

# 10 Things A Non-profit Should Include In Its Contracts

---

All too often non-profit organizations transact on a hand-shake and a wink. Doing this places not only the organization at risk, but the person "contracting" as well. In some states, acting too reckless could leave the person entering these oral agreements personally responsible should anything go wrong.

But I attribute the inability, or refusal, of organization's to implement contracts to a belief that they must be done perfectly or not at all. When in reality, contracts don't always have to resemble the size and readability of an illuminated bible. The important thing is to get a basic transaction down on paper and signed.

What follows is not intended to be legal advice (there goes my disclaimer for the day) but an exercise to get you thinking. Below are ten things an organization should consider including in a contract from here on out. Note, I haven't put these in any particular order and this list certainly isn't meant to be inclusive.

1. Force Majeure Clause: This is a way to protect you from breaching the contract should an event occur that is out of your control. You can also use this as protection should the other party cause a delay.
2. Termination: Make sure to work out when the contract will end. When possible, try to avoid evergreen clauses (those that cause the contract to constantly renew unless you cancel within a certain amount of time). Also, use this section to cover what each party will be responsible for in the event of termination. And discuss what happens in the event the other party breaches the contract (i.e. make sure that you come out whole should the other party decide to terminate).
3. Scope: One of the first things that should be laid out is the scope of the agreement. What will it be applicable to and what role will each party play?
4. Governing Law: The agreement should be clear on what law it will be interpreted under and what "forum" (county, city and state) disputes will be brought under (these are two separate things). Keep in mind that each state's law on a particular dispute may differ. How that dispute will play out in court

may also differ state to state as well. Lastly, (not to get too legal eagle) read up on disclaiming conflict of laws. This will help make sure your language in the provision is actually carried out if the contract does end up in court.

5. Price & Payment: Pricing and payment structures should be worked out in the agreement. Specifics don't necessarily have to be included, particularly if multiple transactions are going to take place. In that case, this section should lay out the default position if price and payment are left out of subsequent paperwork. In regard to payment, you will want to establish some mechanism such as milestones or installments. Also make sure payment doesn't have to be made unless you are "reasonably satisfied" with the product or service. Reserve your right to dispute payment if it is not.
6. Intellectual Property: Though non-profits are generally small, it is never too soon to start protecting one's IP. Copyrights, trademarks and patents are considered intellectual property. These are all as much an asset as a savings account and should be treated as such. If you are hiring a contractor to create something for you, include language that covers who will own the resulting IP. If you want to own all IP, then you'll want to add language stating that the end-product is "a work made for hire" (the US copyright office has more on this). If you're contracting someone to give a speech, work out things such as a license that will allow you to continue to use the speech and re-publish it if you'd like.
7. Risks: Risk allocations (who will responsible for what and in what instances) concerning property damage or personal injury really needs to be worked out ahead of time. Particularly when you or someone in your organization will be on the other party's property or vice-versa.
8. Confidentiality provision: This is an important provision that will address personal or confidential information such as a donor list. Cover basic things such as what will information and documents should constitute as "confidential information", how must that information be protected and when may that information be disclosed.
9. Severability: This is a more formal provision but great to have nonetheless. It essentially protects the rest of your contract from being invalidated should a provision or two be interpreted by a judge or arbiter as illegal. I'll cheat and say that along these same lines an "Entire Agreement" provision should be included to ensure that promises/paperwork made or created outside this contract don't come into play. Only that written in the agreement and signed will be considered.

10. Delivery: Discuss how the product or service will be delivered. This is another one that doesn't necessarily have to lay out all the specifics if multiple transactions will take place. But a default position should be established. If receiving a good cover where delivery must take place and things such as when title over the good transfers and who will be responsible if the good is lost.

Other things you should think about are:

- Say what you mean and mean what you say. No need for the "art thou for here to going's". Write out how you would like the transaction to go and make it happen in the agreement.
- Work out all the defaults. Don't leave anything up to chance. By doing so, you potentially leave your contract in the hands of a judge who is a total stranger to the transaction.

If you're looking for assistance in drafting up your own contract here are some great websites to check out:

- [Common Contract Provisions](#)
- [Contract Provisions Check-list](#)
- [Sample Arbitration Provision](#)
- A really neat website on [Cloud Computing Contracts](#)
- [Sample Mediation Provision](#)
- [Sample Governing Law Provisions](#)
- [A Sample Termination for Convenience Provision](#) that allows parties to terminate at any time.
- [Sample Non-Compete Provision](#)
- [Sample Force Majeure Clause](#)

Not all of these provisions may fit your transaction, or even your industry, specifically. But they will help to show you what the standard clauses are and assist you in better tailoring your agreement. That is, if you insist on drafting all of your own contracts. Of course I recommend using an attorney, in which case these will help you devise a plan as to what issues you would like the contract to cover; saving you time and money in the end.