

Contracting Guide

As a Sponsored Project, you will likely need to hire consultants, vendors, independent contractors, etc. to provide services important to realizing your work. After carefully selecting the person or entity that is **best-suited to perform those services, you'll want to contract them for the services negotiated**. This guide will help you better understand contracting principles, navigate legalese, and highlight best practices.

What is a contract?

Contracts are **promises** that the law will enforce. **They can be oral or written, and they will bind the parties to perform whatever is promised.**

Required Elements - A valid and enforceable contract in the US, generally, must have the following basic components:

- **Consideration** - each **party** to the contract must be providing something **of value** to the other, such as a product, service, or payment.
- **Offer and acceptance** - an offer made by **one party**, such as to provide a good or service, is accepted **by the other**, often for payment
- **Intention to be bound** - the **parties** to the contract must intend for the contract to be **legally binding**
- **Legal purpose** - in order to be **legally enforceable**, the contract must be for lawful purposes
- **Competent parties** - the parties entering into the contract **must be capable** of making the contract and understand what they are doing

When these elements are present, the parties have created a contract. None of these elements require a written document. Something to be mindful of is a valid contract may be orally made. **To avoid ambiguity, AMP wants a written agreement.** Whether it is a **Memorandum of Understanding**, Contract for Service, or Service Agreement, if the language of the document creates obligation and has all of the elements above, then it is a contract.

Functions of Contracts

Contracts clarify responsibilities, provide accountability, and openly discuss consequences when expectations fall short.

Accurate Agreements

The purpose of a contract is to make someone do something they've agreed to do. Often, a contract will **obligate one party**

Something bad

happens...who pays

Allocation of risk is all about what happens when bad things go down, look for

Falling short of success

In the best possible scenario, everyone does what they agreed to do. In the worst, someone doesn't perform,



to perform and in return, the other party will pay for that performance. The performance should be in a “Scope of Work”-type section and the description for payments in a payment or fee section.

“Indemnification” or “Waiver of Subrogation” or “Limits on Liability”. All these headings deal with risk. A contract alone cannot prevent negligence or intentional harm, but it should describe what can happen if it occurs.

which is likely a breach of their obligation. In many of the contracts, if a person doesn’t perform, then they won’t get paid.

Use the [Checklist](#) to help as you review contracts before forwarding them to AMP staff.

Drafting Suggestions

- Accuracy is the main goal of a contract. The scope of work or similar section is the most important section. Drafting a contract requires writing and language agreed on by all the parties. Specificity about the scope of work and related deliverables helps with accountability during the working relationship.
- Always clarify if something is unclear. The easiest way to clarify is to ASK! Ask the other party what a clause or term means. If they can’t explain it or are not sure what it is, maybe it needs to be deleted.
- All contracts need to be drafted in plain language. Insist on legalese being changed.
- Start by asking the other party if they have a contract. When other parties, like vendors, use their own contracts, invoices, etc., it helps demonstrate that the party is independent, professional, and not an employee. New vendors may not have contracts, in this case use the [Contract Generator Form](#) and AMP staff will assist in drafting a contract.
- Carefully consider the parties. Be sure the obligations undertaken in the agreement are consistent with the ability of the parties to fulfill them. AMP needs to be a party and the Sponsored Project should also be identified. A suggested and preferred example is:

“...Allied Media Projects (‘AMP’) on behalf of [Sponsored Project], a fiscally sponsored project...”
- AMP uses an electronic signature platform called DropboxSign.
- Provide context paragraph before listing out the terms and provisions of the contract. A Context paragraph will be helpful when the contract is reviewed later.
- Avoid repetition; do not say the same thing or address the same issue in two or more different places.



- Be consistent throughout the agreement and be specific with naming. Use the parties' names or defined terms as references rather than pronouns (him, his, it, its, them, their) unless the party reference is clear from the context.
- Keep boilerplate language, and remove paragraphs not relevant to your transaction. Boilerplate language helps keep both parties protected, but ask if anything is unclear.

