



**Global Employment
Compass**
El Salvador

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1. Summary of applicable rights for different categories of workers

	Employees (part-time or full-time)	Independent contractors/service providers	Volunteers
Employment laws and regulations	Yes	No	No
Employees' compensation/remuneration requirements.	Yes	No	No
Minimum wage requirements	Yes	No	No
Mandatory provident fund/retirement benefit fund contributions	Yes	No	No
Immigration requirements including the right to work in your country	Yes	No	No
Personal Data (Privacy) laws and regulations	No	No	No
Anti-discrimination laws and regulations	Yes	No	No



2. Legal requirements/rights/ practices for different categories of workers

a. Employees

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Definition of an employee

The nearest definition of a "employee" can be found in Article 17 of the Labor Code. This particular provision delineates the essential elements of an employment contract, thus establishing the foundational basis for the concept of a worker within the legal framework.

1 Contracts of Employment

What types of employment contracts are available? E.g. fixed term, part time, zero hour contracts, other? Are there any specific employment contracts available for non-profit organizations?

Employment contracts are:

- Indefinite
- Fixed term
- Part time

There are no specific employment contracts for NGOs.

What are the key terms of employment contracts?

The employment contract should have at least¹:

¹ Article 23 Labor Code





- Name, surname, sex, age, marital status, profession or trade, domicile, residence and nationality of each contracting party;
- Number, place and date of issue of the personal identity cards of the contracting parties; and where they are not obliged to have it, mention shall be made of any reliable document or identity shall be verified by two witnesses who shall also sign the contract;
- The work that under the dependence of the employer, will be performed, trying to determine it as accurately as possible;
- The term of the contract or the expression of being indefinite; in the first case, the circumstance or event giving rise to the forward contract must be stated;
- The date on which the work will begin. When the provision of services has preceded the written granting of the contract, the date on which the worker began the provision of services shall be stated;
- The place or places where the services are to be provided and where the worker must live, if the employer undertakes to provide him with accommodation.
- Working hours;
- The salary that the worker will receive for his services;
- Form, period and place of payment;
- The quantity, quality and condition of the tools and materials provided by the employer;
- Name and surname of persons who are economically dependent on the worker;
- Such other stipulations as the parties may agree;
- Place and date of conclusion of the contract; and
- Signature of the contracting parties.

Is it acceptable to have a probation period for employees? If yes, for how long?

Yes, for 30 days and any party may terminate the employment agreement for the probation period without cause². If the probation period ends, and if neither party expresses their desire to terminate the contract within thirty days, the contract will continue indefinitely unless the parties have specified a termination period as permitted by law. However, if a new contract is made between the same parties for the same type of work before one year has passed, no probationary period can be included in the new contract³.

Are fixed term employment contracts permissible? Are there any limitations on fixed term contracts? Are there any requirements to have a fixed term contract?

Yes, fixed term contracts are permitted⁴; however, contracts related to tasks that are inherently permanent in the company are considered to be entered into for an indefinite period, even if a termination period is specified. The inclusion of a time limit is only valid in the following cases:

² Article 28 Labor Code
³ Idem
⁴ Article 25 Labor Code





- When the objective circumstances that led to the contract allow the tasks to be classified as temporary, transient, or occasional; and
- Whenever circumstances or events that result in the total or partial termination of the tasks, either integrally or successively, have been taken into account for the hiring process.

In the absence of an agreement in the aforementioned cases, the contract is presumed to be entered into for an indefinite period.

Do employment contracts have to be in writing? Are there any signatory requirements for employment contracts? For example, could they be signed in-person or electronically, etc.)?

Employment contracts must be in Spanish and in writing, as well as any amendment or renewal. Three copies shall be signed by the employer and employee, each them will have its copy and another shall be sent the Ministry of Labor⁵.

Electronic signature is recognized in El Salvador and has the same force as handwritten signature; however, it is highly recommended that handwritten signature is used for employment contracts.

Do employees have to be issued with a written employment contract before they start work?

It is recommended that before starting an individual to work an employment contract should be in writing and duly executed by the Parties; however, the law allows to prove the labor relationship with any type of evidence, even if no employment contract has been executed.

Can you provide a simple template of the contracts mentioned above?

Please refer to Annex A.

Is there an obligation for an employer to run a criminal record check to the extent that any individual they hire will be working with children or vulnerable people?

No, but is a common practice.

Can employers request references from former employers for new hires?

By law no but is a common practice.

Is an employer required to set up any form of employee representative body? If so, what is the trigger for this?

No, employers are not legally obligated to establish any type of employee representative body. However, employees have the right to form unions and engage in collective bargaining.

Is it common to have collective agreements in your jurisdiction that apply to all employers in a particular region or sector?

Yes, if there is a union in such workplace.

2 Conditions of employment

What is the minimum age requirement for employment?

⁵ Article 18 Labor Code





- For the commerce and services sector: \$305.00 per month.
- For the industry and maquila sector: \$359.16 per month.
- For the agriculture sector: \$243.46 per month.
- Coffee, Sugar and cotton mills: \$272.66

What type of work may a child undertake? For example, are there any specific restrictions?

Work of individuals under the age of eighteen must be suitable for their age, physical condition, and development⁶.

It is prohibited the employment of minors under the age of eighteen in dangerous or unhealthy tasks. However, minors aged sixteen and above may be authorized to work if their health, safety, and morality are fully guaranteed, and they have received appropriate and specific instruction or vocational training in the corresponding field of activity. However, these prohibitions and restrictions do not apply to work carried out in general, professional, technical schools, or other training institutions⁷.

Hazardous labor is the work that can immediately and seriously endanger the life or physical integrity of the worker⁸. The danger can arise from the nature of the work, the materials used or produced, the residues left behind, the handling of corrosive, flammable, or explosive substances, or any storage involving such substances. Examples of hazardous labor include operating machinery or mechanisms in motion, using certain types of saws, working in underground or underwater environments, handling explosive or toxic materials, construction and demolition work, mining and quarrying, maritime work, and other specified jobs in laws, safety and hygiene regulations, collective agreements, individual contracts, and internal work regulations. Work in bars, pubs, billiard halls, and similar establishments as hazardous for individuals under the age of eighteen⁹.

Unhealthy labor is work that, due to the conditions in which it is performed or its nature, can cause harm to the workers' health¹⁰. This includes work involving toxic substances or materials, the release of deleterious gases or vapors, and the emission of dangerous or harmful dust. Additional specifications regarding unhealthy labor can be found in laws, safety and hygiene regulations, collective agreements, individual contracts, and internal work regulations.

Children under the age of fourteen and those who have reached that age but are still subjected to compulsory education cannot be employed in any type of work¹¹. However, minors who are at least twelve years old can be authorized to work under certain conditions. The work must be light and should not harm their health or development. Additionally, the work should not interfere with their attendance at school, participation in approved vocational training programs, or hinder their educational progress¹².

⁶ Article 104 Labor Code.
⁷ Article 105 Labor Code.
⁸ Article 106 Labor Code.
⁹ Article 107 Labor Code.
¹⁰ Article 108 Labor Code.
¹¹ Article 114 Labor Code.
¹² Idem.





If a child is under fourteen years old, they must enter into employment contracts through their legal representatives. In the absence of legal representatives, they can enter into contracts through individuals who financially support them or through the Public Defender's Office. The absence of legal representatives includes situations where they have passed away, are incapacitated, are outside the country, or their whereabouts are unknown¹³.

For minors under sixteen years old, their workday cannot exceed six hours per day or thirty-four hours per week in any type of work. They are also restricted from working more than two extra hours in a day and from engaging in physically demanding tasks. Furthermore, minors under eighteen years old are prohibited from working during nighttime hours¹⁴.

