Contracts consist of an offer, an acceptance of the offer, and include remuneration with conditions for the work performed. These legal agreements aim to ensure that all parties understand the details of the business agreements they are making. The actions and goals contained within the contract should include precise details of the work including each party’s obligations, payments, warranty, liability, services, earnings, and penalties for non-performance.

Below you will find specific clauses that are important to consider when entering in to a formal written contract with another party. These clauses are important when determining liability in the case of a contract dispute.

**Your business contracts should be reviewed and approved by qualified Legal Counsel. It is recommended you seek proper legal advice for complete and accurate evaluation of your contracts.**

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| **🗹** | **ITEM** | **BENEFITS/COMMENTS** |
|  | **Statement of Work.** A definition of what is to be done by you including how and by when. |  |
| 🞏 | Do you clearly define your “statement of work” in the contract? | Being clear in describing what is expected is an important fundamental in any contract. |
| 🞏 | Be specific on how the project or services will be managed. | Project managers/leaders should be assigned for all projects. This provides for consistency of work, achieving project deadlines and assuring qualified personnel are assigned to the project.  |
| 🞏 | Are Project Managers named by both you and your customer?  | Project managers should be qualified to lead the project. Make sure their knowledge, skill and background suit the nature of the project. The project manager should be the point person in coordinating all aspects of the project including communication, timelines, changes, problems, etc.   |
| 🞏🞏🞏 | Are change orders integrated in to final contract? Does this include;Appropriate sign-off of change orders?Acceptance of work? | All parties of the contract should provide written acknowledgment and acceptance of all changes or alterations made to a contract.  |

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|  | **Representations & Warranties.** This is your promise to your customers regarding the performance of your product and/or services.  |  |
| 🞏 | Are verbal commitments made by your firm, sales staff, etc. consistent with your written offerings? | Avoiding verbal commitments and agreements. Written statements allow for clarity of all parties and will save you from potential customer disputes. |
| 🞏 | Do you state that services will be performed in a “workmanlike” (or similar) manner including caps on reporting deficiencies – 60, 90, 180 days? | This type of statement contemplates a level of quality, without overcommitting and establishes expectations of discovery and reporting deficiencies. |
|  | **Indemnification**. A promise by one party to take financial responsibility for damages.  |  |
| 🞏 | Does the Indemnification clause exist and does it protect you and/or provide mutual protection to both parties?  | Avoid onerous clauses that overly favor one party over another will make mutually acceptable resolution much easier. |
| 🞏 | Do “Liquidated Damages” appear here (or elsewhere)? | CAUTION: Liquidated Damages are often financially burdensome and can be enforced against a service provider for the slightest error in providing specified services. This type of clause should be avoided when possible.  |
|  | **Limitation of Liability**. Putting a cap on your financial obligations. |  |
| 🞏 | Is there a clause limiting your liability? | This is one of the most important clauses in your contracts. Knowing your maximum financial obligation on any contract protects the financial assets of your corporation. Make sure it’s reasonable and applies to the scope of work or services for each individual contract.   |

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| 🞏 | Do you make certain that you are not responsible for any special, indirect, incidental, exemplary, punitive or consequential damages or loss of goodwill whether relating to the use, inability to use, performance or lack of performance of your goods, products or services?  | CAUTION: As in Liquidated Damages, many of these items can go far beyond what you might expect to incur if things go wrong. Limiting your liability to the nature and scope of your work or services is important. |
| 🞏 | Does the cap on your liability state it is limited to a specific amount such as; a set dollar total, equal to or lesser of fees paid, etc.? |  Again, cap your potential financial damages. This protects the financial assets of your firm. |
|  | **Reasons for Termination of Contract**. When and why either party may choose to close out the relationship. |  |
| 🞏 | Does it specify what has to take place to execute termination of the agreement or statement of work? | It is valuable to specify for what reasons one or both parties may walk away from a contract. This can help avoid allegations of project abandonment or failure of service.  |
| 🞏 | What rights are afforded when the agreement is terminated? | When/if a party terminates a contract, what are they obligated to do or continue? This should be clear and reasonable. |
|  | **Dispute Resolution.** What do we do if we disagree? |  |
| 🞏 | Is Dispute Resolution defined in the contract?  | This process tends to expedite resolution and helps avoid unnecessary and exorbitant legal fees.  |
| 🞏 | Does the clause define what the process will be? | The process should be clear and agreed upon by both parties. Legal counsel for each party should approve the process as well.  |
| 🞏 | Does it include the option of binding Arbitrations? If so, what State?  | Jurisdiction matters. Legal counsel should be sought and advise on the jurisdiction.  |

