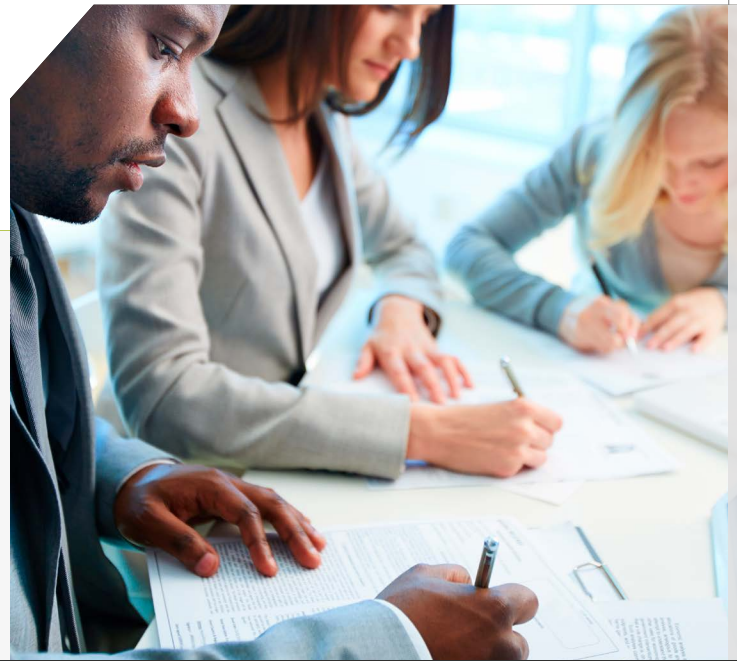


Checklist

A Guide for Reviewing Contracts



A careful review of any contract is important before an institution signs and agrees to legally enforceable promises, rights and obligations. (For more detailed information about contracting, see the “Resources” section below.) This guide highlights common contracting issues and can help promote consistent reviews by staff who are not lawyers. It is best suited for routine contracts involving the purchase of goods and services or the normal use of facilities and equipment.

The guide is not intended to serve as a comprehensive listing of all potential contracting considerations. Contracts that would likely be beyond the scope of this guide include those involving complex transactions or specialized areas of law, such as construction, real estate, software licenses, technology transfers, finance and investment, or employment. Before using the guide, consult the institution’s contracting policy to ensure this tool is consistent with the terms of the policy and appropriate for it.

Using the Guide

1. Complete an initial read through of the contract with an understanding that the institution will be bound by all terms contained in the contract and anything discussed with the other party that is not in the contract likely will not be enforceable. Helpful questions to consider as you read the contract include:
 - a. Do I understand what I’ve just read?
 - b. Is the language consistent with the institution’s intent?
 - c. Can the institution perform as written?
2. Use section A below to note all language or contract terms that may not reflect the parties’ intent.
3. Complete the remaining portions of this checklist.
4. Review all section A notes and checklist answers.
Answers appearing in a shaded box as well as any language or contract terms noted in section A have the potential to place the institution at risk. Address any concerns in one of the following ways:
 - a. Seek further clarification to resolve the issue.
 - b. Negotiate or suggest more favorable language.
 - c. Determine—preferably with the assistance of legal counsel, the risk manager, or a senior business officer—that the institution can reasonably accept the potential negative consequences of leaving the current language “as is.”

A. Initial "Read Through" Notes

Read the contract carefully and identify anything that seems ambiguous or may not reflect the intent of the parties. List those sentences here.

1. _____
2. _____
3. _____
4. _____
5. _____

B. Person Reviewing the Contract

All written contracts an institution is considering entering into should, at a minimum, be reviewed by the person who is best situated to evaluate whether the contract's language reflects the parties' intent. Typically, this person is not a lawyer, but is knowledgeable about the contract's subject matter and integrally involved with its performance. Supplemental review by legal counsel or other affected campus personnel may be required.

