



GET IT IN WRITING:

**THE IT PROFESSIONAL'S
GUIDE TO ESSENTIAL
CONTRACTS**

TABLE OF CONTENTS

INTRODUCTION	WHAT ARE CONTRACTS & WHY DO THEY MATTER?.....	3
 CHAPTER 1	CONTRACTS THAT DEFINE CLIENT RELATIONSHIPS.....	5
 CHAPTER 2	CONTRACTS THAT DEFINE EMPLOYMENT RELATIONSHIPS.....	14
 CHAPTER 3	OTHER CONTRACTS: THE TERMS AND CONDITIONS EDITION....	23
 CHAPTER 4	WHAT IS A “BREACH OF CONTRACT?”.....	26
 CHAPTER 5	MAKING SURE YOUR CONTRACTS HOLD UP IN COURT.....	29
	CONCLUSION.....	31

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INTRODUCTION: WHAT ARE CONTRACTS & WHY DO THEY MATTER?

It used to be risky enough just to run a business. But doing business in the digital age, the stakes higher than ever.

As the owner of a small tech business, you know the score: you could be sued over failing to prevent a hack or data breach. Your clients may not understand the wizardry behind your work, which may lead them to blame you for a whole host of losses that you had nothing to do with. Even if you're not at fault, clearing your name in court can cost thousands (not to mention ding your reputation).

That's where contracts can help. And a contract doesn't have to be riddled with legal language to be effective. In fact, to be legally valid, a contract simply has to meet these two conditions:

- **All parties must be in agreement.** An offer is made by one person and accepted by another.
- **Something of value must be exchanged.** For example, your tech business trades services or products for your client's money.

When used properly, contracts...

- Outline the terms of a professional agreement.
- Clarify what all parties are expected to do.
- Provide the legal footing you need in the event of a lawsuit.

Pay special attention to that last point, because more than **15 million** lawsuits are filed every year in the United States, according to the [National Federation of Independent Business](#). The icing on the cake? Many are meritless. That means the chances of your business being sued are high, and you need to be prepared to protect yourself.

So let's get started. This guide outlines the contracts IT professionals most often need and explains which types of contracts you need for your work.



CONTRACTS THAT DEFINE
CLIENT RELATIONSHIPS

CONTRACTS THAT DEFINE CLIENT RELATIONSHIPS

Perhaps the most fundamental of all your contracts, your client contracts outline the work you do and the manner in which it will be done. Client contracts are useful for two reasons:

- They can prevent miscommunications with your clients, which can help you dodge a lawsuit in the first place.
- They can limit your liability, which makes it harder for a client to successfully sue your business.



Client contracts can prevent miscommunications and limit your liabilities.

WHAT YOUR CLIENT CONTRACTS SHOULD INCLUDE

In a nutshell, client contracts should detail...

- **What work your IT business will do.** Perhaps the most important part of the contract. It defines the scope of your work: what you will and won't do. It can help you avoid lawsuits if a client accuses you of not delivering on your side of the bargain.
- **Project timelines.** Project milestones and the final deadline.
- **Materials needed to complete the project (if any).** This should also specify who is responsible for supplying those materials.
- **Cost of the project.** Be sure to include when payment is due and how you expect to be paid (cash, check, online transfer, etc.).
- **Signatures of both parties.** A contract isn't legally binding until both parties sign it.

Depending on the type of work you do, you might also need an indemnification clause to help limit your liability for certain situations. Also called a "hold-harmless" clause, this part of your contract divides risk between the parties. However, these clauses are finicky and are best left to your legal advisor because the language has to be exact.

Get legal advice when drafting indemnification clauses.

A strong indemnification clause can help you...

- Establish conditions for when you can't be held liable for losses related to your work (e.g., the customer doesn't correctly use the software you installed, which allows their network to be breached).
- Place risk on those best able to control risk factors.
- Minimize the impact on your claims history, which can keep your insurance costs low.

Now that you know the basics, let's look at some specific types of client contracts and what they include.

EXAMPLES OF CLIENT CONTRACTS

The kind of client contracts you end up using will depend on the kind of work you do. But as a rule, every contract should list...

- Your business's contact information (e.g., name, phone number, address, email).
- Your client's contact information.
- Effective dates for the contract.
- Acceptance of terms (i.e., the signatures of both parties).

To save space, we won't list these points on every contract overview.

