



12 things to look for when reviewing a contract

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Careful review of contracts can reduce risk for your organization.

Whether you're signing a lease agreement or a multi-million dollar service agreement for new software, contracts are a fact of life in any business. A contract review requires diligence and an eye for detail. Managing expectations, focusing on outcomes and getting the key information from vendors can also help achieve better outcomes in contract management.

It is not uncommon for otherwise very careful people to glance over a contract and just sign it without really knowing what it obligates them or the other party to do. Consult with an attorney before signing any contract to make sure your interests are protected.

What should you look for when reviewing a contract? Here are a few suggestions; your attorney may have additional advice:

1. **Negotiate the terms.** When presented with a contract, remember that this is a starting point. You can negotiate the terms of nearly every agreement. Understand the purpose and scope of the contract and ask for what you want. You want to make the deal happen, but so does the other person. The worst that can happen is they say "no."
2. **Identify the parties.** Be sure to include the names and addresses of any subsidiaries that will provide services.
3. **Complete all blanks.** Items left blank can be filled in later by someone else, so be sure to fill them in. It's also good to initial all changes or deletions on any preprinted forms.
4. **Rights and responsibilities.** It's important to capture who's responsible for what and who is liable if something doesn't happen according to the contract. Never rely on an oral understanding. Know all of your rights and responsibilities under the contract. Carefully read the entire contract because rights and responsibilities are typically scattered throughout the agreement.

5. **Confidentiality provisions.** Determine if the other party will have access to any of your nonpublic personal or protected health information and, if so, consider including a provision requiring them to handle and secure the information in a commercially reasonable manner consistent with applicable federal and state laws.
6. **Remedies provisions.** No one wants to talk about the bad stuff, such as what happens if something goes wrong, but you need to consider these things to put necessary mechanisms in place. Explore ways to limit your liability. Also determine what types of remedies you need in the event of default by the other party.
7. **Allocating risk.** Determine how risk is to be allocated. Risk is typically borne by the party in the best position to prevent loss. Check for (or add) insurance requirements.
8. **Hold harmless and indemnification provisions.** When you agree to hold someone harmless you agree to not hold him or her responsible for liability that may arise out of the transaction. When you indemnify someone, you are agreeing to protect him or her from liability or loss that may arise out of the transaction. If you must indemnify the other party, limit the indemnification as much as possible. Negotiate the same indemnification for yourself. An attorney can also help you understand unintended consequences that might arise from using or agreeing to a particular clause.
9. **Causes for termination.** Consider including ways to terminate the contract for cause and/or for convenience (without cause) if it is not working to your benefit.
10. **Resolution of disputes.** Determine how you want to deal with resolution of disputes. An arbitration or mediation requirement could ultimately save you lots of time and money. However, there are times when you may need to go to court to resolve the dispute. When appropriate, try to give yourself some flexibility.
11. **Incorporated documents.** When another document is incorporated by reference, always read the incorporated document. Don't assume you know what it contains.
12. **Signature lines.** Confirm that signature lines refer to individuals who are authorized to sign the contract on behalf of the business; otherwise the contract may not be enforceable.

It's also good practice to periodically review existing contracts to determine whether they still meet your needs. The same goes for the vendor; trust your relationship with key vendors but also verify that they are performing up to your expectations and contractual obligations.