

Contract Checklist

1. Identity of Parties

- Name
- Type of entity of each party (corporation, LLC, etc.)
- Addresses

2. Recitals

- Background of agreement
- Purpose for entering into the contract
- Key assumptions for the contract

3. Obligations of the Parties

- What is each side required to do?
- By what date?
- If something has to be delivered, whose obligation is it and at who's cost?

4. Terms of the Contract

- Is the contract a one-shot situation or will it last for some designated time period?
- How can the term be renewed or extended?

5. Price

- What is the price for the product or service?
- Is it a fixed price, determined by a formula, by a project fee, or some other manner?
- Who pays any tax?

6. Payment Terms

- When is payment due?
- Will there be installment payments?
- Will interest be charged?
- Is there a penalty for late payment?

7. Representations and Warranties

- What representations and warranties are to be made by the parties?
- Are certain warranties disclaimed (e.g., merchantability or fitness for a particular purpose)?
- How long are any warranties good for?

8. Liability

- What limitations of liability exist (e.g., no liability in excess of payment received, or no liability for consequential damage or lost profits)?
- Under what circumstances is one party liable (e.g., material breach of agreement or grossly negligent in performing services)?

9. Termination of Contract

- When can one party terminate the contract early?
- What are the consequences of termination?
- What post-termination obligations are there?

10. Confidentiality

- What confidentiality obligations are there?
- What are the exclusions from confidentiality?

11. Default

- What are the events of default?
- Does a party have a period to cure a default?
- What are the consequences of a default?

12. Disputes

- How are disputes to be handled – litigation, mediation or arbitration?
- If arbitration, what rules will govern? (e.g., JAMS/Endispute or the American Arbitration Association)
- If arbitration, how many arbitrators and how will they be picked?
- If arbitration, will there be procedures for discovery and what the arbitrator can and can't do?
- If litigation, where can or must the litigation be brought?

13. Indemnification

- Is there indemnification for certain breaches or problems?
- What is the procedure required to obtain indemnification?
- Is there a cap on or exclusions from indemnification?

14. Miscellaneous

- Governing law
- Attorneys fees
- Modification of Agreement
- Notice
- Entire Agreement
- Severability
- Time of the Essence
- Survival
- Ambiguities
- Waiver
- Headings
- Necessary Acts and Further Assurances
- Execution
- Jury Trial Waivers
- Specific Performances
- Representation on Authority of Parties
- Force Majuere
- Assignment

15. Signatures

- What authority is required for one party to sign the contract (e.g., Board of Directors approval)?
- How many signatures are required?
- Are the signature blocks correct? For corporations, this is a typical appropriate signature block:

ABC, Inc.

By: _____
John Smith, President