



WORK MADE FOR HIRE AGREEMENT & GUIDE

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1. Overview

Businesses spend considerable time and money developing new ideas and products. In many cases, they turn to employees to create new and innovative materials. After investing their time and money into their creation, those companies will want to make certain that they own the goods that are produced. A work made for hire agreement can help provide such assurance.

A well-drafted work made for hire agreement outlines each party's rights and responsibilities, and allows the parties to negotiate and determine what services and materials to be provided. It also makes sure both parties understand that ownership rights remain with the company. The enclosed document can provide a good starting point for your arrangement. You and the author must continue to discuss the terms of your agreement, settling questions about work parameters, payment, and responsibilities. Once you have agreed on terms and have signed the attached form, each party can focus on its area of expertise: the company on the development of its business and the author on the tasks assigned.

2. Dos & Don'ts Checklist

- Under federal law, a work is protected by copyright from the time it is created in a "fixed form." Another way of saying this is that from the time a work is written down or recorded, it immediately becomes the property of its author, who is the sole person who can claim copyright. An exception to this rule is for categories of works called "works made for hire." If something is a work made for hire, the employer or the commissioner of the item is considered its author.
- Generally speaking, work created by employees for employers is considered a work made for hire. However, there is no exact standard for determining when a work is made for hire, or even who will be considered an employee of a company. To protect your company, it's a good idea to get a signed written agreement specifying that something is a work made for hire in every case.
- In some cases, you can enter a work made for hire agreement with someone who is not an employee of your company (e.g., an independent contractor). However, the work that you commission must fall into one of nine specific categories: contribution to a collective work; part of a motion picture or other audiovisual work; translation; supplementary work; compilation; instructional test; test; answer material for a test; or atlas. If the work requested does not fall into one of these categories, consider transferring or assigning the author's copyright to the company.
- Be careful – if you have an agreement with an individual specifying that a work is made for hire, many states will infer a generalized employment relationship and require that you deduct taxes, pay workers' compensation insurance, and make other employer-employee accommodations. This is true even if all other factors would generally make the relationship one between independent contractor and the company. Review your state's rules to know the consequences of entering into a work made for hire agreement.

- Before sitting down to customize your agreement, decide what your goals are for. The contract can contain any agreed-on terms but should, at a minimum, include a description of the author's tasks, the amount to be paid, the terms of payment, deadlines for completion, and the end products expected (e.g., slides, photographs, CDs, articles, etc.). Clarify the terms and conditions of your agreement before memorializing them in writing.
- Allow each party to spend time reviewing the agreement. This will reduce the likelihood, or at least the efficacy, of a claim that a party did not understand any terms or how those might affect the document as a whole.
- Both parties should review the document carefully to ensure that **all relevant deal points** have been included. It is better to be over-inclusive than under-inclusive. Do not assume that certain expectations or terms are agreed to if they are not stated expressly on the agreement.
- Sign two copies of the agreement, one for you and one for the other party.
- Depending on the nature of its terms, you may decide to have your agreement witnessed or notarized. This will limit later challenges to the validity of a party's signature.
- The enclosed document is drafted in a way that elevates the company's interests over those of the author. If you believe this agreement is too imbalanced for your purposes, or too restrictive to allow the author to perform his or her duties, revise or restructure the provisions to fit your organizational goals.
- If your agreement is complicated, do not use the enclosed form. Contact an attorney to help you draft a document that will meet your specific needs.

3. Work Made for Hire Agreement Instructions

The following provision-by-provision instructions will help you understand the terms of your agreement.

The numbers below (e.g., Section 1, Section 2, etc.) correspond to the provisions in the contract. Please review the entire document before starting your step-by-step process.

