

CONTRACT CHECKLIST

**THIS IS NOT LEGAL ADVICE.
IF YOU HAVE QUESTIONS YOU NEED TO SEEK LEGAL COUNSEL.
THIS FORM IS INTENDED TO HIGHLIGHT CONTRACT ISSUES ONLY**

A. BASICS

1. Does the contract correctly identify the parties?
 Yes.
 No. Modify to the parties.
2. Does the contract correctly identify what type of entity each party is? (Corporation, company, governmental entity of the State, etc.)
 Yes.
 No. Modify or insert correct type of entity.

B. PAYMENT TERMS

1. Does the contract provide for payment at least thirty days after receipt of a proper invoice?
 Yes
 No: Modify to insert.
2. Does the contract call for late payment penalties or finance charges?
 Yes:
 No

C. LIABILITY AND INDEMNIFICATION ISSUES

1. Does the contract seek to limit the Vendor's liability and the Company's scope of recovery?
Sample: In no event shall VENDOR be liable to Company for any special, incidental, or consequential damages, arising from breach of warranty, breach of contract, negligence, strict liability in tort, or any other legal theory, even if VENDOR has been advised of the possibility of such damages. Such damages include, but are not limited to, loss of profits/revenue, cost of capital, overhead costs, costs of any substitute services or claims of Company for any such damages. **Or in combination with other terms that limit Vendor liability:** The remedies set forth in this Agreement shall be Company's sole and exclusive remedies for any claims against Vendor under or related to this Agreement.
 Yes: Delete. If unsuccessful, seek counsel or make judgement call.
 No.
2. **Should the contract require VENDOR to indemnify the Company for any personal injury?**

Consult with vendor and negotiate mutually acceptable term.
3. Does the contract provide for personal liability of the Company signer or any other Company employee?
 Yes: Delete. If unsuccessful, seek counsel or judgement call.

___ No.

4. Does the contract provide for the Company to pay attorney fees, court costs, or other litigation expenses of other parties if there is a dispute?

Sample: In the event of a breach of this Agreement, the breaching party shall pay to the other party all attorneys' fees and other costs and expenses incurred by the nonbreaching party in connection with the enforcement of any provision of this Agreement.

___ **Yes:**

___ No.

5. Does the contract provide for a limitation of damages to be paid by Company? The following language should be inserted into the contract:

In no event shall Company be liable for any indirect, consequential, special or incidental damages whatsoever, for losses that may arise out of the performance of this Agreement, whether based in contract, tort (including negligence) or otherwise. Any damages arising under this Agreement for which Company may be liable for any purpose whatsoever shall be limited to the monies actually paid by [other contracting party] to Company.

___ **Yes:**

___ No.

D. BREACH OF CONTRACT AND TERMINATION CLAUSES

1. Does the contract allow the Vendor to unilaterally terminate the contract for cause?

Sample: Vendor may terminate this Agreement for breach [or cause] at any time upon thirty (30) calendar days' prior written notice to Company.

___ **Yes:** **Modify the contract to make the clause mutual to both parties, so that the Company may also terminate for cause in the same way the Vendor can, and allow for a cure period. Check with customer to determine if more time is required to terminate the agreement.**

Revision: Either party may terminate this Agreement at any time upon prior written notice to the other Party of a specific breach and the failure of the other Party to cure its breach within 30 days of receipt of notice of breach.

___ No

2. Does the contract allow the Vendor to unilaterally terminate the contract for convenience?

Sample: Vendor may terminate this Agreement at any time upon thirty (30) calendar days' prior written notice.

___ **Yes:** **Modify the contract to make the clause mutual to both parties, so that the Company may also terminate for convenience in the same way that the other party can. Check with client to determine if more time is required to terminate the agreement.**

Revision: Either Party may terminate this Agreement at any time it determines it is in its best interest to do so upon thirty (30) calendar days' prior written notice to the other Party.

___ No. **Modify agreement to show Company may terminate this agreement without cause upon expiration of whatever time frame the client wishes.**

3. In the event of termination by Vendor does the contract allow the Vendor to receive full payment under the contract?

Sample: In the event Vendor terminates this Agreement for breach, Vendor shall retain the deposit and Company shall issue payment on the remaining balance [or loss of business] within 30 days of the date of termination.