1. Is one of these correct:

- | | |
|--|---|
| a. Is the person completing this guide knowledgeable about the subject matter of the agreement? | <input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Don't Know |
| | |
| b. Did the person knowledgeable about the subject matter of the contract review and approve the contract before forwarding it to the person completing this guide? | <input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Don't Know |
| | |
| c. Has the person completing this guide consulted with the person knowledgeable about the subject matter of this contract? | <input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Don't Know |

Actions Needed

C. Core Contract Terms

The contract's core terms should be clear, accurate, and easy to understand. These terms include those that identify or address the parties and their respective promises, rights, and obligations as well as the duration of the agreement, modifications, remedies for nonperformance, and dispute resolution.

1. Parties

- a. Does the contract correctly and accurately identify the parties? Yes No
 Don't Know
- b. Does the contract accurately identify each party's legal status or type of entity (corporation, company, governmental entity, and so forth)? Yes No
 Don't Know
- c. Can the other party assign the contract to another entity that is not identified in the contract? Yes No
 Don't Know

2. Promises, Rights, and Obligations

- a. Is the purpose of the contract described completely and accurately? Yes No
 Don't Know
- b. If the contract involves the payment of money, is the payment amount promised under the contract correct? Yes No
 Don't Know
- c. If the contract involves goods, services, or the use of facilities or equipment, is the description of the goods, services, facilities, or equipment promised under the contract complete and correct (for example, quantity, size, type, time and place of delivery, and standards of quality)? Yes No
 Don't Know
- d. Does the contract refer to any promise, standard, or other term that is reflected in documents, websites, or other resources that are not contained in or attached to the contract? Yes No
 Don't Know
- e. Have all documents, websites, or other resources referenced in the contract been reviewed to confirm that they are consistent with the contract's terms? Yes No
 Don't Know

3. Duration

- a. Is the duration of the contract—that is, the beginning and end of the contract's term—correct? Yes No
 Don't Know
- b. Are all other dates concerning performance milestones correct? Yes No
 Don't Know
- c. Can the institution perform its promises within the contract's duration and performance milestones? Yes No
 Don't Know

Actions Needed

Actions Needed

d. Does the contract's term automatically renew? Yes No
 Don't Know

e. Is the institution comfortable with the manner in which the contract renews? Yes No
 Don't Know

4. Modifications

a. Have the parties agreed that they can modify the terms of the contract? Yes No
 Don't Know

b. Can either party modify the terms through unilateral action? Yes No
 Don't Know

c. Can the parties modify the terms by mutual consent? Yes No
 Don't Know

d. Does the contract state that a writing signed by the parties is required to show their mutual consent to modifications? Yes No
 Don't Know

5. Remedies for Nonperformance

a. Does the contract state that a breach of its terms entitles the nonbreaching party to one or more of the following: automatic damages, accelerated payments, injunctive relief, or penalties? Yes No
 Don't Know

b. Does the contract clearly state the circumstances, if any, under which either party can terminate the agreement before the end of its term? Yes No
 Don't Know

c. Does the contract require written notice of a party's intent to terminate the contract before the end of its term? Yes No
 Don't Know

d. Does the contract allow either party to terminate the contract for cause? Yes No
 Don't Know

e. Does the contract clearly define the circumstances that can prompt a for-cause termination? Yes No
 Don't Know

f. Does the contract allow either party to terminate the contract without cause or for convenience? Yes No
 Don't Know

g. Does the contract allow either party to terminate the contract due to acts of God or other extraordinary circumstances that cannot be controlled by the parties (that is, a *force majeure* provision)? Yes No
 Don't Know

h. Does the contract allow a breaching party the opportunity to cure or correct its breach within a reasonable time frame? Yes No
 Don't Know

6. Dispute Resolution

a. Does the contract require binding arbitration to resolve disagreements or claims arising out of it? Yes No
 Don't Know

b. Does the contract permit the use of voluntary, nonbinding mediation to resolve disagreements or claims arising out of it? Yes No
 Don't Know

Actions Needed

- c. When a dispute arises, are the contract's terms to be interpreted under the laws of a state different from the state in which the institution is located? Yes No
 Don't Know
- d. When a dispute arises, does the contract require it to be litigated in a state different from the state in which the institution is located? Yes No
 Don't Know
- e. Does the contract impose a time frame within which the institution must file a legal claim or sue for a breach of contract that is shorter than the state's statute of limitations for contract claims or lawsuits? Yes No
 Don't Know
- f. Does the contract require the institution to pay for attorney fees, court costs, or other litigation expenses of the other party in the event of a dispute? Yes No
 Don't Know

D. Responsibility for Third-Party Injuries

Every written contract should address how the parties will share or allocate responsibility for third-party claims arising out of the parties' actions under the contract. Additionally, insurance is important proof of a contracting party's ability to pay for third-party claims. The institution should require, and be particularly attentive to, both risk allocation and proof of insurance provisions in its contracts.