Please note: *contracts should be tailored to your company's specific operations and risks. These outlines are intended to give you a general overview of the key points each contract usually has. They are not meant as exhaustive guides or as legal advice.*

CONSULTING AGREEMENT / CONSULTING CONTRACT

IT consultants: this contract will be your mainstay. This document usually has the following elements:

1. **Terms of Agreement.** Effective dates and conditions when the agreement can be renewed or adjusted. For short-term projects with defined scopes, include start and end dates.
2. **Duties.** Services you will provide to the client. For example, if you're a software consultant, specify that you will provide software planning, design, and development services.
3. **Time Requirements.** When you will be available to the client.
4. **Compensation and Terms.** Hourly or project rate plus travel time.



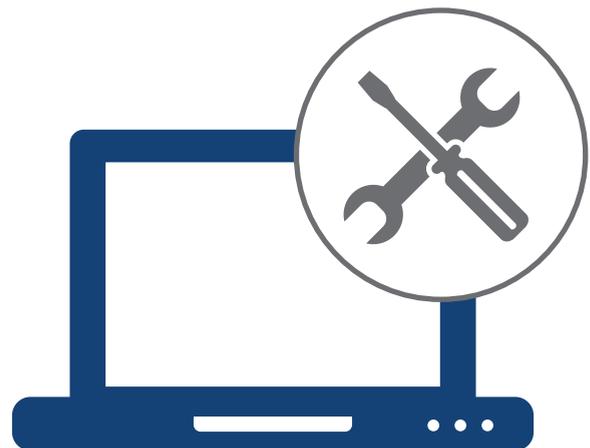
A consulting agreement establishes the duties of an IT consultant, clarifies licenses and rights to new material, and outlines payment terms.

5. **Expenses.** Who is responsible for what (e.g., you may specify that your client is responsible for paying for licensing fees and hardware).
6. **Confidentiality.** This lets you sidestep having a separate non-disclosure agreement. Basically, it states you can't discuss the work you do for your clients unless they make that information public.
7. **Rights and Licenses.** If you develop software specifically for your clients, you may need to iron out who has the copyrights to the work, you or the client. Your client may want you to sign a work for hire agreement, which would give them the ownership of the work you produce. [Jump to page 19 for details.](#)
8. **Relationship.** An important inclusion for independent contractors. It can provide proof to the IRS that you are not your client's employee.
9. **Waiver, Modification, or Cancellation.** Include this to clear up miscommunication problems. If the provisions of the agreement change, those changes must be in writing and signed by both parties.
10. **Assignment.** This specifies that the parties entering into the agreements are the ones responsible for seeing it through. No bait-and-switching.
11. **Liability.** This is your indemnification clause. It states that you can't be held liable for certain losses associated with your services. However, it may not be enough to keep your business out of court, and

each judge will decide whether the clause has legal standing. That's why, as a failsafe, you should always carry adequate [Professional Liability Insurance](#), which pays for legal expenses when you're sued over the financial losses your work allegedly caused.

12. **Governing Law.** This specifies which state's laws you and your client are following (which is important if you ever get dragged to court).

If you want to get your boilerplate contract underway, check out [Tech Republic's IT consulting contract template](#).



WEB DESIGN CONTRACT

Website developers and designers: this contract is for you. Typically, it includes the following sections:

1. **Fees and Payment Terms.** Your hourly rate and how you'd like to be compensated. You might also include late fees and payment default procedures.
2. **Expenses.** Which party is responsible for domain and licensing expenses (including sales tax). Usually, you want the client to pay.
3. **Services.** What you will and won't do for the client. This should specify third-party operations you may handle on behalf of your client (e.g., web hosting and domains).
4. **Completion.** The steps each party will take to ensure project completion. For example, you may submit the final website to the client and get their approval in writing. Only then will you publish the website and submit it to search engines and directories.
5. **Deadlines.** When the total project and project milestones will be completed.
6. **Copyright.** Assurance that the logos, audio, video, trademarks, and photos the client submits for you to use are owned by the client. The client agrees to indemnify and hold your web design company harmless against all claims of copyright or trademark infringement, privacy violations, or defamation arising out of use of the work.
7. **Ownership of Copyright.** This specifies that your client retains all copyrights to material they submit for you to use.
8. **Cancellation of Work.** Conditions for when work can be cancelled, who retains the ownership of copyrights for any original artwork produced for the project, and billing for work completed up to cancellation.
9. **Other Electronic Commerce Business Relationships.** Statement that you aren't responsible for issues related to services offered by outside parties (e.g., interruption in payment processing services, Internet service, or web-hosting service).
10. **Testing and Acceptance Procedures.** Your process for testing web elements and getting client approval.



