



Service Contracts Overview & Commentary

A service contract is a type of agreement widely used to protect the service providers as well as their clients. A service contract is a legal contract between a business and its customers or clients, outlining the terms and conditions and duties owed to one another; covering various aspects such as scope, pricing, payments and responsibility of services. These contracts protect both the business and the customer by creating clear and enforceable guidelines both parties can follow.

Service contracts between two parties may be unique to each situation, but a standardized contract form is meant to include the legal provisions your company may want as part of every customer negotiation and relationship. We have provided a sample service contract in the training materials for that purpose and for you to tailor to your needs. This commentary is intended to explain and comment on the contract clauses in the sample contract.

The sample contract and this commentary are intended for small businesses providing basic services to customers, such as cleaning, physical wellness, pet-related and arts-related services. The contract and the commentary are not for Independent Contractors, software related agreements, construction or more complex agreements. Please seek attorney advice for these types of services.

Note:

The terms “contract” and “agreement” will be used interchangeably throughout this document.



Service Contract Commentary

This commentary is for educational and reference purposes only and not a comprehensive guidance. It is not legal, tax or business advice. An organization should always consult an attorney to tailor this information to the organization's needs. Eligible applicants are encouraged to apply for Communities Rise's (CR) legal services as CR offers assistance reviewing agreements/contracts.

Top of the Contract

Before using this Sample Service Contract, please remember to give the document a title that does not include the word “sample.”

This Sample Service Contract is drafted from the point of view of a small business that provides services to customers/clients. As you can see, the contract assumes your business is organized as a Washington Limited Liability Company. If this is not the case, please edit this line to correctly describe the structure of your business (for example, “Washington Corporation”).

Section 1 - Term

The term clause clarifies the duration of the contract. This clause helps protect your business by making clear the specific time frame during which the services will be provided and when the contract starts and when it ends. The term can be fixed, ongoing, or based on the completion of specific milestones. For example, a one-year service contract is an example of a fixed term. A common approach to the term clause is the milestone “until completion of the services” which is used in the template.

Section 2 - Scope of Work

The scope of work clause clearly outlines all of the services to be performed by the business for the customer. This is one of the most important terms in a services contract. This clause can help your business by clarifying expectations of the customer and making sure there are no misunderstandings. It is useful to specify the tangible outcomes that the customer can expect as a result of the services—e.g. a clean house for a cleaning business. You may want to consider drafting a detailed description of services in the scope that breaks down the overall service into specific tasks and activities and a detailed description of each task. Also, it is helpful in the scope to attach realistic timelines to the delivery of services and to outline deadlines to ensure that both parties are aligned on timing expectations.



Section 3 - Payment

If the services contract contemplates monetary payment for the services, the cost of the services should be clearly outlined in the payment clause. This clause should include service rates per hour, one-time payments, product costs, and anything else the customer is expected to pay as part of the agreement.

Section 4 - Warranties/No Warranties

In a services contract, a warranty clause refers to promises made by the seller/service provider about its services. This is similar in concept to warranties most are familiar with from purchasing expensive products such as computers or phones; in that if something major is wrong with the product, a warranty can provide an opportunity to get your money back or at least get the item repaired without charge.

In the services contract context, the customer's experience of the services can be subjective; even when services were provided perfectly there is still the possibility a customer could be dissatisfied. This is distinct from the purchase of goods context where there is more clarity and objectivity if a product is defective. Therefore, best practice in a services contract is to make clear in the contract that no warranties have been made to avoid customer claims based on their subjective lack of satisfaction with the services. This is accomplished using what is called an "As Is" or "No Warranties" clause. This is what is in the template.

Section 5 - Limitation of Liability

The Limitation of Liability clause helps protect your small business if something goes wrong and your business violates the contract terms. If that happens, this clause is intended to step in and protect your business from a large claim of damages by a customer. These damages may include consequential, incidental, indirect, exemplary, special, punitive, or enhanced damages, as well as any loss of actual or anticipated profits. The clause protects your business by specifying a maximum amount of damages—a damages cap—that your business can be held financially responsible to your customer for such damages. This cap is often set at the amount paid to the business within the 12 months preceding the claim. It is important to note that this clause and the cap on damages do not eliminate the potentially liable party's responsibilities to the other party related to indemnification, confidentiality, or infringement of intellectual property.