- **Introduction.** Identifies the document as a work made for hire agreement. Write in the date on which the agreement will become effective (often the date on which it is signed). Identify the parties and, if applicable, what type of organization(s) they are. Note that each party is given a name (e.g., "Company") that will be used throughout the agreement. The hiring party is called the "Company" and the party providing the materials is called the "Author." If you want to use a term that better suits your arrangement (e.g., Photographer, Filmmaker, etc.), you can substitute that word in every place the word "Author" is used.
- **Recitals.** The "whereas" clauses, referred to as recitals, define the world of the agreement and offer key background information about the parties. In this agreement, the recitals include a simple statement of your intent to enter into a work made for hire arrangement. In the first paragraph of the recitals, describe in detail the materials that are to be created by the Author.

- **Section 1: Materials; Work for Hire.** The Company’s appointment (and the Author’s acceptance of the appointment) of the Author to create the materials. This section also emphasizes that any materials or work created will be considered property of the Company (i.e., a “work made for hire”).
- **Section 2: Delivery.** Sets forth the terms and conditions that will govern the Author’s submission of the materials to the Company.
 - Section 2(a): Delivery Date. Enter the date by which all materials must be delivered in final form. If you want to specify a particular employee (or department) at the Company to whom the materials should be delivered, you can do so in this subsection. You can also specify the form that the submission should take. If you prefer that the materials be sent electronically or in person only, state that preference here.
 - Section 2(b): Form of Delivery. Allows you to specify the form that the delivery of the materials themselves should take. This will depend on the type of work that is being undertaken. A number of examples have been provided for different types of materials, but they will not all be applicable to every situation. Delete any references that do not apply to your arrangement.
 - Section 2(c): Supplemental Information. Sometimes just providing the materials will not give the company the ability to use them. In those cases, the recipient will need supplemental information for its own protection. This subsection addresses certain types of additional information that may be required. For example, if the commissioned materials are photographs or other images, the Author will be responsible for obtaining model releases. The Company would need such releases before an image could be used for trade or advertising purposes, even if the pictures are of company employees.
 - Section 2(d): Verification of Materials. Requires the Author to verify the truth of any facts contained in his or her work, and to keep records of that verification.
 - Section 2(e): Failure to Deliver. Details the Company’s three options if the Author doesn’t finish the Materials or doesn’t turn them over on time. First, the Company can end the agreement without any additional obligations (including any obligation to pay the Author). Second, the Company can keep its rights in the materials, and pay the Author part of the original fee, reduced by the amount that the Company thinks is reasonable given the defect or delay in delivery. Finally, the Company can set a new date for delivery of the materials, and there will be no extra fees provided for any additional work.
- **Section 3: Ownership of the Materials and Derivative Works.**
 - Section 3(a): Work for Hire. Emphasizes again that the materials created under the Agreement are works made for hire, and the Company will therefore be considered the author of those materials. If for any reason the work created is said to not be a work made for hire, the Author agrees to assign his or her interest to the Company (thereby giving the ownership that was supposed to be given by creating a work made for hire).
 - Section 3(b): Sole Proprietor. Indicates that the copyright to the materials is with the Company.
 - Section 3(c): Right to Change. Allows the Company to edit or not edit, use or not use, the materials in its discretion. In other words, although the Company has rights to use the Author’s materials, it does not have to do so: it is obtaining the ability to do it without the obligation of having to.

