**CHECKLIST**

**FOR COMPLETE CONTRACTS TERMS**

Not all items are relevant in all contractual situations. In some situations, other provisions may be appropriate that are not listed below. The following checklist is, however, a basic and general guide as to what provisions it may be important to include, or at least consider, in the business contracts that you enter. This document is not intended to substitute for legal advice nor legal wording provided by a competent advisor in the relevant legal jurisdiction.

* **Title of contract**
* **The identity of the parties**
* Individuals or business entities
* If businesses, what type? (partnership, company, LLC, 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**
* **Recitals**
* Purpose(s) of the contract
* Background of agreement
* **Underlying assumptions**

Key assumptions for the contract

* **Restrictions**

Identifies any limitations in use of the supplied services and/or products (e.g., the software can only be installed and used by the buyer on one machine at any given time, with permission to make one backup copy).

* **Price**
* What is the price of the product or service?
* Is it a fixed price, determined by a formula, by a project fee, or some other manner?
* **Contract terms**
* Duties of each party
* Rights of each party
* Relevant dates
* Relevant quantities
* Is the contract a one-shot situation or will it last for some designated time period?
* How can the term be renewed or extended?
* Lump sum, COD, instalments?
* Payment due dates
* Taxes
* Interest
* Late fees
* **Ownership of Intellectual Property**

Outlines the ownership of copyright, patents, source code, executable code, documentation, content and all other deliverables supplied under the contract.

* **Representations and Warranties**
* What representations and warranties are to be made by the parties?
* Are certain warranties disclaimed (e.g., merchantability or fitness for a particular purpose)?
* How long are any warranties good for?
* **Disclaimers**
* **Limitations on liability**
* What limitations of liability exist (e.g., no liability in excess of payment received, or no liability for consequential damage or lost profits)?
* Under what circumstances is one party liable (e.g., material breach of an agreement or grossly negligent in performing services)?
* **Termination of Contract**
* When can one party terminate the contract early?
* What are the consequences of termination?
* What post-termination obligations are there?
* **Liquidated damages**
* **Confidentiality provision**
* What confidentiality obligations are there?
* What are the exclusions from confidentiality?
* **Indemnification agreement**
* Is there indemnification for certain breaches or problems?
* What is the procedure required to obtain indemnification?
* Is there a cap on or exclusions from indemnification?
* **Default**
* What are the events of default?
* Does a party have a period to cure a default?
* What are the consequences of a default?
* **Arbitration clause**
* How are disputes to be handled – litigation, mediation or arbitration?
* If arbitration, what rules will govern?
* If arbitration, how many arbitrators and how will they be picked?
* If arbitration, will there be procedures for discovery and what the arbitrator can and can’t do?
* If litigation, where can or must the litigation be brought?
* **Waiver**

An assertion that any delay or partial pursuit by one party of its rights against the other party does not constitute a forfeiture of the right to later seek further or complete remedy or redress to a situation should the need arise.

* **Assignment**

Identifies if either party to the contract can transfer the contract, in whole, or in part, to another party, and under what conditions (if any).

* **Severability**

Explains that if any of the provisions of the contract are rendered null and void, all other provisions remain in force.

* **Notice**

Describes how and where the parties shall formally communicate to each other in the event they need to take such action (e.g., all notices shall be deemed to have been received by the other party within five working days if sent by regular mail to the addresses below).

* **Entire Agreement**

Explains that the written contract is the only description of the agreement between the vendor and buyer, regardless of what may have been previously stated or written down. Explains the process for updating the contract (often based upon mutual agreement, in writing).

* **Governing law**
* **Signatures of authorised signatories**
* What authority is required for one party to sign the contract (e.g., Board of Director's approval)?
* How many signatures are required?
* Are the signature blocks correct?
* **Notarisation**
* **Miscellaneous**
* Attorney’s fees
* Modification of Agreement
* Time of the Essence
* Survival
* Ambiguities
* Headings
* Necessary Acts and Further Assurances
* Execution
* Jury Trial Waivers
* Specific Performances
* Representation on Authority of Parties
* Force Majeure
* Company seal
* Witness(es)

**EXAMPLE**

**COMPLETE PROVISIONS FOR CONTRACTS**

Following are an example of provisions that you might want to copy and paste to your contracts. Remember that these provisions are not intended to substitute for legal advice nor legal wording provided by a competent advisor in the relevant legal jurisdiction.

**Choice of Law**

This Agreement and any dispute arising from the relationship between the parties to this Agreement shall be governed by [E.G., CALIFORNIA] law, excluding any laws that direct the application of another jurisdiction’s laws.

**Attorney Fees Provision**

In any litigation, arbitration, or other proceeding by which one party either seeks to enforce its rights under this Agreement (whether in contract, tort, or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing party shall be awarded its reasonable attorney fees, and costs and expenses incurred.

**Notice**

Any notices required or permitted to be given hereunder shall be given in writing and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, (c) by facsimile, or (d) by a commercial overnight courier that guarantees next day delivery and provides a receipt, and such notices shall be addressed as follows:

[FULL ADDRESS]

or to such other address as either party may from time to time specify in writing to the other party. Any notice shall be effective only upon delivery, which for any notice given by facsimile shall mean a notice which has been received by the party to whom it is sent as evidenced by confirmation slip.

**Modification of Agreement**

This Agreement may be supplemented, amended, or modified only by the mutual agreement of the parties. No supplement, amendment, or modification of this Agreement shall be binding unless it is in writing and signed by all parties.