Every employer who employs workers under the age of eighteen must maintain a record that includes the worker's date of birth, the agreed-upon type of work, the work schedule, and the agreed-upon salary. Workers under the age of eighteen cannot be employed without undergoing a thorough medical examination beforehand to determine their fitness for the specific job they will be employed in¹⁵.

A regulation will establish the requirements and characteristics of the medical examination for minors. However, it is mandatory that¹⁶:

- The examination is conducted by a qualified doctor.
- This is evidenced by the corresponding certificate.
- The fitness for the specific job should be subject to periodic medical inspections at intervals of no more than one year until they reach the age of eighteen.
- For jobs involving health risks, periodic repetition of the examination will be mandatory until the age of twenty-one.

The medical examination referred to in this article must be provided free of charge to the worker.

Juveniles are not allowed to be employed in the jobs where due to their nature or circumstances may cause damage to health, safety or morals of juveniles. Moreover, the Labour Law provides that a juvenile is required to undergo a medical exam prior starting the work. Such medical exam should be undertaken annually. Moreover, normal working hours of a juvenile cannot exceed 36 hours per week at the rate of 6 hours per day. During Ramadan such hours must be reduced to 24 hours per week. A juvenile is also entitled for a break/s. Such time is not calculated in the working hours. In addition, a juvenile may not be employed between sunset and sunrise or on the days of a rest or during the official holiday or more than the normal working hours. Moreover, a juvenile cannot be retained in the place of work for more than 7 continuous hours. Employers who are employing juveniles must submit to the Ministry of Labour a statement showing the name, work of the juvenile and a date of his/her engagement and also place on a conspicuous place a clear statement of the juveniles' working hours and their intervals of rest.

Wages

What is the minimum wage requirement for employees? Are there any exceptions in minimum wages for young persons or people with disabilities?

¹³ Article 115 Labor Code.
¹⁴ Article 116 Labor Code.
¹⁵ Article 117 Labor Code.
¹⁶ Idem.





Salary can be :

- Time-based: Payment based on units of time worked.
- Piece-rate: Payment based on the quantity and quality of work performed.
- Mixed system: Payment based on units produced or work completed during the workday.
- Task-based: Payment based on completing a specific amount of work within an agreed time.
- Commission-based: Payment based on a percentage or agreed amount per transaction.
- Piecework or lump-sum: Payment agreed upon for a specific job without consideration of time spent.

There are no exceptions for young people or people with disabilities.

Are there any conditions which warrant a pay raise or extra pay? If yes, what are they?

No, they are not; except when minimum wage is increased that salaries must be adjusted.

When are wages due? For example, is there any obligation to pay wages weekly, or monthly?

The salary must be paid at the agreed or customary location; payment of salaries at certain establishments is prohibited, except for workers of those establishments¹⁷.

Are employers obliged to provide employees with paid leave on public holidays?

Yes, must be remunerated with the basic salary¹⁸.

Are employers obliged to provide employees with annual leave?

Yes, after one year of continuous work for the same company or establishment, or under the same employer, workers are entitled to a fifteen-day vacation period¹⁹.

Are employees entitled to receive their usual salary during their annual leave?

Yes, which will be remunerated with a benefit equivalent to the ordinary salary corresponding to that period plus an additional 30% thereof²⁰.

Is there a requirement to pay overtime? How is overtime compensated?

Yes, and is as follows:

Workers who, by mutual agreement with their employers, work on the day designated as their weekly rest day, have the right to receive their basic salary for that day plus a minimum additional compensation of fifty percent for the hours worked, and they are also entitled to a paid compensatory rest day. If they work overtime, the calculation for the corresponding surcharges will

¹⁷ Articles 128 and 129 Labor Code.

¹⁸ Article 191 Labor Code.

¹⁹ Article 177 Labor Code.

²⁰ Idem.





be based on the overtime salary they are entitled to for that day, as determined in the previous clause²¹.

Workers who, by mutual agreement with their employer, work on a public holiday, will receive an extraordinary salary consisting of their regular salary plus a surcharge of 100% of their regular salary. If they work overtime, the calculation for the corresponding surcharges will be based on the extraordinary salary.

Work performed during nighttime will be compensated with a minimum surcharge of twenty-five percent on the salary established for the same work during daytime hour²².

Any work performed beyond the regular working hours will be remunerated with an additional payment consisting of 100% of the basic hourly salary²³.

Are there any extraordinary circumstances that could be relied on to temporarily cease paying employees for the hours worked?

Yes, an employment contract can be suspended when services and salary payments are temporarily halted²⁴. The suspension can affect all or part of the contracts in a company, reasons for contract suspension include force majeure, death or incapacity of the employer, legal strike or stoppage, work-related or common illness or accident, detention of the worker or employer, pre- and post-natal rest, mandatory military service, incompatibility with a public office, lack of funds, inability to operate with reasonable profitability, reduction of activities, risk to health, compliance with labor regulations, and holding a managerial position in a professional association²⁵.

Are employees entitled to an end-of-year payment?

Yes, employers are obligated to provide their workers with an annual bonus, known as "aguinaldo", based on each year of service. The full bonus payment is required when an employee has worked for one year or more. If an employee has not completed one year of service by December 12th, they are entitled to receive a proportional amount based on the time worked. The minimum amount of the aguinaldo bonus is determined based on the length of service: 10 days' salary for one or more but less than three years of service, 15 days' salary for three or more but less than ten years of service, and 18 days' salary for ten or more years of service.

Are employees entitled to payments when their employment contract is terminated, such as notice or notice pay, accrued or untaken holiday and/or statutory severance?

Yes, employees are entitled:

If they quit: Employees who voluntarily resign after at least two years of service are entitled to a severance payment of fifteen days' salary per year worked. The severance payment cannot exceed twice the legal minimum wage. Employers must pay the severance within fifteen days of the resignation. Resigning workers are also entitled to receive their full or proportional holiday bonus and paid vacation, following the prescribed rules²⁶.

21 Article 175 Labor Code
22 Article 186 Labor Code
23 Article 169 Labor Code
24 Article 35 Labor Code
25 Articles 36 and 37 Labor Code
26 Articles 8 and 9 Voluntary Resignation Law





If the employment contract is terminated for a cause: An employee with an indefinite-term contract who is unjustifiably dismissed is entitled to receive compensation equivalent to thirty days of basic salary per year of service, proportionally for partial years. The minimum compensation should not be less than fifteen days of basic salary. The compensation calculation is based on salaries that do not exceed four times the legal minimum daily wage. In the case of fixed-term contracts, if an employee is unjustifiably dismissed before the contract expires, they are entitled to compensation equivalent to the basic salary they would have earned until the contract's original end date, not exceeding the compensation for an indefinite-term contract²⁷.

If the employment contract is terminated without a cause: By law there is no mandatory severance.

Working hours

What is considered a full time working week? If the employee is contractually required to work less than this amount are they considered a part time employee?

The daytime workweek shall not exceed forty-four hours, and the nighttime workweek shall not exceed thirty-nine hours²⁸. In hazardous or unhealthy tasks, the workday shall not exceed seven hours per day, nor thirty-nine hours per week if it is during the day; nor shall it exceed six hours per day, nor thirty-six hours per week if it is during the night²⁹.

Are there fixed public/statutory holidays each year? Can employees be required to work on public/statutory holidays? Are employees entitled to any other type of leave besides public/statutory holidays?

The following days are established as public holidays³⁰:

- January 1st;
- Thursday, Friday, and Saturday of Holy Week;
- May 1st;
- August 6th;
- September 15th;
- November 2nd; and
- December 25th.