11. **Sole Agreement and Amendment.** Essentially, to change the terms of this contract, it has to be in writing and signed by both parties.
12. **No Guarantees.** Limit of your responsibility for how much (or how little) traffic the new website generates.
13. **Governing Laws.** Statement that the client must comply with federal and state ecommerce laws, copyright laws, and use laws. Get in writing that you can't be held responsible for their noncompliance.
14. **Confidentiality.** This replaces a separate non-disclosure agreement. For more about NDAs, [jump to page 17](#).
15. **Security.** Statement that your client will hold you harmless for security flaws in the software.
16. **Accessibility, Usability, Cross-Platform Issues.** This explains you will do your best to make sites useable across as many platforms as you and the client agree to.

For a web design contract template, check out the one offered by [Media Surgery](#).



SERVICE LEVEL AGREEMENT

A service-level agreement (SLA) specifies what services the IT provider will furnish for the customer. **SaaS professionals**, take note. This agreement usually has the following elements:

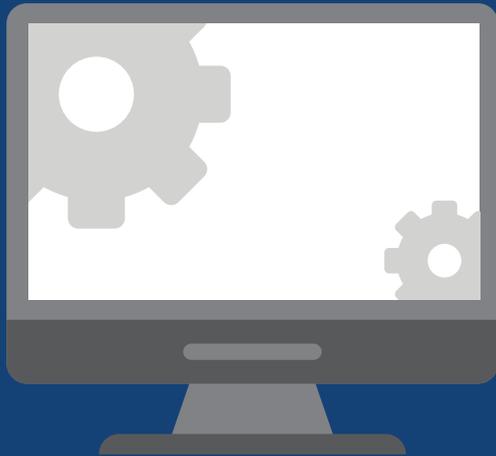
1. **Agreement Overview.** Statement that your company is providing IT services required to support and sustain a product or service for your client.
2. **Goals and Objectives.** States the purpose of the agreement: to outline each party's roles or responsibilities, offer a measurable description of service to the customer, and establish service support and delivery parameters.
3. **Stakeholders.** List of primary stakeholders in the SLA – you, the IT service provider, and your client.
4. **Effective Dates and Amendments.** When the agreement goes into effect and when it can be updated.
5. **Service Agreement.** Details on the scope of your work and service parameters. It should list the services you provide (e.g., assistance using Remote Desktop and a Virtual Private Network).



You'll need a service level agreement if your tech business offers a service that requires maintenance or troubleshooting.

6. **Customer Requirements.** What your client is expected to pay for (e.g., support costs) and how customers can resolve a service issue.
7. **Service Provider Requirements.** Timetables for when you will respond to service issues. Details on how your customers will be notified when you need to schedule maintenance.
8. **Service Management.** Details on service availability, monitoring of in-scope services, and related components. For example, it will list the times when your support is available. It will also detail timeframes for responding to issues based on priority level.

[Entrepreneur.com](#) offers an [SLA template](#) that your IT services business may find useful.



SOFTWARE DEVELOPMENT AGREEMENT

If you're a software or mobile **app developer**, this contract can ensure you get paid for the services you provide and help prevent disputes. Key elements include:

1. **Work Phases.** A breakdown of the project into stages or milestones. Typically, the developer must deliver parts of the product by certain dates in order to get paid a specified amount. The client usually signs off on each phase of the project to prevent later claims of underperformance.
2. **Software Specifications.** Essentially, the blueprint of your project. It outlines what the software will do and what your client can expect from the final product. This is the heart of the contract, so take your time to include details, which can clear up misunderstandings, limit client dissatisfaction, and deter litigation. Be sure to write this in language your client can understand.
3. **Payment Arrangements.** Rates and preferred payment methods. You may also want to include how you will be paid if the project is cancelled early.



Because clients may not understand your work, software developers should make sure this agreement states in plain English what the software will do.

4. **Transfer of Copyright Ownership.** Confusion over whether you or your client own the intellectual property rights to the software is the quickest way to get into a legal tangle, so sort it out in writing. There are plenty of ownership options. If your client wants to own the copyright, you, the developer, have to transfer that ownership to them.
5. **Ownership of Background Technology.** New software is likely built with the help of other programs, data, and tools that may end up in the new product. That means you have to be careful when signing over ownership rights. You likely want to have a provision that maintains your ownership of background technology that went into the finished product. However, be sure to give the client a nonexclusive license to use that background technology.
6. **Warranty Provisions.** The place to guarantee your work. Give a timeline for when you will make repairs or replace the product free of charge if it doesn't operate as specified. Consider including a non-infringement warranty, too, which states that the software will not infringe on anyone's copyrights or other intellectual property rights.
7. **Dispute Resolution.** Details on how to resolve any conflicts. It may include an arbitration clause or mediation clause. Arbitration allows an unaffiliated person to make a decision about the issue. If your contract includes a binding arbitration provision, you can't go to court to enforce the contract (but neither can your client). Mediation is cheaper than arbitration and is never binding. The mediator helps you and the client sort through the dispute and provides an objective point of view when needed.

