

**CONTRACT REVIEW GUIDELINES**

<b>Information which <u>must</u> be included in the contract:</b>		<b>Affirmative</b>
1	Legal names of the parties.	
2	Purpose and scope of the contract.	
3	Term of the contract, including a specific beginning and end date.	
4	Responsibilities of each party, including any time requirement for performance.	
5	Confidentiality provisions. (Vendor and its agents are prohibited from using or disclosing financial, personal, and other sensitive information about Company and its members, except as necessary to perform pursuant to contract terms.)	
6	Compliance clause (parties agree to comply with all applicable federal and state laws and regulations)	
7	Both parties have provided something of value (i.e., cash payment for some product/service).	
8	Payment terms, 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.)	
9	Signature lines for execution by appropriate parties.	
<b>Information which <u>should</u> be included, if applicable:</b>		<b>Affirmative</b>
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. A segregated account at Company is also recommended.	
5	Clear identification of the party who will be responsible for any costs associated with the contract.	

6	Right to cure in case of default (preferably between 10 business – 30 calendar days). No right to cure for breach of confidentiality provisions.	
7	Handling and security of non-public personal information. (Must be handled and secured in a commercially reasonable manner consistent with Company’s privacy policy and applicable federal and state privacy laws)	
8	Reporting of data or confidentiality breach (Party required to report any breach in security or confidentiality of information.)	
9	Party responsible for breach of confidentiality shall be responsible for all direct and indirect costs, losses and damages to Company and its members.	
11	Warranties. (For services, should warrant that services to be performed in a professional and workmanlike manner consistent with industry standards. For software, products, or any license granted, should warrant that it does not infringe on any intellectual property or other proprietary rights.)	
12	Service Level Agreements. (Usually an attachment. Includes performance standards; response times and requirements; and penalties for failure to meet performance standards (either refund or credit against future payment)	
13	Indemnity and hold harmless clauses (Vendor should indemnify and hold Company harmless from liability as a result of negligence by the party, including a material breach of the written contract; also against software, product and/or license infringement claims.)	
14	Limited right to subcontract. (Parties do not have the right to subcontract responsibilities without prior written notice and approval. Any approved subcontracting clause must also include language that subcontractor must adhere to terms of the written contract and vendor assumes full liability for subcontractor.)	
15	Evidence of insurance coverage. (Vendor should provide reliable evidence of current insurance coverage in an amount sufficient to protect Company’s interests.)	
16	Statement of what will happen to contract if another event or contract this contract is contingent on does not occur.	
17	Attachment and incorporation of any underlying contract or additional terms a party is required to follow the terms or conditions of.	

18	Vendor reporting requirements (i.e. content and frequency of reports)	
19	Clear specification of the rights of the parties to any intellectual property at issue (i.e. usage rights for software license).	
20	Ownership of intellectual property rights of any software or other products/services to be developed as part of the contract.	
21	Specification of ownership of any equipment or other personal property after the contract is ended when purchased as part of the contract.	
22	Right to terminate for convenience (without cause) and/or for cause. Should also include a statement of conditions which would result if contract is terminated early; inclusion of cancellation clause (30 days written notice, etc.)	
23	Specification of anything that must take place when the contract terminates (i.e. return of equipment, etc.)	
24	Right to monitor and audit for contractual compliance (preferably not less than once annually) and responsibility for payments.	
25	Authorization for Company and appropriate regulatory agencies to have access to vendor records.	
26	Due diligence requirements (i.e. frequency of review of vendor relationship; document/information required to perform review; right to vendor testing)	
27	Business continuity and disaster preparedness requirements. (i.e. continuation of services in event of operational failure; maintenance of disaster recovery and contingency plans; right to test vendor plans and see results of vendor tests)	
28	Member complaint and service issues (i.e. party responsible for handling member complaints; reporting and performance requirements)	
29	Non-solicitation clause (For the term of the contract and not more than 1 year after termination of the contract, parties agree not to directly solicit other party's employees.)	
<b>Applicable legal provisions:</b>		<b>Affirmative</b>
1	Force Majeure (Acts of nature or public enemy or governmental or judicial restraints that are out of the control of either party that would result in a delay in the performance contract for which neither party	

	would be liable. Should not include events that could be mitigated by a business continuity plan.)	
2	Entirety/Merger clause (Written contract and all incorporated attachments contains all of the agreements between parties)	
3	Modification rights (No modification except in writing signed by all parties)	
4	Assignment provisions (Parties do not have right to assign their rights and responsibilities without the other party's approval)	
5	Enforceability/waiver 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)	
6	Independent contractor clause (describes legal relationship between parties)	
7	Third party beneficiaries (Identifies any third party beneficiaries and specific rights. Generally, contract is for sole benefit of contracting parties.).	
8	Notice clauses (Specifies manner in which notice should be given under the contract, including person and address where notice should be received)	
9	Applicable state law (North Carolina should be designated for performance, or applicable law; secondary choice is neutral law of either NY or DE)	
10	Venue and jurisdiction (Wake County, NC; secondary choice is in the federal and state courts located in the county and state of the defending party's headquarters; final option, federal and state courts located in New York County, NY.)	
11	Execution provisions (i.e. Contract may be executed in counterparts; each counterpart deemed an original; all counterparts considered one/same agreement; electronic copies [email only/no fax] deemed an original)	
<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	Unreasonable limited liability clauses (proposed damage limitation must be reasonable compared to the amount of loss Company could experience if vendor fails to adequately perform)	
3	Binding mediation and/or arbitration clauses	
4	Waiver of jury trial (NC law prohibits waiver.)	
5	Change "warrant" or "represents" to "agrees"	
6	Agreement for Company to purchase or provide liability insurance	
7	Agreement for Company to enter into a partnership or agree to be the agent for another party, vice versa)	
8	Statement of assumption of personal liability on the part of whoever signs the contract.	
9	Exclusivity clauses (unless exclusivity is desired, then keep term short)	
10	Liquidated damages clause	