Additionally, August 3rd and 5th are established in the city of San Salvador and any other the Legislative Assembly may declare.

Yes, employees who, by mutual agreement with their employer, work on a public holiday, will receive an extraordinary salary consisting of their regular salary plus a surcharge of 100% of their regular salary. If they work overtime, the calculation for the corresponding surcharges will be based on the extraordinary salary.

²⁷ Articles 58 and 59 Labor Code

²⁸ Article 161 Labor Code

²⁹ Article 162 Labor Code

³⁰ Article 190 Labor Code





Every employee is entitled to one paid day of rest per workweek³¹.

Do part time employees receive any particular protection on the basis of their part-time status?

No, they have the same protection as any other employee.

Do part-time employees receive the same pro-rated terms to full time employees, e.g. in relation to pay and benefits?

Yes.

Social security

What social security contributions are employers obliged to pay? Presumably, pro-rated contributions are required for part time employees?

Employer must pay:

Social Security: 7.75% of the salary

AFP (Private Pension Fund Administrators): 6.75% of the salary.

Employer must withhold from the salary:

Income Tax (ISR): The employer is required to withhold and pay income tax for employees, calculated based on the progressive tax rates established by law. It is withheld between 10%-30% of the salary.

Social Security: A portion of the salary is withheld to cover contributions to the Social Security system, which provides social security benefits including pensions, healthcare, and workplace accident coverage. It is withheld 3% of the salary up to \$75.00

AFP (Private Pension Fund Administrators): A portion of the salary is withheld to contribute to the individual pension fund administered by an AFP. This deduction is allocated to each employee's individual account for their future retirement. It is withheld 7.25%

Are employers obliged to provide health insurance to their employees?

No; provided that, Employers of companies engaged in activities that, by their nature or special circumstances, pose a danger to the health, physical integrity, or life of workers, as determined by the General Directorate of Social Security, are required to provide insurance coverage for those workers who, due to their involvement in hazardous tasks, are exposed to occupational risks³².

Are employees entitled to unemployment insurance / benefits following the end of employment?

No.

Are employers obliged to provide sick leave? If yes, for how long? How many days have to be paid by employers? Is it possible to have unpaid sick leave?

Yes, they are provided sick leave, and they are entitled to the following benefits:

³¹ Article 171 Labor Code
³² Article 360 Labor Code





Daily subsidy of 75% of the base salary for common illness or accident (from the fourth day onwards, up to a maximum limit of 52 weeks, as determined by medical authorities for the same illness).

Daily subsidy of 75% of the base salary for work-related accidents or occupational diseases, starting from the day following the occurrence of the accident (from the second day onwards).

Daily subsidy of 100% of the base salary for maternity leave, lasting 16 weeks (only for the contributing mother).

Funeral assistance (provided when the insured person passes away).

Pensions of up to 70% of the annual base salary for occupational risks

Are employers obliged to provide maternity leave for employees? If yes, for how long? How many days/months have to be paid by employers? Is it possible to have unpaid maternity leave?

Yes, employers in El Salvador are required to grant pregnant workers a 16-week maternity leave, with 10-weeks taken after childbirth. They must also pay the equivalent to 75% of the basic salary during the leave. If a worker experiences pregnancy-related illness, she is entitled to additional parental leave. The employer is not obliged to provide monetary benefits beyond the specified limits. A simple medical certificate is sufficient to claim maternity leave. The worker must have worked for the same employer for at least six months before the expected due date. If the worker is unable to return to work after the maternity leave due to certified illness, the employer must provide sickness benefits and maintain her employment. Workers who breastfeed have the right to a one-hour daily break, which can be divided into two 30-minute intervals. These breaks are counted as working hours and are remunerated accordingly.

Is paternity leave available to employees? If yes, for how long? How many days/months have to be paid by employers? Is it possible to have unpaid paternity leave?

Yes, for three days in case of paternity due to birth or adoption; leave that will be granted at the choice of the worker from the day of birth, either continuously or distributed within the first fifteen days from the date of birth. In the case of adoptive parents, the period will be counted from the date the respective Adoption Judgment becomes final. To enjoy this leave, a Birth Certificate or Certification of the Adoption Judgment must be presented, as applicable. For this leave, the employer is obligated to provide an economic benefit equivalent to the regular salary for three days³³.

The Labor Code addresses the issue of maternity leave in Article 309. This provision grants eligible female employees the entitlement to a designated period of leave intended for physical recuperation and related purposes following childbirth. Importantly, this leave benefit is non-transferable and exclusive to the mother.

The labor code comprehensively regulates paternity leave under Article 26, Paragraph 6, Literal d). According to this stipulation, eligible fathers are entitled to a paternity leave period lasting for three days. It is crucial to note that, in cases of biological paternity, the duration of paternity leave is immutable. Conversely, in scenarios involving adoption, the law provides for a more extended leave period, specifically 12 weeks, in accordance with the dictates of the Special Adoption Law. Furthermore, El Salvador's ratification of Convention 183 on Maternity Protection in 2022 has

³³ Article 29 Labor Code





extended certain benefits to fathers, though the full extent of such privileges is contingent upon the enactment of secondary legislation.

Are employers liable for absence due to work-place injuries?

Yes, according to the law, occupational risks in El Salvador include work-related accidents and occupational diseases. Work-related accidents include incidents that occur while performing a service on the employer's order outside of regular work hours, during justified breaks or rest periods, and as a result of crimes or offenses committed during work. The employer is responsible for providing necessary obligations and benefits in such cases, but may seek reimbursement from the responsible parties. However, the employer is not liable for accidents caused by external factors unrelated to work or intentionally caused by the victim. The employer is also exempt from liability if the victim was intoxicated or under the influence of drugs during the incident³⁴.

Are employees entitled to retirement benefits from the employer? If yes, what benefits?

No

Are employers obliged to introduce reporting channels and legal safeguards for whistleblowers?

No.

3 Safe and supportive work environment

Broadly what measures have to be in place to ensure employers uphold health and safety? (such as fire or earthquake drills)

Employers are obligated to adhere to the Occupational Health and Safety Act, which sets forth minimum standards for workplace safety and health. This entails providing protective equipment, maintaining adequate ventilation, and conducting routine workplace inspections. Furthermore, employers must conduct fire drills and earthquake drills to ensure that employees are well-prepared for emergency situations.

Is there a requirement for an employer to issue any form of non-discrimination policies? (such as gender equality policies, equal employment opportunities, diversity, and inclusion policies, etc.)

No, but by law the employer cannot discriminate by any reason and also they cannot pay lower salary to a person that does the same job. The Labor Code of El Salvador, under Article 30, enumerates a series of prohibitions applicable to employers. Among these proscriptions, the twelfth pertains to the prohibition of discriminatory practices. It expressly forbids any form of differentiation, exclusion, or preferential treatment based on considerations of race, color, sex, religion, political opinion, national origin, or social standing. Exceptions to this prohibition may only be allowed by law for the sole purpose of safeguarding the interests of the worker.

Is there a requirement to provide employees with training designed to combat discrimination and harassment?

No.

³⁴ Articles 316, 317 and 321 Labor Code





Is there a requirement to have a data protection policy?

No.

Is it mandatory for employers to have a Child Protection Policy (CPP)? Are employees obliged to provide training on CPP to its employees?

No.

4 Tax

Which taxes are mandatory for employers to pay and deduct on behalf of their employees?

Employers are required to withhold income tax.

Are all employee taxes deducted from the salary that the employer pays or is there a requirement for employees to pay certain taxes directly?

All taxes are deducted from the salary by the employer.

