

Square One Standard Confidentiality and Intellectual Property Terms

First Edition, Second Update

1. *Overview.* These terms set out the rules about confidential information and intellectual property for your work for the company. If the company employs you, these terms apply to your work as an employee. If the company hires you as a contractor, these terms apply to your work as a contractor.
2. *Confidentiality.*
 - (a) *Purpose of Confidentiality.* The purpose of *Section 2 (Confidentiality)* is to protect the company's confidential information, as well as confidential information entrusted to the company by others.
 - (b) *Confidential Information.* With the exceptions listed in *Section 2(c) (Not Confidential Information)*, "**Confidential Information**" means:
 - (i) all information the company shares with you during your work for the company
 - (ii) any information the company shared with you before you started work with the company, as a head start bringing you up to speed for work
 - (iii) any information building on these kinds of information
 - (c) *Not Confidential Information.*
 - (i) *Public Information.* Information that is already public is not Confidential Information. Confidential Information that becomes public stops being Confidential Information, unless you made it public in breach of these terms.
 - (ii) *Information from Other Sources.* Information that you receive other than from the company or related to your work for the company is not Confidential Information, unless the source breached a confidentiality obligation to the company by providing the information.
 - (iii) *Independently Developed Information.* Information you develop or discover on your own, unrelated to your work for the company, is not, or stops being, Confidential Information. You will bear the burden of proving that development or discovery was unrelated to your work using written evidence from the time you claim to have developed or discovered the information.
 - (d) *Nondisclosure.* Except as required by law, you agree not to disclose any Confidential Information to anyone.
 - (e) *Limited Use.* You agree to use Confidential Information only in your work for the company, to benefit the company.
 - (f) *Security.* You agree to take reasonable measures to secure computer files, documents, e-mails, and any other materials containing Confidential Information. If the company provides written security requirements for some or all

Confidential Information you receive, you agree to either follow those requirements or to notify the company immediately that you will not.

- (g) *Preserve Proprietary Notices.* You agree not to remove any copyright notices, confidential markings, or other proprietary notices from materials containing Confidential Information.
- (h) *Legally Required Disclosure.* These rules apply when the law requires you to disclose Confidential Information, or when you reasonably suspect the law may require you to:
 - (i) *Give Notice of Required Disclosure.* If the law allows, you agree to promptly notify the company of the nature of the requirement and the Confidential Information affected. If practical, you agree to give notice quickly enough to give the company a practical chance to start a proceeding to protect the confidentiality of the Confidential Information.
 - (ii) *Cooperate and Assist.* On company request, you agree to cooperate with the company and provide reasonable assistance to the company in any proceeding to protect the confidentiality of Confidential Information. The company agrees to reimburse your reasonable out-of-pocket expenses of that cooperation and assistance.
- (i) *Give Notice of Leaks.* You agree to tell the company in writing whenever you become aware, suspect, or anticipate that Confidential Information has been or will be disclosed or used in breach of this agreement or other confidentiality agreements with the company.
- (j) *Return and Destruction.* When your work with the company ends, or when the company asks you to in writing, you agree to promptly:
 - (i) return materials containing Confidential Information that the company provided with a request to return
 - (ii) destroy other materials containing Confidential Information
- (k) *After Termination.* After your work with the company ends:
 - (i) Your obligations for Confidential Information that you know or should reasonably expect the company protects as a trade secret continue as long as the Confidential Information remains a trade secret.
 - (ii) Your obligations for other Confidential Information continue for five calendar years from the date your work with the company ended.
- (l) *No License.* The company does not grant you any license for Intellectual Property Rights in Confidential Information.
- (m) *No Warranty.* The company does not make any promise that Confidential Information will be complete or accurate.
- (n) *Defend Trade Secrets Act Notice.* Per the Defend Trade Secrets Act of 2016:
 - (i) An individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that:

- (A) is made:
 - (I) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and
 - (II) solely for the purpose of reporting or investigating a suspected violation of law; or
 - (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.
- (ii) An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual:
- (A) files any document containing the trade secret under seal; and
 - (B) does not disclose the trade secret, except pursuant to court order.

3. *Intellectual Property.*

- (a) *Intellectual Property Rights.* “**Intellectual Property Rights**” are legal rights in ideas, inventions, information, and other things that aren’t physical property. Copyrights, patents, trade secrets, and trademarks are the most common. When these terms say Intellectual Property Rights, they also mean legal rights in applications to protect Intellectual Property Rights, like copyright, trademark, and patent applications.
- (b) *Purpose of Intellectual Property Terms.* The purpose of *Section 3 (Intellectual Property)* is to make sure the company gets ownership of all Intellectual Property Rights in your work for the company, or, failing that, very broad licenses for it. Since the legal rules about intellectual property are a bit complicated, these terms are, too. But at a high level:
- (i) You promise to let the company know about the work you do in *Section 3(d) (Disclosure)*.
 - (ii) If the law allows the company to own copyright in your work from the start, *Section 3(e) (Work Made for Hire)* makes it so.
 - (iii) If rights in your work unavoidably belong to you to start, you transfer them to the company in *Section 3(f) (Assignment)*.
 - (iv) If you can’t transfer your rights, or use the rights of others, you license them to the company in *Section 3(g) (License)*.
 - (v) If you can’t transfer special “moral rights“, such as in artwork, you agree not to enforce those rights in *Section 3(h) (Moral Rights)*.
- (c) *Covered Intellectual Property.*
- (i) *General Definition.* “**New Intellectual Property**” means all Intellectual Property Rights in these kinds of work, created by you alone or with others:

- (A) work you did before starting work with the company, as a head start on work for the company
 - (B) work you do for the company
 - (C) work you create using equipment, supplies, facilities, or confidential information from the company
 - (D) any work building on these kinds of work
- (ii) *State Law Exclusions.* If you work in a state with laws that limit the Intellectual Property Rights that terms like these can assign to the company, New Intellectual Property does not include any rights that can't legally be assigned under that law. Examples of those state laws include:
- (A) California Labor Code section 2870
 - (B) Delaware Code title 19 section 805
 - (C) Illinois Compiled Statutes section 1060/2
 - (D) Kansas Labor and Industries Code section 44-130
 - (E) Minnesota Labor, Industry Code section 181.78
 - (F) New Jersey Statutes section 34:1B-265
 - (G) North Carolina General Statutes chapter 66 article 10 sections 66-57.1 and 66-57.2
 - (H) Utah Code title 34 chapter 39
 - (I) Washington Revised Code sections 49.44.140 and 49.44.150
- (d) *Disclosure.* You agree to keep records of the work you create for the company, and to promptly disclose New Intellectual Property covered by these terms to the company in writing, as it is created. If you're not sure whether you've created New Intellectual Property, you agree to disclose your work to the company anyway, so the company can decide.
- (e) *Work Made for Hire.*
- (i) *Express Agreement to Make "Work Made for Hire".* Subject to *Section 3(e)(ii) (State Employment Law Exception)*, as far as the law allows, New Intellectual Property will be "work made for hire" under copyright law.
 - (ii) *State Employment Law Exception.* Some states have laws that make workers who agree to make "work made for hire" into employees, even if they would otherwise be contractors. For example, section 3351.5(c) of the California Labor Code and section 686 of the California Unemployment Insurance Code. If you work in one of those states and work for the company as a contractor, *Section 3(e)(i) (Express Agreement to Make "Work Made for Hire")* does not apply if it would make you an employee under that state's law.
- (f) *Assignment.*

- (i) *Assignment of Rights.* You assign all your rights in New Intellectual Property that aren't covered by *Section 3(e) (Work Made for Hire)* to the company.
- (ii) *Further Steps.* You agree to do everything necessary to paper assignments in *Section 3(f) (Assignment)*, make them legally effective, and help the company enforce the rights assigned. The company will notify you by e-mail of any further steps required, provide all necessary documentation, and reimburse you for reasonable out-of-pocket expenses.
- (iii) *Acting on Your Behalf.*
 - (A) *What the Company Can Do.* The company can take action under *Section 3(f)(ii) (Further Steps)* on your behalf if you aren't capable of doing so, if you refuse to do so, or if the company can't find you or get in touch with you.
 - (B) *Legal Intent.* In legal terms of art, *Section 3(f)(iii)(A) (What the Company Can Do)* appoints the company as your "attorney in fact with full right of substitution" to act on your behalf under *Section 3(f)(ii) (Further Steps)*.
- (g) *License.* You give the company a license for all rights in New Intellectual Property that aren't covered by *Section 3(e) (Work Made for Hire)* or *Section 3(f) (Assignment)*, as well as any Intellectual Property Rights of others that you use in work for the company. That license allows the company to do anything that would otherwise infringe Intellectual Property Rights, and to sublicense others to do so. The license isn't limited in time or otherwise, and you can't revoke it.
- (h) *Moral Rights.* If the law gives you "moral rights" in work for the company that you can't assign, you waive those rights and promise not to enforce them against anyone.

4. *Responsibilities.*

- (a) *Conflicting Agreements.* You guarantee that agreeing to these terms and following them won't cause you to break any other agreement with anyone else
- (b) *Intellectual Property Infringement.* You guarantee you will not infringe the Intellectual Property Rights of others in work for the company
- (c) *Open Licensing.* If the company provides policies on acceptable terms for open source, open data, open content, material dedicated to the public domain, or similar kinds of freely available work, you agree to follow those policies. You guarantee that any freely available work that you include in or build on in New Intellectual Property will conform to those policies.
- (d) *Rights to License.* Otherwise, you guarantee that you will not include or build on material covered by Intellectual Property Rights that you can't license to the company under *Section 3(g) (License)* in work for the company.

5. *General Contract Terms.*

- (a) *Law.* If the company employs you, the law of the state where you work will govern all rights and duties under these terms. If the company hires you as a contractor, the same law that governs your contract governs these terms.
- (b) *Disputes.* If the company employs you, the company agrees to make any legal claims related to these terms only in the federal or state courts nearest the address that the company provides with its signature. If the company hires you as a contractor, the company agrees to follow the dispute-resolution terms of your contract for legal claims related to these terms.
- (c) *Whole Agreement.* These terms and any document incorporating them by reference list all the terms you and the company agree to about confidentiality and intellectual property in your work for the company.
- (d) *No Assignment.* You may not assign our agreement without written permission from the company. The company can assign our agreement, as a whole, to another business entity that acquires its stock or substantially all its assets, or to a new business entity set up to change its legal form or jurisdiction. Any attempt to assign rights under our agreement against these terms has no legal effect.
- (e) *No Delegation.* Neither side may delegate any duty under our agreement. Any attempt to delegate has no legal effect.
- (f) *Unenforceable Terms.* If a court decides that any part of these terms can't be enforced, for any reason, the rest of these terms will continue to apply.

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