For a template of a software development agreement, check out the [sample provided by PandaDoc.com](#).

HOW TO CREATE CLIENT CONTRACTS ON A BUDGET

As a small-business owner or tech entrepreneur, you probably don't have the bankroll to keep an attorney on hand to create legal documents as you need them. Get around this by...

- **Having a lawyer create boilerplate contracts for each of your major services.** Yes, this takes a little capital, but once these basic contracts are approved and legally sound, you can adapt them for projects as needed.
- **Pillaging the Internet's endless (and useful) resources.** Of course, you'll still need to use your common sense here and only enlist the advice of trusted sites. We recommend [ContractEdge.com](#) and [Nolo.com](#), two websites that offer downloadable contracts and DIY tips.

Now that we've covered client contracts, let's take a look at some employment contracts that help prevent problems when hiring workers.



On a budget? Have a lawyer create boilerplate contracts that you can tweak.



CONTRACTS THAT
DEFINE EMPLOYMENT
RELATIONSHIPS

CONTRACTS THAT DEFINE EMPLOYMENT RELATIONSHIPS

One clear indication that your IT business is flourishing? You have so much work that you have to hire some help to keep up with demand. That's the good news.

The bad news is that when you hire, you can be held liable for a host of problems. For example, if a subcontractor makes a mistake, your company could end up paying for the lawsuit against him. If you accidentally misclassify an employee as an independent contractor, the IRS could fine you.

One way to prevent fines and lawsuits is to use contracts. In this chapter, we'll look at the key ingredients of several contracts you may use to limit your liability exposures and ensure your employees or contractors understand the terms of your relationship.



Employment contracts help you clearly define the terms and expectations for people you hire.

EXAMPLES OF EMPLOYMENT CONTRACTS

As with client contracts, employment contracts always need to include...

- Contact information of both parties.
- Effective dates.
- Signatures from both parties.

We won't keep repeating these items. Instead, we'll focus on what various employment contracts cover and how to use them.

In the true spirit of an eBook about contracts, here's your disclaimer: even though we hit the high points of each type of contract, these lists are not templates. When in doubt, enlist the help of a legal professional to create your business contracts.

INDEPENDENT CONTRACTOR AGREEMENT / FREELANCE CONTRACT

When you want to hire temporary help or an expert for a single project, you likely want to hire a freelancer (i.e., an independent contractor). These workers belong to the 1099 tax classification, which means they are in business for themselves. That also means you don't have to cover them with [Workers' Compensation Insurance](#), pay part of their employment taxes, or offer other benefits.

However, your business can get in serious trouble if it misclassifies employees as independent contractors to save a few bucks. A freelance contract / independent contractor agreement can help keep you honest (and support your defense if the IRS audits you).



Here are some of the points a freelance contract includes:

- **Services.** Outline of the project at hand, due dates, and deliverables. Be sure to specify the contract term (e.g., whether the project is a one-time gig or ongoing work). Depending on the type of project, you may need to address which party has intellectual property rights.
- **Fees and Payment.** Pay rates, pay cycles, and billing procedures.
- **Relationship of the Parties.** Explicitly state that the party contracting with your company is an independent contractor. Even if the person you're dealing with is a seasoned freelancer, it helps everyone to explicitly state that they are classified as a 1099 worker and aren't entitled to employment benefits.
- **Non-Disclosure.** Explanation that your contractor must not share company secrets that they learned while working with your business. You may wish to use a separate NDA altogether.
- **Indemnity.** This clause needs to be written by a lawyer because the language has to be precise to stand up in court. It should state that the contractor will hold your business harmless for any injuries that arise from their negligence.

For more details, check out the [independent contractor agreement template at RocketLawyer.com](#).

SUBCONTRACTOR AGREEMENT

Let's say you're a website developer, and you've been hired to create a brand-new, optimized website for a client. You decide to hire an **SEO professional** to work for you as a subcontractor, which your client contract allows. However, you need a subcontractor agreement to protect yourself. That's because the subcontractor has access to sensitive client information – and you could be held responsible if that information finds its way into the public sphere thanks to your subcontractor's loose lips. For example, while writing about the project on their blog, the SEO professional could accidentally unveil new products and marketing initiatives that aren't public knowledge yet.