5 Remote work

Are employers required to have a registered legal entity in the jurisdiction in order to employ employees in the jurisdiction?

Yes, if there is no registration of the employer (either through a branch or through a local entity) it becomes very difficult to comply with the labor law requirements.

Are employers required to provide any form of physical working space for employees working in your country?

No, unless it is a hybrid mode.

Please provide general instructions for employers on what to check if the employer has remote employees, including concerning employee tax liabilities.

The same tax obligations apply to employers who have remote employees.

6 What to do when things go wrong

Dispute resolution

Do employees (including volunteers) need to go through any form of dispute resolution before bringing a claim to a court or tribunal?

No, it is not necessary. Usually if the employee considers that a right has been violated, he can go to the Ministry of Labor and they perform an inspection to the company to determine if a violation has occurred. However, the Ministry of Labor does have a mediation center to help in any conflict.

Resignation

What grounds do employees have for resignation?

An employee can resign from their employment at any time, for the resignation to be effective it is not necessary that the employer accepts it.





Termination

What grounds do employers have for the termination of employment contracts?

Employers may terminate employment contracts either with cause or without cause. The employment contract terminated by the employer without incurring liability for various reasons. These include worker deception, repeated negligence, loss of trust, revealing company secrets, immoral acts, disrespect towards the employer or their family members, serious disruption of workplace order, causing deliberate or severe negligence damage to property, endangering safety, unauthorized absence from work, disobedience, violation of preventive measures, substance abuse at work, and violation of obligations or prohibitions³⁵. If the employer terminates the employment contract without cause it has to pay severance.

The employer cannot terminate the contract due to the worker's negligence or inefficiency if it is caused by illness or a transfer to a higher position. In the case of a transfer, the worker should be reinstated to their previous position unless three months have passed since the promotion. Within this period, if the worker considers themselves inefficient in their new role, they can request to be reinstated to their previous position, and the employer must comply with the request³⁶.

Employees may terminate employment contracts with the employer's liability under various circumstances, such as unjustified salary reduction, deception by the employer, grave mistreatment, endangerment of life or health, and other breaches. In such cases, workers are entitled to compensation as if they were dismissed³⁷.

How do employers have to document the termination of an employment contract?

Yes, they should have evidence in case the employee sues them.

What is the responsibility of employers for damages incurred by an employee's actions within his/her work?

The worker is obligated to compensate the employer for any damages caused due to a breach of the employment contract. The amount of compensation will be determined by the competent Labor Court judge, taking into account the circumstances. The judge will also specify the method of payment that the worker must follow to fulfill their obligation³⁸.

³⁵ Article 50 Labor Code
³⁶ Article 51 Labor Code
³⁷ Article 51 Labor Code
³⁸ Article 52 Labor Code





b. Independent contractors/consultants*

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Definition of an independent contractor/consultant

Article 2 of the Labor Code provides the closest meaning. Although not presented in the form of a conventional dictionary-style definition, this article serves to demarcate the scope of the relationships governed by the labor code while also excluding those arrangements that do not fall within its purview, including those of independent professionals and consultants.

** The term consultant will be used to also refer to independent contractors, or any other term that would mean a person that provides goods or services under a written contract or a verbal agreement but does not work to meet the definition of employee.*

1 Contracts

What types of independent contractor/consultant agreements are available? Are there any specific agreements available to NGOs?

Independent contractor/consultant agreements typically governed by the Salvadoran Labor Code and other relevant laws. While specific contract structures may vary depending on the nature of the work and the agreement between the parties, the common types of independent contractor/consultant agreements in El Salvador are:

- **Service Agreement:** This is a standard agreement where the independent contractor provides services to a client or company. It outlines the scope of work, payment terms, duration, intellectual property rights, confidentiality provisions, and other relevant terms and conditions.
- **Consulting Agreement:** This agreement is commonly used when a consultant provides expert advice or specialized services to a client. It specifies the consultant's responsibilities, deliverables, fees, duration, confidentiality, and any other relevant terms.
- **Freelance Agreement:** This type of agreement is suitable for individuals offering creative or artistic services such as graphic design, writing, photography, or web development. It defines the scope of work, compensation, intellectual property rights, revisions, and other necessary clauses.
- **Non-Disclosure Agreement (NDA):** An NDA is often used when an independent contractor is granted access to confidential information or trade secrets of a client or company. It ensures that the contractor maintains confidentiality and protects sensitive information.





- **Work-for-Hire Agreement:** In certain situations, a work-for-hire agreement may be used when the independent contractor creates intellectual property or specific deliverables for the client, and the client wants to secure full ownership rights upon completion.

Yes, there are specific agreements available for NGOs (Non-Governmental Organizations) in El Salvador. These agreements are often tailored to address the unique needs and activities of NGOs. Here are a few examples:

- **Service Agreement:** NGOs may engage consultants or service providers to assist with specific projects or tasks. A service agreement between the NGO and the independent contractor or service provider outlines the services to be provided, payment terms, deliverables, intellectual property rights, and other relevant terms.
- **Volunteer Agreement:** NGOs often rely on volunteers to support their activities. A volunteer agreement establishes the terms and expectations between the NGO and the volunteer, including the scope of work, duration, responsibilities, and any legal or liability considerations.

What are the main elements of consultant agreements?

Consultant agreements include elements to ensure clarity and protection for the consultant and the client, the main elements commonly found in consultant agreements are: (i) **Parties:** Clearly identify the parties involved in the agreement, including the consultant and the client; (ii) **Scope of Work:** Define the specific services or tasks that the consultant will provide. This section should outline the objectives, deliverables, milestones, and any limitations or exclusions. (iii) **Compensation and Payment Terms:** Specify the consultant's fee structure, whether it's an hourly rate, a fixed project fee, or other agreed-upon terms. Include details regarding the payment schedule, method of payment, and any additional expenses that will be reimbursed. (iv) **Duration/ Term:** date and expected duration of the consulting engagement. Include provisions for termination, including notice periods and grounds for termination by either party. (v) **Confidentiality:** Include clauses to protect the confidentiality of any proprietary or sensitive information had to be share during the engagement. Clearly outline the obligations of both parties in maintaining confidentiality. (vi) **Intellectual Property:** Address ownership and rights related to any intellectual property created or developed by the consultant during the engagement. (vii) **Indemnification and Liability:** responsibility for any potential claims, damages, or liabilities arising from the consultant's work. (viii) **Governing Law and Dispute Resolution:** Determine the jurisdiction and laws that will govern the agreement. Include a dispute resolution clause, such as mediation or arbitration, to address any potential conflicts. (ix) **Representations and Warranties:** Any specific representations and warranties made by both parties, ensuring the accuracy of information, compliance with laws, and the authority to enter into the agreement, and (x) **Miscellaneous Provisions:** clauses covering matters such as assignment, force majeure, entire agreement, amendment procedures, and any other relevant provisions that both parties deem necessary.

Is it possible to have probation periods for independent contractors/consultants? If yes, for how long?

Probation periods are typically associated with traditional employment relationships rather than independent contractor or consultant arrangements. The concept of a probation period is often used to evaluate an employee's suitability for a specific job or position before confirming their employment status. However, since independent contractors or consultants are not considered employees, the notion of a probation period may not be applicable.





Independent contractors/consultants are usually engaged for a specific project or set of tasks, and their engagement is typically governed by a contractual agreement that outlines the scope of work, deliverables, and other terms and conditions.

Is it possible to have a fixed term consultation/independent contractor agreement? Are there any restrictions around fixed term consultant/independent contractor agreements?