Section 6 - Indemnification

Indemnification is a little different from Limitation of Liability to help protect your business. Similarly, Indemnification clauses are designed to protect one party for their costs, losses and damages resulting from the actions of the other party. But different from limitation of liability



typically, indemnification is protecting against lawsuits against your business from 3rd persons who were harmed by some action of your customer/client—and as a result that 3rd person sues your business. So the typical costs that indemnification helps protect against are the legal costs of defending yourself from such a lawsuit.

Key issues to consider in drafting an indemnification clause include: scope of the coverage and clearly defining the kinds of types of losses or claims covered by indemnification; specifying any limitations on the liability of the party experiencing facing claims against it such as a monetary cap; and outlining the process for making indemnification claims, including notice requirements.

Section 7 - Ownership of Intellectual Property Rights

For a business focused on IP creation—like graphic design or software—you should consult with an attorney as you will want to craft a number of special clauses related to your IP focused business—to protect your IP rights. This template is not intended for those types of businesses. This template assumes that the creation of intellectual property is incidental under your contract and is not your main business.

The Intellectual Property clause is a simple clause addressing the ownership, use, and protection of creative works that your business might produce during the contract, for example a curriculum. There are two issues our clause addresses:

- **Ownership:** Specify who will own the intellectual property created during the course of the services. Under our template we are making it simple that your business owns any intellectual property that you produce during the course of the contract. This is crucial for avoiding disputes over who owns any creative works that were produced during the services.
- **License Rights:** A license is a legal right to use intellectual property that someone else owns. If the client is to receive a license to use the intellectual property, then you should outline the scope, duration, and any limitations on those license rights. For example, you may want to limit how long they may use the intellectual property, or for which purposes they may use it for.



Section 8 - Confidential Information

This section addresses any confidential information that company or client may acquire during the business relationship. If parties have significant confidential information, this section may contain a penalty clause as well, in case the confidential information is revealed by the non-owner of the confidential information.

Obligations: Specify the obligations of both parties to keep confidential information confidential during and after the term of the agreement. This often includes non-disclosure and non-use requirements.

Exceptions: Outline any exceptions to the confidentiality obligations, such as information that is already public information or becomes public through no fault of the receiving party.

Duration: Specify the duration for which confidentiality obligations will apply. Typically this will extend for a certain period beyond the termination of the agreement.

Issues to consider: Permitted Disclosures: You may want to consider if its relevant circumstances under which disclosure may be permitted, such as to employees, contractors, or legal advisors bound by similar confidentiality obligations.

Section 9 - Termination

The "Termination" clause outlines the circumstances under which either party can end the contractual relationship before the completion of the term. Termination clauses are essential for protecting your business against bad behavior by the other party such as failure to make prompt payments.

There are different options for how to draft the termination clause. One type is “termination for convenience.” This is the most typical termination clause and this is the one in the Template. This allows either party to terminate the contract without any specific reason or “cause.” Usually there is a required advance notice period that either party has to give to terminate.

Another option is “termination for cause.” Termination for cause means you are requiring that either party has to give a reason to terminate. Typical reasons include failure to perform according to the contract terms, like failure to pay.

Issues to consider regarding termination clauses are to think about what are the essential items your business needs to “recover” in the event of termination, such as the return of confidential information: payment for services already provided, and resolution of any outstanding matters.



Section 10 - Dispute Resolution, Venue and Applicable/Governing Law

A dispute is any conflict or disagreement that you may have with your customer/client, including informal conflicts and formal lawsuits. Since we are in Washington state, we recommend WA State law and courts in this section even if clients are located out of WA state. In most cases, mediation is advantageous over going to court as it is much cheaper and faster.

Section 11 - Severability

This section protects your legal rights in the event that a lawsuit questions the validity of some small parts of your contract.

Section 12 - Assignability

This section describes that the customer/client cannot transfer its rights and obligations under this agreement to someone else without your written approval

Section 13 & 14 - Modifications and Amendments

Many standard Service Agreements require updates over time. A clause that allows the business owner to modify the agreement in the future can be made to account for pricing changes, rate updates, or other necessary changes. The most common change to a contract is adding to the scope of services, and such changes can be easily made by amending Exhibit A.

Communities Rise Contact Information

Questions? Feel free to send us an email at smallbiz@communities-rise.org or reach us via our [contact form](#). Feel free to leave a voicemail at 206-324-5850 or see our [business resources](#) on our website.