**Entire Agreement**

This Agreement and all other agreements, exhibits, and schedules referred to in this Agreement constitute(s) the final, complete, and exclusive statement of the terms of the agreement between the parties pertaining to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings or agreements of the parties. This Agreement may not be contradicted by evidence of any prior or contemporaneous statements or agreements. No party has been induced to enter into this Agreement by, nor is any party relying on, any representation, understanding, agreement, commitment or warranty outside those expressly set forth in this Agreement.

**Severability of Agreement**

If any term or provision of this Agreement is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, such illegal, unenforceable, or invalid provisions or part thereof shall be stricken from this Agreement, and such provision shall not affect the legality, enforceability, or validity of the remainder of this Agreement. If any provision or part thereof of this Agreement is stricken in accordance with the provisions of this section, then this stricken provision shall be replaced, to the extent possible, with a legal, enforceable, and valid provision that is as similar in tenor to the stricken provision as is legally possible.

**Separate Writings and Exhibits**

The following [E.G., AGREEMENTS, EXHIBITS, SCHEDULES, OR OTHER SEPARATE WRITINGS] constitute a part of this Agreement and are incorporated into this Agreement by this reference: [LIST SEPARATE WRITINGS BY NAME AND DATE]. Should any inconsistency exist or arise between a provision of this Agreement and a provision of any exhibit, schedule, or other incorporated writing, the provision of this Agreement shall prevail.

**Time of the Essence**

Time is of the essence *in re*spect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.

**Survival**

Except as otherwise expressly provided in this Agreement, representations, warranties, and covenants contained in this Agreement, or in any instrument, certificate, exhibit, or other writing intended by the parties to be a part of this Agreement, shall survive for [NUMBER] years after the date of this Agreement.

**Ambiguities**

Each party and its counsel have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

**Waiver**

No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

**Headings**

The headings in this Agreement are included for convenience only and shall neither affect the construction or interpretation of any provision in this Agreement nor affect any of the rights or obligations of the parties to this Agreement.

**Necessary Acts, Further Assurances**

The parties shall at their own cost and expense execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to evidence or carry out the intent and purposes of this Agreement.

**Consent to Jurisdiction and Forum Selection**

The parties hereto agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the State and National courts located in [COUNTRY]. The aforementioned choice of venue is intended by the parties to be mandatory and not permissive in nature, thereby precluding the possibility of litigation between the parties with respect to or arising out of this Agreement in any jurisdiction other than that specified in this paragraph. Each party hereby waives any right it may have to assert the doctrine of forum non convenient or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this paragraph, and stipulates that the State and National courts located in [COUNTRY] shall have jurisdiction and venue over each of them for the purpose of litigating any dispute, controversy, or proceeding arising out of or related to this Agreement. Each party hereby authorises and accepts service of process sufficient for personal jurisdiction in any action against it as contemplated by this paragraph by registered or certified mail, return receipt requested, postage prepaid, to its address for the giving of notices as set forth in this Agreement. Any final judgement  rendered against a party in any action or proceeding shall be conclusive as to the subject of such final judgement  and may be enforced in other jurisdictions in any manner provided by law.

**Execution**

This Agreement may be executed in counterparts and by fax.

**Jury Trial Waivers**

To the fullest extent permitted by law, and as separately bargained-for-consideration, each party hereby waives any right to trial by jury in any action, suit, proceeding, or counterclaim of any kind arising out of or relating to this Agreement.

**Specific Performance**

The parties acknowledge that it will be impossible to measure in money the damage to them caused by any failure to comply with the covenants set forth in Section X, that each such covenant is material, and that in the event of any such failure, the injured party will not have an adequate remedy at law or in damages. Therefore, the parties’ consent to the issuance of an injunction or the enforcement of other equitable remedies against them at the suit of the other, without bond or other security, to compel performance of all of the terms of Section X, and waive the defence of the availability of relief in damages.

**Representation on Authority of Parties/Signatories**

Each person signing this Agreement represents and warrants that he or she is duly authorised and has the legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party’s obligations hereunder have been duly authorised and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

**Force Majeure**

No party shall be liable for any failure to perform its obligations in connection with any action described in this Agreement, if such failure results from any act of God, riot, war, civil unrest, flood, earthquake, or other cause beyond such party’s reasonable control (including any mechanical, electronic, or communications failure, but excluding failure caused by a party’s financial condition or negligence).

**Assignment**

Neither party shall voluntarily or by operation of law assign, hypothecate, give, transfer, mortgage, sublet, license, or otherwise transfer or encumber all or part of its rights, duties, or other interests in this Agreement or the proceeds thereof (collectively, “Assignment’), without the other party’s prior written consent. Any attempt to make an Assignment in violation of this provision shall be a material default under this Agreement and any Assignment in violation of this provision shall be null and void.

**Arbitration**

Any controversy, claim or dispute arising out of or relating to this Agreement, shall be settled by binding arbitration in [Province/National]. The parties agree to abide by all decisions and awards rendered in such proceedings. Such decisions and awards rendered by the arbitrator shall be final and conclusive and may be entered in any court having jurisdiction thereof as a basis of judgement  and of the issuance of execution for its collection. All such controversies claims or disputes shall be settled in this manner in lieu of any action at law or equity; provided, however, that nothing in this subsection shall be construed as precluding the bringing an action for injunctive relief or other equitable relief. The arbitrator shall not have the right to award punitive damages or speculative damages to either party and shall not have the power to amend this Agreement. The arbitrator shall be required to follow applicable law. IF FOR ANY REASON THIS ARBITRATION CLAUSE BECOMES NOT APPLICABLE, THEN EACH PARTY, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL AS TO ANY ISSUE RELATING HERETO IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER MATTER INVOLVING THE PARTIES HERETO.