

EXECUTING A CONTRACT

A. Agreeing on Terms

Often, after commercial terms are settled, the remaining barrier to an executed contract is agreement on terms and conditions. Be sure to review every contract thoroughly to ensure that you agree with all of the terms. If you are unsure about the meaning of a particular term, PCS is happy to help you. For your reference, the following list reflects the top ten terms and conditions that vendors most often reject.

- 1. Insurance.** Generally, UO requires all vendors to carry some form of commercial general liability insurance or professional insurance. This requirement exists to ensure that UO minimizes its risk and creates a funding source for recovery in the event occurs that causes damage to persons or property.
- 2. Indemnification.** It is UO's expectation that vendors assume responsibility for the actions they take and the elements of the transaction they control. If something the vendor does or controls exposes UO to liability, indemnification terms create a duty on the part of the vendor to protect UO from that liability.
- 3. Infringement Indemnification.** Similar to indemnification above, these terms apply to instances where UO is using vendor Intellectual Property (IP) and that vendor IP includes elements that infringe upon the IP rights of a third party. Generally, UO does not have control over the contents of vendor IP, nor does UO have the means to ensure that vendor IP is not infringing. It is appropriate for the vendor to bear any risk arising from their IP, and thus appropriate for the vendor to indemnify UO in the event such a risk is realized.
- 4. Ownership of Work Product.** When UO hires a vendor to create a new work of IP in accordance with UO's specifications, it is appropriate for UO to retain ownership of that IP.
- 5. Limitation of Liability/Liquidated Damages.** Limitations of liability and liquidated damages terms set out the amount a vendor (and UO) may be liable for in the event of breach of the contract or other damages. Limitations of liability provisions attempt to limit, define or eliminate damages occasioned by a parties conduct or breach of contract. Such provisions must be clear and unambiguous to be enforceable. It is acceptable to have a reasonable limitation of liability. Limitations are unreasonable if they require UO to bear too much risk, especially for risk that the vendor is in a better position to control, for example: instances of IP infringement. Liquidated damages provisions are damages whose amount the parties designate during the formation of a contract for the injured party to collect as compensation upon a specific breach (e.g., late performance). Liquidated damages provisions are used when the damages caused by a breach of contract are uncertain. However, they cannot be punitive and must roughly approximate the damages likely to fall upon the party seeking the benefit of the term. A

liquidated damage clause is one method to limit the damages recoverable in the event of a breach of contract.

6. **Warranties.** Often vendors will disclaim standard warranties that are available under the Uniform Commercial Code. While a reasonable disclaimer of warranties is generally acceptable, vendor attempts to disclaim warranties made by vendor sales teams prior to contract negotiations are not acceptable. Conversely, UO's standard terms and conditions contain warranties that be no be applicable to certain transactions. Removing such terms when applicable is acceptable.
7. **FERPA. Personally identifiable information (PII), or sensitive personal information (SPI), as used in US privacy law and information security, is information that can be used on its own or with other information to identify, contact, or locate a single person, or to identify an individual in context.** FERPA is federal legislation which requires UO to protect certain PII and SPI of students. FERPA provisions in a contract may allow UO to provide such data to vendors by requiring vendors to comply with FERPA when in possession of protected student data. Vendors that do not regularly deal with customers in Higher Education often have no knowledge of these laws and are reluctant to agree to their requirements. If FERPA protected data will be disclosed to a vendor, these terms must be included in the Agreement.
8. **Governing Law.** As an instrumentality of the State of Oregon, UO enjoys significant legal benefits under Oregon law. Agreeing that a contract will be interpreted under Oregon Law in the event of a dispute ensures UO retains those benefits. In instances where all, or substantially all, of the services will be performed outside the State of Oregon, it is acceptable for the agreement remain silent on the issue of governing law.
9. **Tort Claims Act Provisions.** As an instrumentality of the State of Oregon, UO enjoys sovereign immunity and is protected by the Oregon Tort Claims act. These terms ensure that 1. The vendor is aware of these protections; 2. That UO retains these protections even if another jurisdiction's laws govern the agreement. If a vendor requests that UO indemnify that vendor, these terms must be included in the Agreement.
10. **Oregon Public Records Law Provisions.** Often, vendor terms include a duty on the part of UO to keep information confidential. As an instrumentality of the State of Oregon, UO is required to comply with the Oregon Publics Records laws. Those laws may require UO to disclose certain records, even if the vendor requests those records are kept confidential. As such, UO's ability to keep records confidential is limited by the Oregon Publics Records laws, and the agreement must include that fact.

B. Executing the Contract.

Once the parties have reached an agreement on the terms, it is time to execute the contract.

1. **Contracting Authority.** Only sign contracts that fall within your authority. If you have not been delegated contracting authority by either the VPFA or PCS, you do not have the authority to sign a contract. If you have been delegated contracting authority, please ensure the contract falls within your authority. If your authority was delegated by PCS, it is limited to transactions up to \$25,000, or a lower amount indicated to you by PCS, and it is limited to PCS approved form contracts.
2. **Signatures.** The UO is able to sign and countersign contracts that have been scanned. Blue-ink signatures are generally not required. Before you sign, make sure the document returned to you by the vendor is exactly the same as the document you provided to the vendors. Also, make sure the document is complete and includes every page. Stand-alone signature pages are not acceptable.