Employment contracts help you clearly define the terms and expectations for people you hire.

Let's look at how a subcontractor agreement can help you avoid being held responsible for mistakes you didn't make. This agreement includes:

1. **Scope of Work.** Expectations for the subcontractor's work. Be sure to describe the project and their duties in detail. If the subcontractor can hire their own help, state that they are not your employees or subcontractors to avoid being held accountable for their employment-related issues.
2. **Duration of Work.** Whether the project is on a fixed timetable or on an "as needed" basis.
3. **Billing and Payment.** Typically, it's a good idea to pay subcontractors for certain milestones of the project. This lets you review their work as they go. However, you'll need to decide whether the subcontractor will be paid at a fixed or hourly rate. Clearly define all terms of payment (e.g., the rate, frequency, invoicing procedure, etc.).
4. **Employment Relationship.** State that the subcontractor is an independent contractor and that you are not responsible for withholding taxes or offering benefits and Workers' Comp coverage.
5. **Non-Disclosure.** As we mentioned before, your subcontractor likely has access to your client's sensitive information. They may even pick up a few of your trade secrets along the way. This is the place where you define what information can and can't be shared. You may also need to outline consequences for violating the clause. (See page 17 for details.)
6. **Non-Compete.** Statement that your subcontractor can't steal work from you. However, non-compete clauses can be tricky, as local laws may limit their validity. You'll need a lawyer's touch on this one. (Jump to page 18 for more.)
7. **Work for Hire.** Statement that the subcontractor has no ownership rights to the project. You own the work your subcontractor produces once it's submitted to the client. (Details on page 19.)
8. **Insurance.** For IT work, it's important that your subcontractors carry their own **General Liability Insurance** and Errors and Omissions Insurance. In fact, your main contract with your client may require you to only hire subcontractors who are adequately insured. Additionally, you should require that your subcontractor has Workers' Compensation Insurance. Otherwise, you could be held responsible for their occupational injuries.

9. **Assignment.** Statement that only the subcontractor can fulfill the terms of this assignment so they don't subcontract out part of their work.
10. **Indemnity.** Again, you'll want a lawyer to write this to make sure it can hold up in court. This protects you when the client tries to sue you over work your subcontractor produced. Some states do not permit indemnity claims arising from your own negligence. As a failsafe, make sure you carry adequate E&O Insurance to address your potential liabilities.
11. **Warranties.** Any promises the subcontractor makes about their work.

Check out [FireEye's sample subcontractor agreement](#) for a good example of what these documents look like in print.

EMPLOYEE CONTRACT

So you want to hire an employee – someone who can learn and grow with your business. Excellent! An employee contract (aka “employment agreement”) can help prevent problems before they arise.

Let's look at some key points in this type of agreement:

1. **Relationship and Duties.** Statement of your employee's tax classification (W2, usually) and their job duties. In a separate clause under this section, you should also account for when the employment relationship can be terminated (e.g., if an employee sexually harasses another employee).
2. **Non-Compete.** This can limit an employee's ability to compete with you in the future (e.g., if they start their own company). We'll discuss non-compete agreements in more detail later.
3. **Non-Disclosure.** This ensures your employee can't divulge company secrets, even after the employment relationship is terminated.
4. **Work for Hire.** Statement that you, the employer, are the owner of the work the employee creates.
5. **Other Important Clauses.** You may also want to include clauses that define how long the employment arrangement will last, compensation and benefits, dispute settlement, and governing law (which is especially important if your employee works remotely).

Keep in mind that every employee contract varies depending on the type of work your employees do. For an employment agreement example, check out this [sample contract by Stanford Graduate School of Business](#).

NON-DISCLOSURE AGREEMENT (NDA)

When you work in the tech industry, trade secrets are your bread and butter. For example, say you're a mobile app developer, and you're working on an app that promises to revolutionize mobile device security. You could make a fortune, so long as word doesn't get out about your new product before it's ready to hit the market.

To protect those secrets, you need to use non-disclosure agreements (also called "NDAs" or "confidentiality agreements"). This kind of contract essentially swears parties to secrecy about confidential information (e.g., a sales plan, a list of customers, or programming code). Your NDA ensures that you have legal recourse if someone shares your information with the wrong parties.