Yes, it's possible to have a fixed-term independent contractor or consultant agreement. In such cases, the agreement specifies a specific duration for the engagement, outlining the start and end dates of the contract. This can be beneficial for projects with a defined timeline or for consulting services that have a predetermined scope.

While there are generally no specific legal restrictions on fixed-term independent contractor agreements in many jurisdictions, including El Salvador, it is important to ensure compliance with local labor laws and regulations.

Do independent contractor/consultant agreements have to be in writing? Are there any signatory requirements? For example, could they be signed in-person or electronically, etc.)?

No, since it is not a legal requirement for independent contractor/consultant agreements to be in writing, it's highly recommended to have a written agreement. A written agreement helps establish clarity and sets out the rights and obligations of both parties involved. It provides a clear reference point for resolving any disputes or disagreements that may arise during the engagement. There are several acceptable methods for signing agreements:

- In-person: The parties may choose to sign the agreement physically. This involves printing out the agreement, signing it with ink, and exchanging copies of the signed document.
- Electronic Signatures: El Salvador recognizes the legal validity of electronic signatures under its Electronic Commerce Law. Electronic signatures can be used to sign independent contractor agreements. These signatures can be in the form of scanned handwritten signatures, digital signatures, or other electronic authentication methods. The use of electronic signatures may require compliance with certain legal requirements, such as ensuring the integrity and authenticity of the electronic signature.

Do all types of independent contractors/consultants have to be under contract in order to be able to work?

In El Salvador, it's advisable for independent contractors/consultants to have a written contract in place before starting their work, although it may not be a strict legal requirement in all cases. However, having a contract provides several benefits and is highly recommended for both parties involved.

Specific legal requirements and practices may vary depending on the nature of the work, industry-specific regulations, and the preferences of the parties involved.

Can you provide a simple template of the agreements mentioned above?

Please refer to Annex B.

Is there an obligation to run a criminal record check to the extent that any independent contractor will be working with children or vulnerable people?





In El Salvador, there is no specific national law that mandates a criminal record check for individuals working with children or vulnerable people. However, it is essential to prioritize the safety and well-being of children and vulnerable individuals in any professional setting. While there is no legal obligation, it is recommended to implement a due diligence by conducting background checks for independent contractors who will be working with children or vulnerable populations.

2 Conditions of work for consultants

Are there any minimum age requirements for an individual to work under a consultant/independent contractor agreement?

The legal framework governing employment and labor rights in El Salvador includes provisions to protect the rights of workers, particularly minors. According to the Salvadoran Labor Code, the minimum age for employment is generally 14 years old. However, there are certain exceptions and restrictions regarding the type of work that individuals under the age of 18 can perform. These restrictions aim to ensure the protection, safety, and well-being of young workers.

Does a consultant/independent contractor need to obtain a license or any other permission in order to work?

In El Salvador, there is no specific requirement for a consultant or independent contractor to obtain a license or permission to work. The country's legal framework generally allows individuals to engage in independent contracting without the need for a specific license or permission.

However, it's important to note that specific professions or activities may be subject to licensing or regulatory requirements based on the nature of the work. For example, certain professions like engineering, accounting, medicine and others may have professional licensing requirements governed by their respective regulatory bodies.

Payment

Are there any minimum pay requirements for consultants/independent contractors? Are there any exceptions in minimum wages for young persons or people with disabilities?

The minimum pay requirements for consultants or independent contractors may vary depending on several factors, such as the nature of the work, industry standards, and any applicable collective bargaining agreements. The Salvadoran Labor Code primarily focuses on employment relationships between employers and employees rather than specific provisions for independent contractors. Therefore, there is no specific minimum wage requirement for independent contractors or consultants under the labor laws of El Salvador.

While there is no statutory minimum wage requirement specifically for independent contractors, it is important to comply with any other relevant legal obligations, such as tax laws and regulations, to ensure proper payment and reporting of income.

Is there any requirement to provide statutory/paid leave to consultants for statutory holidays?

In El Salvador, the legal requirement to provide statutory or paid leave to consultants or independent contractors for statutory holidays is not explicitly defined in labor laws. The provisions related to statutory holidays and paid leave typically apply to employees rather than independent contractors. The specific terms and conditions related to leave entitlements for consultants or independent contractors can be negotiated and agreed upon in the contract between the parties. It is common for independent contractor agreements to address the issue of holidays and leave, including any provisions for paid time off.





Is there any requirement to pay annual leave to consultant/independent contractors? If so, how is this compensated, if at all?

The provisions regarding annual leave typically apply to employees rather than independent contractors. However, it is important to clearly define the terms of their engagement, including any entitlement to paid or unpaid annual leave. The specifics of annual leave entitlements, including whether paid leave is provided, are typically subject to negotiation and agreement between the parties involved.

Is there an obligation to provide consultant/independent contractors with overtime? How is this compensated if required?

Independent contractors are generally engaged on a project basis or for a specific scope of work, and their compensation is often negotiated based on the overall project or assignment. However, the concept of overtime pay may not apply in the same manner as it does for employees who work beyond their regular working hours.

The specific terms and conditions related to compensation, including any additional pay for work performed beyond the agreed-upon scope or hours, should be negotiated and clearly outlined in the contract or agreement between the independent contractor and the client.

Are consultants entitled to an end-of-year payment?

The regulations regarding end-of-year payments, commonly known as "aguinaldo," generally apply to employees rather than independent contractors.

The requirement to provide an end-of-year payment, typically calculated as one-twelfth (1/12) of the total annual salary, prorated based on the months worked during the year, is specified under the Salvadoran Labor Code for employees. However, as independent contractors are not considered employees, they are generally not entitled to receive the same end-of-year payment as employees.

The compensation terms for consultants or independent contractors are usually determined through negotiation and agreement in the contract or agreement between the parties.

Are consultants entitled to a final payment when the contract is terminated?

The entitlement to a final payment for consultants upon termination of their contract would typically depend on the terms and conditions outlined in the contract or agreement between the consultant and the client. The specific payment provisions, including any obligations upon contract termination, should be clearly stated in the contract. The consultant's contract is terminated, they may be entitled to receive compensation for work performed up until the termination date, as well as any other agreed-upon compensation or benefits.

Working hours

Are consultants entitled to any type of leave, whether paid or unpaid??

As independent contractors, consultants in El Salvador do not have a statutory entitlement to traditional employee benefits, including paid or unpaid leave. The Salvadoran labor laws primarily focus on rights and obligations related to employees rather than independent contractors.

Social security

Does the end user engager need to make any social security contributions on behalf of a consultant/independent contractor? Are independent contractors entitled to health insurance from the end user engager?





No.

Are independent contractors/consultants entitled to unemployment insurance / benefits after termination of their independent contractor/consultancy agreement from the end user engager?

No.

Are independent contractors/consultants entitled to sick leave from the end user engager? If yes, for how long? How many days have to be paid?

No.

Are independent contractors/consultants entitled to maternity leave from the end user engager? If yes, for how long? How many days/months have to be paid

No.

Are independent contractors/consultants entitled to paternity leave from the end user engager? If yes, for how long? How many days/months should be paid?

No.

Are employers obliged to cover work-place injuries for independent contractors/consultants?

No.

Are independent contractors/consultants entitled to retirement benefits from the end user? If yes, what benefits?

No.

3 Safe and supportive work environment

Are there any differences in terms of the regime that applies to employees?

Yes, they're not entitled to any benefit established in labor laws.

4 Remote work

Are end user engagers required to have a registered legal entity in the jurisdiction in order to hire independent contractors/consultants there?

No.

5 What to do when things go wrong

Resignation

Do consultants/independent contractors need a reason to terminate the contract or can they terminate it for any reason in accordance with the terms of the contract?

