



## **CHECKLIST ON CONTRACTS**

- Identity of the parties (legal names of the parties)x
  - Individuals or business entities?
  - If businesses, what type? (partnership, corporation, etc.)
  - Name of person signing on behalf of the business
  - Signer's official title
  - Does he or she have authority to bind the business?
- Addresses of the parties
- Purpose(s) of the contract
- Underlying assumptions
- Contract terms
  - In general
  - Duties of each party
  - Rights of each party
  - Relevant dates (Term of the contract, including a specific beginning and end date)
  - Relevant prices/remuneration or other dollar amounts (makes sure currency is correct!!!)
  - Relevant quantities
  - Payment terms
  - Lump sum, COD (cash on delivery), installments?
  - Payment due dates (Payment schedule and any requirements for payment, including some manner for determining when payment is to be made (i.e., specific dates when payment is to be made, payment to be made within thirty days of receipt of invoice, etc.)
  - Taxes
  - Interest
  - Late fees
- Warranties
- Disclaimers
- Limitations on liability
- Liquidated damages
- Confidentiality provision
- Indemnification agreement
- Default
- Arbitration clause
- Governing law
- Venue of lawsuits involving the contract
- Statement that contract constitutes entire agreement
- Severability of individual provisions
- Signatures of authorized signatories
- Notarization

| Information which <u>must</u> be included in the contract:  |  | Affirmative |
|---|--|-------------|
| 1   | Legal names of the parties.  |             |
| 2   | Term of the contract, including a specific beginning and end date.   |             |
| 3   | Purpose of the contract.   |             |
| 4   | What is expected of each party, including any time requirement for performance.  |             |
| 5   | Remuneration to be paid or consideration to be offered.  |             |
| 6   | Both parties have provided something of value (i.e., cash payment for some product/service).   |             |
| 7   | Payment schedule and any requirements for payment, including some manner for determining when payment is to be made (i.e., specific dates when payment is to be made, payment to be made within thirty days of receipt of invoice, etc.) |             |
| 8   | Signature lines for execution by appropriate parties.  |             |
| Information which <u>should</u> be included, if applicable: |  | Affirmative |
| 1   | Any other conditions considered essential in order for the contract to occur.  |             |
| 2   | Additional rights and/or responsibilities of each party.   |             |
| 3   | Requirement of receipts if payment for expenses is being made, statement of any requirements for reimbursement and a limitation on payment.  |             |
| 4   | If one party is collecting money and paying a portion to the other party, the amount or percentage should be clear and the contract should always include the right to review and audit the records of the party collecting money.       |             |
| 5   | Clear identification of the party who will be responsible for any costs associated with the contract.  |             |
| 6   | Limitations of damages in case of default, preferably cap damages at the contract price.   |             |
| 7   | If the University is making a payment, contract should state that amount to be paid is contingent on being approved and money being allocated after each legislative session.  |             |
| 8   | Statement that payment cannot be made if the individual owes money as a child support obligor, if the University is making payment to an individual.   |             |
| 9   | University should be named as an insured If the other party is providing insurance.  |             |
| 10  | Clear statement of which party will be held responsible if there is loss or damage under the contract.   |             |
| 11  | Statement of what will happen to contract if another event or contract this contract is contingent on does not occur.  |             |
| 12  | Attachment of any underlying contract a party is required to follow the terms or conditions of.  |             |
| 13  | Statement of incorporation of any RFP and the other party's response to that RFP that the contract is based on.  |             |
| 14  | Clear specification of the rights of the parties to any intellectual property at issue.  |             |

|   |  |                    |
|---|--|--------------------|
| 15  | Specification of ownership of any equipment or asset after the contract is ended when equipment or anything of value is to be developed or purchased as part of the contract.  |                    |
| 16  | Statement of conditions which would result if contract is terminated early; inclusion of cancellation clause (30 days written notice, etc.)  |                    |
| 17  | Specification of anything that must take place when the contract terminates (i.e. return of equipment, etc.)   |                    |
|   |  |                    |
| <b>Applicable legal provisions:</b>         |  | <b>Affirmative</b> |
| 1   | Force Majeure (events out of the control of either party that would result in a delay in the performance contract for which neither party would be liable)   |                    |
| 2   | Entirety clause (written contract includes all of the agreements between parties)  |                    |
| 3   | Assignment provisions (parties do not have right to assign their rights and responsibilities without the other party's approval)   |                    |
| 4   | Enforceability clause (if party does not enforce its rights under the contract at a particular time, this will not constitute a waiver of its right to enforce the terms and conditions of the contract at any later date) |                    |
| 5   | Independent contractor clause (describes legal relationship between parties)   |                    |
| 6   | Notice clauses (specifies manner in which notice should be given under the contract, including person and address where notice should be received)   |                    |
| 7   | Applicable state law (Texas should be designated for performance, or applicable law)   |                    |
| 8   | Venue (Nacogdoches County)   |                    |
| <b>Language &amp; Provisions to strike:</b> |  | <b>Affirmative</b> |
| 1   | Vague and/or indefinite terminology (e.g., party is supposed to do something "promptly" or no end date)  |                    |
| 2   | Indemnity and hold harmless clauses (can leave hold harmless if necessary; if absolutely necessary can leave indemnity clause by adding "To the extent allowed by the laws of the State of Texas,.")                       |                    |
| 3   | Attorney's fees (can be left in the contract if necessary by adding "to the extent allowed by the laws of the State of Texas.")  |                    |
| 4   | Arbitration clauses (only state approved ADR paragraph )   |                    |
| 5   | Confidentiality agreements   |                    |
| 6   | Change "warrant" to "agrees"   |                    |
| 7   | Agreement for state entity to purchase or provide liability insurance  |                    |
| 8   | Agreement for state entity to enter into a partnership or agree to be the agent for another party, vice versa)   |                    |
| 9   | Statement of assumption of personal liability on the part of whoever signs the contract.   |                    |
| 10  | Exclusivity clauses (unless exclusivity is desired, then keep term short)  |                    |

[http://www.sfasu.edu/gencounsel/resources/proceduralhowto/contract\\_check\\_list.asp](http://www.sfasu.edu/gencounsel/resources/proceduralhowto/contract_check_list.asp)