- Section 3(d): Moral Rights. “Moral rights” are certain intellectual property rights that are maintained in countries other than the United States. In some cases, these rights cannot be assigned. To the extent that the Author has any such rights, he or she waives his or her right to enforce them against the Company in those countries.
 - Section 3(e): Authorial Credit. Permits the Company to use the Author’s name to attribute actual authorship of the materials, if it chooses to do so.
- **Section 4: Payments.** Details what the Author will receive in exchange for the materials he or she is providing. There are two options provided, and you should delete the one that you do not select. In the first, the Company will make a one-time payment to the Author when the materials are complete and received. The second option allows you to construct a different payment schedule. Note that the example provided is for illustrative purposes – you can choose any payment schedule that fits your arrangement. Whichever option you select, enter the total fee that will be paid in the first space provided.
- **Section 5: No Publicity.** Permits the Company to control how the materials will be used and how the Author can provide information about the agreement to any third party.
- **Section 6: Infringement.**
 - Section 6(a): Notification of Infringement. Provides that if the Author discovers that a third party is using the materials without permission, or finds out that the materials are themselves infringing on a third party’s work, it will notify the Company immediately.
 - Section 6(b): Cooperation. If a copyright infringement case is brought (either on behalf of or against the materials), this promises that both parties will participate in the case.
- **Section 7: Author’s Representations and Warranties.** Details the Author’s promises under the agreement. Essentially, he or she is agreeing to enter into the arrangement based on the conditions listed in this section (e.g., that he or she is capable of entering the agreement and satisfying its terms). The Author also promises in this section that the materials it has prepared aren’t illegal in some way (e.g., by being slanderous or libelous, or by violating another person’s copyright). If there are other promises that you wish the Author to make as a condition to entering into the Agreement, enter those in this section as well.
- **Section 8: Third Parties; Taxes.** Provides that the Author can’t bind the Company into any agreements with any third parties. This section also states that the Author will pay its own taxes on any income earned as result of the Agreement. Review your state’s laws for additional information about the tax consequences of entering into a work made for hire agreement.
- **Section 9: Termination.** Explains that certain actions or events, including written notice or material breach, will cause the agreement to end out of time (i.e., before the services are completed or the end of the term, if any). Write in the amount of notice a party must give of its intent to terminate or to notify the other of a breach.
- **Section 10: Indemnification.** Allocates responsibilities between the parties if problems arise in the future, and protects the Company from the financial consequences of the Author’s negligent or intentional conduct.

- **Section 11: Entire Agreement.** The parties' agreement that the document they're signing is "the agreement" about the issues involved. Unfortunately, the inclusion of this provision will not prevent a party from arguing that other enforceable promises exist, but it will provide you some protection from these claims.
- **Section 12: Assignment.** Explains that the Company may assign its obligations and interests without obtaining the Author's permission. However, the Author is not entitled to assign its own interests under the agreement.
- **Section 13: Modification.** Indicates that any changes to the document are ineffective unless they are made in writing and signed by both parties.
- **Section 14: Notice.** Lists the addresses to which all official or legal correspondence should be delivered. Write in a mailing address for both the Company and the Author.
- **Section 15: Governing Law.** Allows the parties to choose the state laws that will be used to interpret the document. Note that this is not a venue provision. The included language will not impact where a potential claim can be brought. Write in the applicable state law in the blanks provided.
- **Section 16: Severability.** Protects the terms of the agreement as a whole, even if one part is later invalidated. For example, if a state law is passed prohibiting choice-of-law clauses, it will not undo the entire agreement. Instead, only the section dealing with choice of law would be invalidated, leaving the remainder of the agreement enforceable.
- **Section 17: Counterparts/Electronic Signatures.** The title of this provision sounds complicated, but it is simple to explain: it says that even if the parties sign the agreement in different locations, or use electronic devices to transmit signatures (e.g., fax machines or computers), all of the separate pieces will be considered part of the same agreement. In a modern world where signing parties are often not in the same city - much less the same room - this provision ensures that business can be transacted efficiently, without sacrificing the validity of the agreement as a whole.
- **Section 18: Headings.** Notes that the headings at the beginning of each section are meant to organize the document, and should not be considered operational parts of the agreement.

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WORK MADE FOR HIRE AGREEMENT

This Work Made for Hire Agreement (the "Agreement") is entered into as of _____, 20____ (the "Effective Date"), by _____, a _____ (the "Author") and _____, a _____ (the "Company," and together with the Author, the "Parties").

RECITALS

WHEREAS, the Company wishes to engage the Author for the purpose of creating the following [written][photographic][other] materials (the "Materials") on the terms and conditions set forth below: [DESCRIBE MATERIALS] _____

_____ ; and

WHEREAS, the Author wishes to prepare the Materials in accordance with the terms of this Agreement; and

WHEREAS, each Party is duly authorized and capable of entering into this Agreement.

NOW THEREFORE, in consideration of the above recitals and promises and benefits contained herein, the Parties hereby agree

1. MATERIALS