No.

Termination of agreement

What grounds do end user engagers have for the termination of consultant agreements?





It has to be per the agreement.

What is the responsibility of the end user engagers for damages incurred by a consultant's actions within his/her work?

They have the remedies by law, and any other remedy agreed per the contract. The end user may file a lawsuit for breach of contract and request damages.





c. Volunteers

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Definition of a volunteer

Volunteers are not defined under the Labor Code.

1 Contracts

Are organizations required to sign any form of agreement with volunteers?

There is no specific legal requirement for organizations to sign agreements with volunteers. The use of volunteer agreements is generally discretionary and depends on the policies and practices of each organization.

However, organization should be careful that this type of agreements are not presumed employment contracts.

2 Conditions of employment

Is there a minimum age requirement for volunteers?

No, there is no regulation in this matter.

What type of volunteering work may a child undertake? Are there any restrictions around this?

There is no regulation in this matter.

Payments and reimbursement

Are organizations allowed to pay stipends to volunteers?

Yes.

Are organizations allowed to reimburse volunteers? If yes, for what expenses (such as transportation, food, etc.).

Yes.

Working hours

Are there any obligations around how many hours volunteers can work?

No, there is no regulation in this matter.





Are volunteers entitled to any type of leave?

No, there is no regulation in this matter.

Social security

Are organizations obliged to pay any social security contributions on behalf of their volunteers?

No, there is no regulation in this matter.

Are organizations obliged to provide health insurance to volunteers?

No, there is no regulation in this matter.

Are organizations liable for absences of volunteers due to work-place injuries?

No, there is no regulation in this matter.

3 Safe and supportive work environment

Are there any differences in terms of the regime that applies to employees?

No, there is no regulation in this matter.

4 Tax

Are organizations obliged to pay taxes if they pay their volunteers stipends? If yes, what types of taxes are mandatory to pay?

Yes, this could be considered a remuneration and they must withhold at least 10%.

5 What to do when things go wrong

What grounds do organizations have for the termination of volunteer agreements/arrangements?

No, there is no regulation in this matter.

What is the responsibility of organizations for damages incurred by a volunteer's actions within his/her work?

The organization is responsible, since the volunteer is acting per the organization's instructions.





d. Non-citizen employees and consultants, including refugees and others forcibly displaced

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1 Status and the right to work

Are employers obliged to secure legal status for their employees or consultants if they are non-citizens? (such as refugee status, humanitarian visas, visas for trafficking survivors, other recognized protection statuses, etc.)

No.

Are employers obliged to secure work permits for their employees or consultants?

Yes, if they are working for them, the employer must provide certain information to the Ministry of Labor.

Is it always necessary to obtain a work permit?

Yes, the non-citizen must have permission to work.

Can asylum-seekers and other persons forcibly displaced access the right to work if they do not have refugee status or other recognized protection statuses?

No.

2 Contracts

Are employment contracts or consultant agreements for non-citizens different to those for citizens?

No, they have the same rights as a citizen.

3 Conditions of employment

Does national law regulate the quotas for the number of non-citizens within one organization? Are employers obliged to report about employed non-citizens?

Yes, 90% of workers must be Salvadorians (which includes any citizen of Central American countries); 85% of the total wages must be for Salvadorians.





Are there any other differences in conditions of employment for non-citizens and citizens?

No, they have the same conditions.

Are there any specific employment terms that apply to citizens but not apply to non-citizens?

No, they apply the same terms.

4 Safe and supportive work environment

Are there any differences in a safe and supportive work environment approach for non-citizens? If yes, please elaborate here.

No.

Does the employer have additional obligations for non-citizens?

No.

5 What to do when things go wrong?

Is the process of termination of an employment contract for non-citizens different than for citizens? If yes, please explain here.

No.

Is the process of resignation for non-citizens different than for citizens? If yes, please explain here.

No.

Are non-citizens entitled to the equal protection of employment laws in the event of employment-related disputes?

Yes.





Annex A Template of employment contract

CONTRATO INDIVIDUAL DE TRABAJO

[]. o LA EMPRESA	EL TRABAJADOR
Numero de inscripción: [].	Nombre: []
Fecha de Inscripción: [].	Edad: []
NIT: []	Profesión u Oficio: []
Domicilio: []	Domicilio: []
Representante Legal: []	DUI: []
DUI: []	Expedido en: []
Expedido en: []	Fecha de Expedición: []
Fecha de Expedición: []	

NOSOTROS, [] en representación de [], en adelante llamada la ("Sociedad Empleadora"; "Empleador Sustituto"; "Empresa" o el "Patrono" indistintamente), y [] de las generales antes expresadas, en adelante llamado(a) el ("Trabajador"), convenimos en celebrar el presente Contrato Individual de Trabajo sujeto a las siguientes estipulaciones:

CLASE DE TRABAJO O SERVICIO QUE EL TRABAJADOR REALIZARÁ:

El Trabajador prestará sus servicios a la Empresa desempeñando el cargo de []. Además de las obligaciones que le impongan las Leyes Laborales, sus reglamentos y el Reglamento Interno de Trabajo de la Empresa, tendrá las obligaciones propias a su cargo especialmente las detalladas en la descripción de puesto que se anexa al presente contrato y la cual se encuentra firmada por ambas partes en señal de aceptación.

DURACIÓN DEL CONTRATO Y TIEMPO DEL SERVICIO:

El presente contrato se celebra por TIEMPO INDEFINIDO, a partir de este día [], sin embargo, con un periodo de prueba de treinta días y que, por lo tanto, durante este plazo cualquiera de las partes podrá dar por terminado el presente contrato, sin expresión de causa y sin responsabilidad para las partes.





SUBORDINACIÓN JERÁRQUICA:

Los servicios que el Trabajador prestará a la Sociedad Empleadora, se realizarán bajo dependencia directa de este y bajo la dirección inmediata o delegada, según sea el caso del jefe inmediato o quien haga sus veces y que tengan la calidad de representantes patronales.

LUGAR DE PRESTACIÓN DE SERVICIO:

El lugar para la prestación de los servicios será en las oficinas del Patrono, ubicadas en []. Se acuerda que de mutuo acuerdo se podrá establecer otro lugar diferente al anterior para la prestación de labores, todo de conformidad a la cláusula I del presente contrato, cuando fuere necesario, para que el Trabajador desarrolle las labores para el Patrono.

HORARIO DE TRABAJO:

La jornada ordinaria de trabajo será de 44 horas semanales, y el horario será de [].

Las horas extraordinarias serán reconocidas cuando éstas hayan sido autorizadas previamente por escrito por el jefe inmediato superior y dentro de los límites que dispone la legislación vigente.

Si por la naturaleza del cargo, el Trabajador tuviere que desempeñar sus labores fuera de las oficinas de la Empresa, no estará sujeto, normalmente, a un horario determinado de antemano, pero estará obligado a trabajar el mismo número de horas que actualmente se trabaja en las oficinas de la Empresa y deberá acomodar sus horas de trabajo a las necesidades para cumplir con las obligaciones de su cargo.

SALARIO, FORMA, PERÍODO Y LUGAR DEL PAGO:

El salario que recibirá el Trabajador por la prestación de sus servicios será la suma MENSUAL total de [], al que se aplicarán las retenciones de ley y que serán pagados en efectivo en depósitos monetarios en cuenta bancaria individual que designe el Trabajador y la cual deberá estar a su nombre. El pago MENSUAL total se efectuará dividido en periodos QUINCENALES vencidos a más tardar los días 15 y 30 o 31 de cada mes, o el día hábil inmediato anterior si las fechas indicadas anteriormente fueran días de asueto o descanso. El monto de salario será confidencial entre la Empresa y el Trabajador.