____ **Yes:** **Modify the contract to provide that the Company will reimburse the Vendor for reasonable costs incurred prior to the date of termination. If not successful, then delete the clause.**

____ No

4. Does the contract state that a breach by the Company would cause irreparable harm and justify injunctive action?

Sample: Company acknowledges that for any breach of the confidentiality article of the contract, Vendor will not have an adequate remedy at law and shall be entitled to obtain entry of an injunction against Company in a court of competent jurisdiction.

____ **Yes:** **Delete the clause. If unsuccessful, seek advice from Counsel.**

____ No

5. Does the contract contain a survival clause?

Sample: Termination of this Agreement by either party shall not affect the rights and obligations of the parties accrued prior to the effective date of the termination. The rights and duties under Articles survive the termination or expiration of this Agreement.

____ **Yes.** **Ensure that the articles specified in the survival clause are ones that the Company wants to survive the contract, such as those shown in the revision below.**

Revision: Termination of this Agreement by either party shall not affect the rights and obligations of the parties that accrued prior to the effective date of the termination. The following terms shall survive termination or expiration of this Agreement: Article prohibiting use of Company's name, Article describing record keeping, reporting, and access, Article addressing confidential information, Article stating the governing law of the agreement, Article describing proper notice procedure, Article containing Sponsor's indemnification of the Company, Article describing termination procedures, Article addressing conformance with law and accepted practice, Article addressing disclaimers/warranties, and Article governing instances of waiver of terms, provisions, or conditions of agreement.

____ No. **Modify the contract to include the language shown above.**

E. TERMS GOVERNING DISPUTES and LAW SUITS

1. Does the contract require binding arbitration, binding mediation?

Sample: Any dispute, claim, or disagreement that arises under this Agreement shall be submitted and resolved by binding arbitration.

____ **Yes:** **Make a judgment call.**

____ No.

2. Does the contract contain clauses that would make it subject to the courts of another state?

Sample: Any legal action brought pursuant to this Agreement shall be brought only in the State or Federal courts of New Hampshire.

____ **Yes:** **Delete section entirely so that contract is silent on the issue or modify the contract as shown below.**

Revision: This Agreement shall be governed in accordance with the law of the State of *[insert State where company is based]*

___No.

F. MODIFICATIONS

1. Does the contract allow modifications to be made by any means other than mutual written agreement of authorized signatories of the Parties?
Sample: Vendor retains the right to increase the Fees at any time with prior written notice to Company. OR Vendor may modify the terms of this agreement by posting of notice on Vendor's website.

___Yes. **Modify to provide upon written notice to and acceptance by Company or upon mutual written agreement of the parties.**

Revision: This Agreement may only be modified upon mutual written agreement of the parties.

___No.

2. Does the Agreement specify that any statements made by any Company employees in connection with the Agreement are binding on the Company?

Sample: The Company shall be bound by any representations or statements on the part of its employees or agents whether oral or in writing.

___Yes: **Modify as follows:**

Revision: The Company shall not be bound by any representations or statements on the part of its employees or agents whether oral or in writing. This Agreement may be modified only by mutual written agreement of the parties.

G. MISCELLANEOUS

1. Does the contract permit the Vendor to assign the contract to a third party without the Company's written consent? *Comment: The problem with this language is that it constitutes a waiver of defenses and recourse that the Company may have against the Vendor.*

Sample: Vendor may assign the performance of this Agreement to a qualified third party without prior notice to or consent of the Company.

___Yes. **Modify as follows**

Revision: This Agreement shall not be assigned by either party without the prior written consent of the parties hereto.

2. Does the Agreement create rights in any entity other than the Vendor and the Company?

Sample: Vendor's parent company shall have the right to enforce any or all terms of this Agreement. Or Company acknowledges that Vendor's parent company is a beneficiary under this Agreement and has full authority to enforce any provisions herein.

___Yes. **Delete or modify as follows:**

Revision. There are no third party beneficiaries under this Agreement. OR Only those entities that are parties to this Agreement have any rights hereunder.

___No