Sample Anti-Corruption Contract Provisions

Instructions

It is vital that anti-corruption compliance is incorporated in a company's contracts with its third parties. Below are some contract provisions that you may want to consider when drafting a contract or reviewing the contract language you are currently using with your third parties. The first set of terms relates to representations that you should obtain from your third parties. The next set of provisions are more general contract terms.

As a reminder, these materials are for informational purposes only and are not legal advice or a substitute for legal counsel. Contracts are legal documents and any terms in them must be tailored to the specific circumstances and to the requirements of the applicable governing law.

Representations

1. **Basic compliance with laws:** An express representation that the third party, including its directors, officers, employees, agents, and representatives, is, has been, and will remain in compliance with all applicable laws.
2. **U.S. Foreign Corrupt Practices Act (FCPA) compliance:** An express representation that the third party, including its directors, officers, employees, agents, and representatives, is, has been, and will remain in compliance with the U.S. FCPA. In particular, this should include a representation that the third party has not and will not offer, promise, pay, or give anything of value, directly or indirectly, to any foreign officials, political parties, party officials, candidates for public or political party office, to influence the acts of such officials, political parties, party officials, or candidates in their official capacity, to induce them to use their influence with a government to obtain or retain business or gain an improper advantage in connection with any business venture or contract in which your company is a participant.
3. **Anti-corruption compliance:** An express representation that the third party, including its directors, officers, employees, agents, and representatives, has not and will not offer, promise, pay or give, or solicit, accept or receive, anything of value, directly or indirectly, to/from any person, as an inducement to use influence improperly to obtain, provide, or retain business, or gain an improper advantage in connection with any business venture or contract in which your company is a participant.
4. **Accuracy of due diligence information:** An express representation that due diligence information provided by the third party is accurate and complete.
5. **Identity of owners/stakeholders/beneficiaries:** An express representation that no government officials, directly or indirectly, own or have any other financial interest in the third party.
6. **Absence of undisclosed corruption investigations/allegations:** An express representation that the third party has fully disclosed and is not aware of any investigation or allegation that it, including its directors, officers, employees, agents, and representatives, have been involved in any corruption.

Other Provisions

1. **Indemnification:** Indemnification for any corruption-related allegation, including all legal fees and costs for the underlying investigation.
2. **Cooperation:** Require full cooperation with any Company investigation, specifically including an agreement to provide access to any documents in possession, custody, or control which are reasonably necessary in the view of the Company for the investigation.
3. **Termination:** Any corruption-related violation, breach of the corruption-related representations, provision of false information, or failure to cooperate in an investigation is deemed to be a material breach of the contract, with no need for notice and opportunity to cure, if the Company has reasonable grounds to believe this has occurred. Further, such a finding will be the grounds for immediate cessation of all payments.
4. **No sub-vendors (without approval):** Agreement not to hire an agent, subcontractor, or consultant without disclosure and the Company's prior written consent.
5. **Audit rights:** Explicit provision of anti-corruption audit rights that extend beyond any audit rights otherwise associated with the financial relationship between the parties and that allow for a full review of anti-corruption-related compliance procedures and training.
6. **Other anti-corruption requirements:** Include specific provisions requiring performance of any other anti-corruption compliance actions contemplated in the business relationship—e.g., compliance with Company code, disclosure of potential conflicts of interest, adherence to specific Company policies (hospitality policy, political/charitable contributions policy), ongoing training requirements, internal/external audits, anti-corruption process improvements.
7. **Periodic certification:** Require an annual (or other appropriate period) certification updating any anti-corruption representations, and otherwise confirming that the third party has not engaged in any conduct that violates anti-corruption or other applicable laws, nor is it aware of any such conduct.
8. **Defined contract term:** Provide a finite term requiring the third party to requalify as a business partner at a regular interval (e.g., annually, every three years, etc.).