HERRAMIENTAS Y MATERIALES:

La Empresa suministrará al Trabajador las herramientas y materiales necesarios para el desempeño de sus labores, entre las cuales se comprenden: mobiliario, equipo de cómputo, de oficina y otras herramientas que utilizara en particular por sus funciones. Las mismas han sido entregadas al Trabajador en buen estado de funcionamiento y deberán ser devueltos en esa misma forma por el Trabajador a la Empresa cuando sean requeridos por su jefe inmediato, salvo la disminución o deterioro causado por caso fortuito o fuerza mayor, o por la acción del tiempo, o por consumo o uso normal de los mismos, uso ejercido con el cuidado y diligencia debidos. Asimismo, será responsable del manejo de la documentación que genera y la que está bajo su responsabilidad, obligándose a realizar la entrega de toda la información al finalizar el presente contrato por cualquier causa.

EXCLUSIVIDAD DE LOS SERVICIOS:

Ambas partes han acordado que el Trabajador prestará sus servicios a la Empresa en forma exclusiva. Como consecuencia de ello, el Trabajador queda especialmente obligado a: (1) a dedicar todo su tiempo de trabajo a las funciones propias de su cargo; (2) a no desarrollar actividades análogas o similares en beneficio de empresas competidoras de la Empresa, aún fuera de sus horas





laborales. La infracción a lo dispuesto en esta cláusula se tendrá como falta grave del Trabajador en el cumplimiento de las obligaciones que le impone el presente contrato.

PERSONAS QUE DEPENDEN ECONÓMICAMENTE DEL TRABAJADOR:

Nombre	Parentesco	Porcentaje

CONFIDENCIALIDAD:

El Trabajador se obliga a guardar la más estricta confidencialidad y dentro del denominado secreto comercial de todos los conocimientos que pudiere llegar a obtener sobre los métodos de prestación de servicios, estrategias y políticas comerciales y financieras, procedimientos de mercadeo y administrativo de la empresa, así como del software en general, específicamente de los programas de aplicación y bases de datos y en general sobre cualquier tipo de conocimiento que de su relación laboral con [], pudiere llegar a adquirir. Asimismo, el Trabajador acepta que cualquier idea o proyecto que sea generado por su propia inventiva dentro de sus funciones laborales y con el fin de obtener mejor desarrollo de sus trabajos, será propiedad exclusiva de [].

LUGAR Y FECHA:

En fe de lo cual, firmamos el presente documento por triplicado en la ciudad de [], departamento de [], el [].





Annex B Template of Service Agreement

CONTRATO DE SERVICIOS PROFESIONALES

NOSOTROS

Por una parte, [_____], de _____ años de edad, [profesión u oficio], portador de mi Documento Único de Identidad número [], actuando en nombre y representación y en mi calidad de [] de la sociedad [], de nacionalidad panameña, y que en el curso del presente documento se denominará la "Empresa"

Y por otra, [_____], de _____ años de edad, [profesión u oficio], del domicilio de _____, departamento de _____, con Documento Único de Identidad número _____ y que en el curso de este instrumento se denominará el "Contratista"

Por medio de este instrumento otorgamos un CONTRATO DE PRESTACIÓN DE SERVICIOS PROFESIONALES (el "Contrato"), que se sujetará a los términos y condiciones siguientes:

OBJETO DEL CONTRATO: En virtud del presente Contrato, el contratista, prestará a favor de la Empresa servicios consistentes en [].

PLAZO: el Contratista prestará los servicios descritos por un plazo de cuatro (4) meses, contados a partir del día quince de noviembre del presente año, el cual podrá ser prorrogable por un periodo similar o el acordado entre las Partes por medio cruce de cartas.

PRECIO Y FORMA DE PAGO: En contraprestación de las actividades realizadas por el contratista, recibirá una remuneración por sus servicios profesionales, en concepto de honorarios, por un monto total de [_____] DÓLARES DE LOS ESTADOS UNIDOS DE AMÉRICA (\$00.00), pagaderos en ocho (8) cuotas quincenales de _____ DÓLARES DE LOS ESTADOS UNIDOS DE AMÉRICA (\$00.00). La Empresa hace constar que el pago de estos servicios se hará previa entrega de crédito fiscal o factura, según aplique, de parte del Contratista. El Contratista declara y entiende que será el responsable ante la administración tributaria por el pago de los impuestos que se genere por este Contrato.

NO EXISTENCIA DE RELACIÓN LABORAL: Las Partes declaran expresamente, que entre la Empresa y el Contratista existe notoria independencia; y que la prestación de servicios de esta última se sujeta únicamente a lo pactado en el presente Contrato, asumiendo por tanto el Contratista, el riesgo comercial de la prestación de sus servicios. El Contratista, no tendrá la obligación de cumplir horario o jornada alguna, ni estará bajo subordinación laboral, por lo tanto, las partes aceptan y reconocen expresamente que el Contratista, no es considerado trabajador dependiente o subordinado de la Empresa y prestará sus servicios de forma independiente, pudiendo prestar sus servicios a diferentes empresas. El Contratista reconoce y acepta que no está sujeto a la legislación laboral, por ser un contratista independiente. Las vinculaciones de las





partes se regirán por las disposiciones civiles y mercantiles que les sean aplicables. Asimismo, quedará exclusivamente sujeto a las condiciones del presente contrato; y sus derechos y obligaciones se limitan estrictamente a los términos y condiciones del mismo. El Contratista, no tendrá derecho a ningún beneficio, pago, subsidio o compensación, con excepción de los expresamente descritos en este contrato.

OBLIGACIONES DE EL CONTRATISTA

El Contratista se compromete a prestar los servicios con la eficiencia y calidad requerida, atendiendo en beneficio de su gestión, los requerimientos o necesidades que en el ámbito de su especialidad, le indique la Empresa;

El Contratista se obliga a mantener en todo momento, una conducta profesional ética e íntegra frente a la misma, sus ejecutivos, sus usuarios y público en general.

OBLIGACIONES DE LA EMPRESA CONTRATANTE:

La Empresa se compromete a pagar los honorarios establecidos en el presente contrato;

La Empresa se obliga a asumir los costos en que incurra el Contratista, previa autorización de la Empresa, para dar respuesta a eventualidades emergentes.

CONFIDENCIALIDAD

El Contratista acepta que toda información que reciba de la Empresa, así como la que se origine de este acuerdo comercial es CONFIDENCIAL y propiedad exclusiva de la Empresa, por lo que se compromete a no divulgarla en forma alguna a terceras personas. El Contratista se obliga a manejar bajo estrictos parámetros de confidencialidad, toda la información que se le proporcione.

