for [EMPLOYER'S NAME] to audit the agent's expenses and invoices.
* A requirement that the agent will inform [EMPLOYER'S NAME] if it is making payments of any kind to foreign officials.
* An agreement that the agent will inform [EMPLOYER'S NAME] if the agent (or its employees or affiliates, if the agent is an entity) takes any official office or position in a foreign government.
* Please contact [EMPLOYER'S NAME]'s [DEPARTMENT NAME] for assistance in drafting these provisions.

**DUE DILIGENCE**

Before engaging an agent, [EMPLOYER'S NAME] must conduct careful due diligence on the agent to ensure the agent will conduct business in an ethical and lawful manner. The steps taken should be tailored to the particular facts and circumstances of the engagement. These steps may include:

* Confirming the agent can perform the requested services: [EMPLOYER'S NAME] should determine if it is legal under local law for the agent to perform the requested services and whether the agent is capable of performing them. Background checks should be conducted, including verifying the agent’s past performance, experience, expertise, qualifications, and competency. This includes gathering information required for making any prudent business decision. [EMPLOYER'S NAME] may also visit the agent’s place of business to verify staffing and operations.
* Determining the agent’s integrity: [EMPLOYER'S NAME] should evaluate the agent’s integrity by reviewing published reports about the agent’s activities, checking global watch lists, contacting the agent’s references, and consulting with relevant agencies, including:
	+ the relevant country desk at the U.S. State Department.
	+ the relevant country or business desk at the U.S. Commerce Department.
	+ the commercial attaché at the U.S. Embassy in the relevant foreign country.
	+ the commercial desk of the foreign country's embassy in the United States.
* Determining the reputation for corruption in the agent’s country: Research should be conducted by reviewing press reports on corruption and by contacting the agencies listed above. It is important to determine if the country traditionally faces bribery or corruption problems.
* Identifying relationships between the agent and foreign officials: [EMPLOYER'S NAME] should assess whether the agent’s company is owned, directly or indirectly, by a government or government official. The agent’s personal or family connections to political figures or government officials should also be investigated. Additionally, [EMPLOYER'S NAME] should determine if the agent was recommended by a foreign official or someone with business connections to a foreign entity.
* Determining the reasonableness of compensation payments: Payments made to the agent should align with market rates for the services rendered in the jurisdiction. Scrutiny should be applied if payments are requested for services provided in one country but directed to another, or if unusually large upfront payments are requested. Payments not in line with market standards may indicate the presence of facilitation payments or bribes.
* Thoroughly reviewing the agent's expenses: [EMPLOYER'S NAME] should ensure that all expenses incurred by the agent on the company’s behalf are supported by proper documentation. Special attention should be paid to requests from the agent for payments to “get the business” or “make necessary arrangements,” or any requests for charitable or political contributions. Additionally, requests for false documentation, such as fake invoices, are red flags.
* Using consistent standards and common sense to spot red flags: Signs to watch for include requests for confidentiality, working through intermediaries, refusal to comply with anti-bribery laws, uncooperativeness during the diligence process, and evasive or incomplete answers.

The company representative conducting the due diligence should document the steps taken in a memorandum submitted to [DEPARTMENT NAME]. If any inconsistencies or concerns arise during the review, the company representative must:

* Consult with a member of the [DEPARTMENT NAME].
* Obtain written approval from the appropriate [Vice President/Manager/Officer] responsible for authorizing the arrangement.

**MONITORING PERFORMANCE**

Throughout the course of the agent’s engagement, [EMPLOYER'S NAME] must monitor the agent’s performance. The company should:

* Review all invoices submitted by the agent: [EMPLOYER'S NAME] must carefully examine each invoice to ensure the accuracy of charges and services rendered.
* Require a detailed accounting of services and payments: The agent must provide detailed documentation of services performed and payments made on behalf of the company, including supporting receipts and invoices.

The due diligence steps outlined above should be repeated periodically throughout the agent's engagement to ensure continued compliance with applicable laws and [EMPLOYER'S NAME]'s Business Conduct Guidelines.

If there are any questions regarding compliance with anti-bribery laws, including the FCPA, or if there is uncertainty about the propriety of a specific engagement, payment, or transaction, [EMPLOYER'S NAME]'s representative should contact [DEPARTMENT NAME] for guidance.

To report potential violations of this policy, [EMPLOYER'S NAME]'s representative must immediately notify [the Law Department/a Compliance Officer/Hotline Number/[OTHER CONTACT]].

**QUESTONS ABOUT THIS POLICY**

If an employee or other representative of [EMPLOYER'S NAME] has any questions regarding this policy, please contact [NAME OF RELEVANT CONTACT].

**ACKNOWLEDGEMENT OF RECEIPT AND REVIEW**

I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (employee name), acknowledge that on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (date), I received and reviewed a copy of [EMPLOYER'S NAME]’s [NAME OF POLICY]. I understand that it is my responsibility to familiarize myself with the policy and adhere to its terms.

I also acknowledge that this policy is not intended to create an employment contract or alter my at-will employment status, unless otherwise specified in a written agreement signed by an authorized representative of [EMPLOYER'S NAME]. Any delay or failure by [EMPLOYER'S NAME] to enforce the provisions of this policy does not constitute a waiver of its rights to enforce them in the future.

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Signature

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed Name

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date