Here are the key elements of non-disclosure agreements:

1. **Definition of Confidential Information.** What constitutes protected confidential information. Consider subject matter that is at the heart of your business, such as innovative processes, client lists, or financial information.
2. **Exclusions from Confidential Information.** Information that doesn't need protection. These exceptions are usually based on what the laws have to say. For example, if the receiving party (i.e., the person signing the contract) already knew about something before you disclosed it, it can't be protected by the agreement.
3. **Obligations of the Receiving Party.** Statement that the person signing the contract can only use the confidential information in specific ways. Most state laws prohibit the receiving party from breaching the confidential relationship or inducing others to breach it.
4. **Time Periods.** Establishment of how long the information must remain confidential. In the United States, five years is common, but some companies prefer two or three years.
5. **Boilerplate Provisions.** These are usually included at the end of every agreement (e.g., governing laws, dispute resolution, etc.).

For a sample confidentiality agreement, check out [Nolo.com's customizable template](#).



NON-COMPETE AGREEMENT

This agreement can either be a standalone contract or a provision added to an employee contract. Non-compete contracts exist between you and your employee, and they require that your employee not use what they learned while working for you against you. Non-compete agreements usually stipulate that an employee won't work for competitors, steal your current clients, or compete with you for some period of time once they leave your company.

Non-compete contracts can be difficult to enforce if they're unreasonable. Here are some key considerations to keep in mind:

1. **Time Frame.** Period of time the agreement can be enforced for after the employee leaves. A year is usually considered reasonable.
2. **Geographic Area.** If your agreement covers too wide an area (e.g., the whole country), it can very easily be challenged if the employee takes their case to court.
3. **Types of Business Engagement.** The viability of your contract depends on whether or not its provisions still allow an employee to earn a living with limited adverse effects on your business. If you prohibit a former employee from engaging in too many types of business, a court will likely deem the agreement unenforceable.

Check out [SME Toolkit's sample non-compete agreement](#) to see an example.



Worried your former employees will take what they learned from your business and use it against you? A non-compete agreement may be in order.

WORK FOR HIRE AGREEMENT

Usually added as a provision to employment contracts, the work for hire agreement states that any work the employee or contractor produces while employed by your business belongs to you. If you didn't own the rights to the work, your business couldn't make money from it.

If your business requires that employees produce original work for you to sell, you need them to sign a work for hire agreement to get those rights.

For example, if you own a software development business, you would need your programmers to sign a work for hire agreement so you could sell and distribute the products they developed. In terms of copyright law, the work for hire clause ensures that you, the employer, are considered the author of the work.

Essentially, a work for hire agreement states...

1. The employee or contractor agrees to complete work for you in the manner and timeframe agreed upon.
2. The work contributed will be considered a "work made for hire" as defined by the copyright laws of the United States.
3. The employer is the sole and exclusive owner and copyright proprietor of all rights and proceeds of the employee's services, no matter the stage of completion.
4. If work falls outside the scope of "work made for hire," the employee agrees to transfer and assign the copyrights to the employer.

5. The work doesn't necessarily have to be attributed to the employee or contractor.
6. The employee agrees that the work submitted doesn't violate copyright laws.

These are generally short contracts. Though they sound a little severe, they are pretty standard for most employment relationships that require employees to produce original work. You can see a [work for hire agreement template](#) courtesy of [JDSupra.com](#).

Now that you know a little more about employment contracts, let's move on to contracts you may need for engaging with customers and the public.



OTHER CONTRACTS:
THE TERMS AND
CONDITIONS EDITION

OTHER CONTRACTS: TERMS AND CONDITIONS EDITION

Running a business in the digital age means you probably have a website, app, or some way to distribute information online. And if you do anything other than offer information, you'll likely need a terms of service agreement for those who use your services.

TERMS OF SERVICE AGREEMENTS

These are rules that users agree to in order to use a service. For websites, this may merely be a disclaimer. For mobile apps, you may have users agree to these terms before they can download the program to their device.

Depending on what you do, your terms of service agreement may include the following components:

PRIVACY POLICY

Your business can be sued if it's not specific about the way it stores, uses, manages, or discloses personal data. That's why, if you gather information from your customers or clients, you need to have a privacy policy.

For example, if you run an [Internet marketing business](#) or you are a [database administrator](#), your privacy policy needs to be bulletproof. Not only do you handle clients' sensitive information, but you have access to their clients' data, too. If you store that information in a way that's not specified in your privacy agreement, your clients (and their clients) can sue you.



Your business can be sued if it doesn't stick to stated plans for storing, using, or managing personal data.

Because protocol for handling other people's information should be transparent, most businesses include their privacy policy on their website. That way, clients and customers don't have to guess about how their information will be used.

Typically, privacy policies describe...