1. Risk Allocation Between the Parties

- a. Does the contract contain a risk allocation provision (e.g., an indemnification, hold harmless, or waiver or release of liability clause)? Yes No
 Don't Know
- b. Is the risk allocation provision clearly written and easy to understand? Yes No
 Don't Know
- c. Does the contract contain (choose one of the following):
- i. A one-sided or broad risk allocation provision that requires the institution to assume full responsibility and pay for all claims arising out of the contract, including claims caused by the other party's negligence? Yes No
 Don't Know
- ii. An intermediate provision that requires the institution to assume responsibility for losses caused by the joint negligence of both parties? Yes No
 Don't Know
- iii. A limited or mutual provision that requires each party to remain responsible for losses caused by its own negligence? Yes No
 Don't Know
- d. Does the risk allocation provision require the institution to assume responsibility for the other party's negligent acts or to pay claims that the institution did not cause? Yes No
 Don't Know
- e. Is the risk allocation provision consistent with the institution's contracting policies? Yes No
 Don't Know
- f. Does the contract place a monetary limit on the amount of liability assumed by the other party? Yes No
 Don't Know

2. Insurance Requirements

- a. Has the other party requested or required the institution to carry certain lines or amounts of insurance? Yes No
 Don't Know
-
- b. Has the institution requested or required the other party to carry certain lines and amounts insurance? Yes No
 Don't Know
-
- c. Are the insurance limits requested or required of the contracting parties adequate for the potential exposures presented by the contract? Yes No
 Don't Know
-
- d. Does the contract require the other party to provide certificates of insurance to the institution before the contract is signed? Yes No
 Don't Know
-
- e. Does the contract require the other party to name the institution as an "additional insured" through an endorsement to the other party's insurance policies that are required by the contract? Yes No
 Don't Know
-
- f. Does the contract state that the other party's insurance will provide primary coverage for claims arising out of the contract? Yes No
 Don't Know
-
- g. Has the institution obtained verification prior to signing the contract that the other party has met all insurance requirements? Yes No
 Don't Know

E. Signature

The individuals signing the contract on behalf of the institution and the other party must each have authority to bind their respective party to the contract. The institution's representative should seek proof of signing authority from the other party's representative.

-
1. Does the person signing the contract on behalf of the institution have authority to commit the institution to the contract? Yes No
 Don't Know
-
2. Are the name and title of the person signing the contract on behalf of the institution correct? Yes No
 Don't Know
-
3. Has the person signing the contract on behalf of the other party provided proof of his authority to commit the other party to the contract? Yes No
 Don't Know
-
4. Are the name and title of the person signing the contract on behalf of the other party correct? Yes No
 Don't Know

Actions Needed

F. General Appearance

Written contracts should not contain any errors, particularly those that have the potential to change the terms of the agreement or create ambiguities about them. Staff members who review contracts for the institution should identify any suspected errors for correction before the contract is signed.

- | | |
|---|---|
| 1. Are the spelling, formatting, grammar, and punctuation used in the contract correct? | <input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Don't Know |
| 2. Have any errors or mistakes been identified and corrected? | <input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Don't Know |
| 3. Is the general appearance of the contract professional and accurate? | <input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Don't Know |

Actions Needed

Conclusion

Your contract review is complete. Remember to review any notes you made in section A and the checked answers in the guide's remaining sections. Because of potential risk to the institution, we recommend additional discussion with legal counsel, the risk manager, or a senior business officer about these items using the guidelines on page 1 at step 4.

Resources

[Avoid Unfavorable Indemnity Provisions in Institution Contracts](#)

[Improving Contracting on Campus: A Layperson's Guide to Understanding Contract Basics](#)

[Improving Contracting on Campus: Allocating Risks Between Parties](#)

[Contracting 101](#)

[Contracting Learning Program](#)



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