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|  | **Force Majeure**. A key clause in any contract. Performance obligations are minimized for situations that are beyond your control.  |  |
| 🞏 | Is Force Majeure defined as a Greater Force which excuses a party from liability if an unforeseen event, beyond the control of the party, prevents a party from performing its obligations?  | A contract should not hold a party responsible for things that are beyond their control. You should not be held accountable for events such as power outages, communications systems delay, riots, etc., that prevent you from fulfilling your contractual obligations.  |
| 🞏 | Is it extended to specifically state acts of God, natural disasters, war, etc.? | A typical list of force majeure events might include war, riots, fire, flood, hurricane, typhoon, earthquake, lightning, explosion, strikes, lockouts, slowdowns, prolonged shortage of energy supplies, and acts of state or governmental action prohibiting or impeding any party from performing its respective obligations. |
|  | **Governing Law**. A statement indicating what jurisdiction will have final say over your contract. |  |
| 🞏🞏🞏 | Your home state. Or,Where contract was executed (if different from above). Or,Your client’s home state (if different from above) | If worse comes to worst, a court or jury in your home jurisdiction may look more favorably on you. Your legal counsel is likely more familiar with your home state jurisdiction which works in your favor.  |
|  | **Entire Agreement** |  |
| 🞏 | Does the contract include language to the effect that “The agreement and statement of work attached represents the entire agreement.”? | This is important because in the case of a dispute, the agreement may limit what can be introduced and represents the negotiations made. |
|  | **Definitions** |  |
| 🞏 | Are “Definitions” a part of the contract? | It is beneficial to clarify the intent of language and key terms. This ensures both parties interpret terms and scope of work in the same manner.  |
|  | **Governing Provisions** |  |
| 🞏 | If there is any difference between the terms of the agreement and statement of work, which set of agreements govern?  | This is helpful and allows for specific reference to assist in determining where to look when a contract dispute arises. |
|  | Contract Amendments / Addendums |  |
| 🞏 | Do you manage all amendments and addendums with the same level of consistency as the initial contract (same parties reviewing, signing-off, etc.)? | Consistency will always prove to a contract’s advantage. |
| 🞏 | Does this include all oral or written amendments and changes? | Any oral amendment should be followed by written confirmation that is agreed upon, in writing, by both parties.  |
| 🞏 | Does this include changes in completion of work (deadlines modified)? | Any change in due date should be incorporated into the written agreement.  |
| 🞏 | Are all modifications made part of the written agreement? | Again, all modifications and changes should be put in writing. They should be acknowledged and agreed upon by signing and dating an amended agreement.  |
|  | **Legal Review** |  |
| 🞏 | Has a qualified attorney reviewed this contract on your behalf? | All contracts should be reviewed by an attorney with contract law credentials. Each party should have the contract reviewed by their own counsel to assure that the contract is written in their best interest.  |

**Disclaimer: The application, impact, and interpretation of contract law can vary widely based on the specific facts involved and upon the laws of the jurisdiction in which you are located.  Accordingly, the information in this document is provided with the understanding that Berkley Technology Underwriters is not herein engaged in rendering legal, accounting, tax, or other professional advice or services.  As such, it should not be used as a substitute for consultation with professional accounting, tax, legal or other competent advisers.  Berkley Technology Underwriters shall not be liable for any loss or damage of whatever nature (direct, indirect, consequential, or other) whether arising in contract, tort or otherwise, which may arise as a result from your use of (or failure to use) the information in this document.**