- What personal information is collected.
- How the information will be used, stored, or managed by the company.
- How the information will be transferred to third-party companies.
- How cookies will be used.
- How users can modify or delete their personal information.
- How users can opt out of future communications.
- What processing server will be used when collecting sensitive financial information.

Looking for an example? Check out [Google's in-depth privacy policy](#). Yours may not need to be as detailed as that of a multi-billion-dollar company, so adapt accordingly. And keep in mind that if you change your policy, you need to notify your customers.

DISCLAIMERS

If your website links to other sites, offers ad space, or has a blog that allows users to comment, you should probably have a disclaimer in your terms of service agreement. This should explain that your IT business doesn't endorse and isn't responsible for the accuracy or reliability of third-party content. As for ads, you must state when you are getting paid to provide endorsements.

Also include a disclaimer about the information your site offers. For example, you could state that the site and its components are for informational purposes only, and that

your site isn't liable for the accuracy or usefulness of any information made available on it. That way, if someone sues you because they followed your blog's security tips and they still suffered a data breach, your disclaimer may help you in court.

Though a disclaimer may minimize the financial impact if you are sued, it won't deter lawsuits altogether. That's why you should always carry adequate liability insurance just in case.



TRANSACTION CONDITIONS

If you sell software as a service (SaaS), your terms of service agreement should include notices regarding credit card use, third-party payment processing, and refunds. These notices are called "transaction conditions."

INTELLECTUAL PROPERTY / COPYRIGHT NOTICES

Include notices regarding copyright and trademark of the site's components.

Now that you know the touchstones of a Terms of Service agreement, let's move on to another important issue: what a breach of contract is and how it can lead to lawsuits.



WHAT IS A “BREACH
OF CONTRACT?”

WHAT IS A "BREACH OF CONTRACT?"

Don't worry – we're not going to overwhelm you with legal jargon in this chapter. Instead, we'll cover the basics of what a breach of contract is, situations that constitute a breach, and how you can protect your small IT business if it's accused of not holding up its end of the bargain.

MATERIAL BREACH: THE IRREPARABLY BROKEN PROMISE THAT LEADS TO LAWSUITS

A breach of contract simply means that one of the agreeing parties failed to honor the contract. Easy enough, right?

In contract law, there are a couple types of these breaches. However, we will focus on the kind of breach that the courts care most about: a material breach of contract.

A material breach essentially obliterates the contract. It is an act that renders the agreement "irreparably broken" because it makes the very heart of the deal worthless. When material breaches occur, the other party can waltz right to court to try to collect damages.



Here are some situations that might signal a material breach of contract:

- **A party has been deprived of the thing of value they bargained for.** Say, for example, you're a [network security consultant](#), and you sign a contract with a client claiming that you will install antivirus software. If you install iTunes instead, they could sue you for a material breach.
- **Throwing money at the problem won't necessarily right the loss.** You're a software developer, and you've committed to create exclusive CRM software for your client. But for whatever reason, you realize you can't deliver your end of the deal before the project gets underway. Because it will take more than reasonable effort or expense to fulfill the terms of the contract, your client might have a case for a material breach.

- **There's hardly a chance that the breaching party can fix things.** Say you keep missing milestones clearly outlined in your client contract. The client may be able to make a case that you demonstrated that the problems aren't going to be corrected.
- **The non-breaching party is ready to perform their side of the bargain.** Here's the bright side of material breaches: the other party has to be ready and willing to perform their side of the contract in order for the breach to be legitimate in the eyes of the law. So say your client claims that you didn't create the software they asked for. However, you followed the specs outlined in the software development agreement. It's just that the client is holding out payment because they wanted you to throw in a few other touches. The client could lose their case because they aren't willing to uphold their side of the deal.

You can learn more about breaches of contract in Nolo.com's series, "[Contract Disputes](#)."

Keep in mind, though, just because you haven't breached a contract doesn't mean your clients won't accuse you of doing so. Remember, there's a significant knowledge gap between tech professionals and those who don't work in IT. Even if you clearly state in writing what you're going to do, it may not be enough to curb client expectations. When clients are dissatisfied, they're more likely to sue.



\$2,000 to \$5,000: the average cost of legal defense fees to respond to frivolous claims.

E&O Insurance can pay for your legal defense costs and settlements or judgments when you're sued over breaching a contract.

DEALING WITH BREACH OF CONTRACT LAWSUITS

As with any lawsuit, you don't actually have to do anything wrong to be sued for breach of contract. And while a frivolous breach of contract suit against your business will likely be dismissed by a judge, you'll still have to go to the trouble of presenting a defense for yourself or risk a default judgment against you.