Para los efectos del presente Contrato, el término "Información Confidencial" se refiere, sin limitar, toda aquella información a la que ha tenido y tenga acceso o que se ponga o haya puesto a disposición del Contratista, que de manera enunciativa pero no limitativa incluye información de carácter laboral, comercial, legal, contable, financiero, industrial, e informático, información de clientes, información de accionistas, funcionarios y empleados, estrategias de mercado, operaciones de la empresa, grupo empresarial o subsidiarias; todo tipo de propiedad intelectual incluyendo pero no limitándose a marcas, nombres, nombres comerciales, emblemas, expresiones, logotipos, procesos, señales de publicidad, distintivos, especificaciones, secretos industriales, secretos comerciales, información referente a productos, aplicaciones informáticas, desarrollos, técnicas de operación de negocios, planes o proyectos de nuevos servicios, equipos, invenciones, descubrimientos, patentes o solicitudes de patentes, ideas, métodos, procesos, investigaciones y análisis, procedimientos de ventas y/o adquisiciones, procedimientos internos, ideas, invenciones, conceptos, programas de informática en varios estados de desarrollo y su documentación relacionada, diseños, dibujos específicos, dibujos industriales, técnicas, metodologías, modelos, datos, código fuente, código objeto, documentación, diagramas, organigramas, procesos, materiales de entrenamiento, plantillas, planillas, herramientas, reportes e información sobre procesos, cuentas, métodos de facturación, fuentes de suministro, métodos comerciales y archivos, planes, estrategias, ideas de negocios, documentos, entregables y bienes, signos distintivos, modelos de utilidad, diagramas, muestras, síntesis, prestaciones de servicios, reportes de avances o progreso, materiales, especificaciones, toda la tecnología, know-how, software, bases de datos, contratos, información histórica y financiera de los clientes de la Empresa, listados de clientes de la Empresa, proveedores de Contratante, cuentas de clientes de la Empresa, información estadística con relación al negocio, su relación con los clientes de la Empresa, así como estadísticas de procesos y actividades internas, datos de operación y las estructuras organizacionales y de costos, descripciones de producto o servicio que se presta por parte de la Empresa a sus clientes, así como





la información relacionada a precios, promociones, descuentos, sorteos u ofertas, en general cualquier información de los clientes de la Empresa, informes y reportes, información sobre ventas, métodos, precios y su estimación, datos de mercadotecnia, investigaciones, técnicas de ventas; los nombres, direcciones, números de teléfono y fax, hábitos de compra y prácticas de los clientes de la Empresa o terceros, clientes potenciales de la Empresa, distribuidores y representantes; incluyendo los nombres y cualquier otra forma de identificación de vendedores, suministradores y proveedores, costos de materiales, y los precios en que dichos materiales, productos o servicios que son o han sido obtenidos o vendidos; la información de tipo contable, financiero, fiscal, tributario y legal de Contratante, la información referente a las relaciones comerciales y laborales; es decir toda aquella información no divulgada de la Empresa que pueda ser usada en alguna actividad productiva, industrial, comercial o de servicios, y sea susceptible de transmitirse a un tercero y cualquier otra información de naturaleza reservada que no se encuentre libremente disponible a terceros.

La Información Confidencial puede ser verbal, escrita o estar plasmada o no en un medio tangible. Toda información a la que ha tenido o llegue a tener acceso el Contratista se presumirá confidencial y por lo tanto protegida bajo el presente Contrato.

En caso que Información Confidencial tenga que ser revelada a cualquier autoridad u órgano, ya sea administrativo o judicial, se deberá notificar a la Empresa inmediatamente.

La cláusula de Confidencialidad continuará vigente aún luego de haber finalizado el Contrato por un período de CINCO (5) AÑOS contados a partir de la fecha de terminación del contrato antes referido. Lo anterior sin perjuicio de la información Confidencial que por su naturaleza aun pudiera seguir afectando a la Empresa inclusive después del plazo pactado.

El Contratista se compromete a devolver inmediatamente a la Empresa y/ o a destruir toda la Información Confidencial, ya sean documentos, notas y otros productos del trabajo propiedad del Contratista, del cliente o de un tercero, que se encuentren en su posesión o control, incluyendo copias, al momento de finalización de este Contrato.

El Contratista acepta y entiende que debido a la naturaleza de los servicios y los procedimientos especialísimos que representan las actividades de la Empresa, y acepta que cualquier incumplimiento de su parte a cualquiera de las obligaciones contempladas en esta cláusula de confidencialidad resultará en un daño irreparable para la Empresa.

El Contratista se compromete a indemnizar los daños y perjuicios que pudieran determinarse. Asimismo, el Contratista se obliga a defender y a mantener indemne a la Empresa de cualquier reclamación o acción que se pueda interponer por parte de un tercero como consecuencia del incumplimiento de este Contrato.

La violación a este Contrato puede conllevar a su vez la violación de obligaciones que la Empresa ha contraído con terceros, haciéndose extensiva la responsabilidad respecto a aquellos daños o perjuicios que se cause a terceros, o que con ocasión de ellos sean susceptibles de ser reclamados a la Empresa.

El Contratista, reconoce que en caso de incumplimiento, será responsable y se hará acreedora de las penas, sanciones y responsabilidad civiles respecto de la reparación del daño material o la indemnización por daños y perjuicios, de conformidad con lo previsto en los artículos 180 y 181 de la Ley de Fomento y Protección de la Propiedad Intelectual y 230 y 231 del Código Penal de El Salvador.

[Sin perjuicio de lo establecido en la cláusula anterior, en caso de incumplimiento a las cláusulas del presente Acuerdo, el Contratista se obliga además a pagar en concepto de Penalidad la





cantidad de: \$[_____] ([_____] DÓLARES DE LOS ESTADOS UNIDOS DE AMÉRICA), sin necesidad de requerimiento judicial. Las Partes acuerdan y aceptan que esta penalidad, será independiente de cualquier otra acción de daños y perjuicios a la que tenga derecho exigir la Empresa.

TERMINACIÓN DEL CONTRATO: El presente contrato podrá terminar por las siguientes causas:

Por voluntad unilateral de la Empresa, sin necesidad de justificar la causa por la que han decidido su terminación y sin necesidad de indemnización alguna por parte de alguna de ellas, solamente se deberá comunicar por escrito con acuse de recibo a la otra parte, con al menos dos días de anticipación a la fecha que se desee dar por terminado el presente Contrato, liquidando la relación comercial existente.

Por vencimiento del plazo pactado o de alguna de sus prórrogas. En todo caso, la carta de aviso deberá ser dirigida a la parte requerida, quien deberá firmar de recibido, todo de acuerdo con la cláusula segunda del presente Contrato.

Ambas partes acuerdan que también se podrá dar por terminado el Contrato de forma mutua, y en este caso no habrá responsabilidad para ninguna de las partes y tampoco mediará indemnización alguna; únicamente, deberá liquidarse la relación comercial existente.

Por incumplimiento por parte de la Empresa de cualquiera de las cláusulas del Contrato.

Por incumplimiento por parte del contratista de cualquiera de las cláusulas del presente acuerdo, obligándose además a pagar a la Empresa cualquier daño y/o perjuicio que le ocasionare. Dicho pago en concepto de daños y perjuicios, podrá ser descontado y/o compensado de cualquier obligación comercial que a la fecha existiera por parte de la Empresa y a favor del Contratista, lo cual este último reconoce, comprende y acepta expresamente en este acto.

SOLUCIÓN DE CONTROVERSIAS: En caso de cualquier controversia, conflicto, disputa o reclamo que resulte del presente Contrato, las partes se someten a la jurisdicción de los tribunales de la ciudad de San Salvador.

MODIFICACIONES: No obstante lo dispuesto en el presente acuerdo, el contratista acepta expresamente, que a petición escrita de la Empresa, el presente acuerdo, podrá modificarse, suscribiéndose un nuevo acuerdo y/o sus anexos si aplicasen.

LUGAR PARA RECIBIR NOTIFICACIONES: Las partes señalan como lugar para recibir notificaciones las direcciones siguientes:

Contratista:

Contratante:

En fe de todo lo anterior, ratificamos el contenido del presente contrato por estar redactado conforme a nuestras voluntades y lo suscribimos en dos ejemplares originales, quedando uno en poder de cada una de las partes, ambos con igual fuerza legal, en la ciudad de y departamento de San Salvador, a los ____ días del mes de _____ del año dos mil veintiuno.

F. _____

EMPRESA CONTRATANTE

F. _____

CONTRATISTA





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