What does it cost to present a defense for a case that gets dismissed? Between \$2,000 and \$5,000, according to the [U.S. Chamber Institute for Legal Reform](#). Luckily, you don't have to pay those costs out of pocket. With a Professional Liability Insurance policy in force, your benefits can cover...

- Legal defense fees.
- Settlements.
- Judgments if you're found liable.
- Other court costs (witness fees, docket fees, etc.).

Most clients require you to have a Professional Liability (also called Errors & Omissions) policy anyway. The hope is that you never have to use it, but you'll be glad you have it on hand if a demand letter comes your way.

Keep in mind that as soon as you catch word of a potential E&O claim, you should notify your insurance provider. For more on that topic, read the blog post, "[What Happens if I'm Sued? A Guide to Handling Errors & Omissions Claims](#)."

Read on for more information about how to stay protected in court.



MAKING SURE YOUR
CONTRACTS HOLD UP
IN COURT

MAKING SURE YOUR CONTRACTS HOLD UP IN COURT

As we mentioned at the beginning of this guide, it doesn't take much to make a contract valid. To be legally binding, the document simply has to outline an agreement where something of value is exchanged. Once both parties sign on the dotted line, you have a bona fide contract.

Though not all contracts have to be in writing to be effective, oral contracts are much harder to prove. That's why it's a good idea to always put your business contracts in writing.

Let's take a quick look at what constitutes as an agreement and an exchange of value.



For a contract to be legally binding, it needs to show (usually through signatures) that agreeing parties are exchanging something of value.

THE AGREEMENT: WHAT COUNTS AS AN OFFER

Let's say you're an IT consultant, and you meet with a potential client to talk about their IT needs. You propose a multi-pronged solution to secure their network, including new software to detect viruses and malware. You also give them a price for this service. This is the offer.

After taking a dramatically long sip of coffee, the client beams at you and says you start on Monday. That's an acceptance. Of course, this is the most basic example of an agreement, and there are many routes the conversation can take. For instance, the client may counteroffer with a different rate, and you may have to mull it over. Essentially, you both just need to get to a place where you accept the terms on the table.

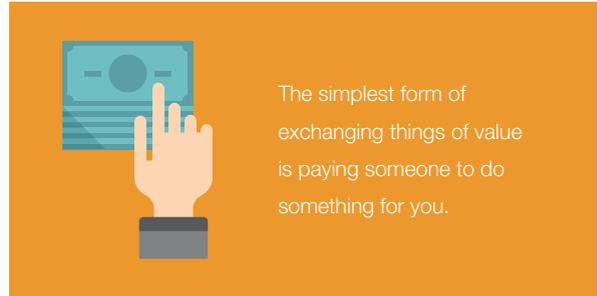
And as we mentioned, you'll need to get all this in writing in case something goes awry and that client takes you to court.

THE GREAT EXCHANGE: THINGS OF VALUE

The thing of value at the heart of the exchange is often a promise to do something in the future. For instance, in the example above, you're promising to implement IT solutions to secure your client's network. Your client promises to pay you the rate you agreed on.

And so the wheels are set in motion.

Keep in mind, though, if one person does something as a gift, it's not a contract. Similarly, a one-sided promise is also not a contract. Both parties have to be in agreement and exchange things of value (e.g., services in exchange for payment) in order for a contract to exist.



YOUR CONTRACT IN COURT: WILL IT SURVIVE?

Every contract is different, so there's no one-size-fits-all solution to making sure a contract holds up in court. However, the following three tips can help:

1. **Get a lawyer on it.** If your contract includes indemnity clauses (and it should), you need a lawyer to craft the language. Plus, it's never a bad idea to have a lawyer review your contracts to make sure they are specific, compliant with state laws, and not overreaching.
2. **Get it in writing.** It's difficult (if not impossible) to prove oral contracts in court.
3. **Get it signed.** A contract isn't legally binding until both parties show their agreement by signing their names to it.

And that's the long and short of it. Now go out there and exchange some things of value.

CONCLUSION

In some ways, striking a business deal is like driving a car. You never know which time you get behind the wheel could result in an accident. Contracts are like seatbelts. They may not prevent a dispute from happening, but when one does crop up, they may protect you from the full impact of the financial blow.

In short, always use contracts. They can only stand to protect you. And for extra protection, be sure you have Errors & Omissions Insurance to shield you from the financial burden that accompanies breach of contract claims. To get quotes tailored to your IT business's risks, [submit an online insurance application](#) with insureon today.

