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Do's and Don'ts of Contracts

*The terms “agreement” and “contract” are used interchangeably.

1. **Texas PTA Criteria.** Before you enter into any agreement, please be certain that the transaction you are about to agree to meets the Texas PTA's criteria and policies—especially as it may relate to fundraising. Texas PTA has developed such guidelines (particularly as they relate to fundraising) to help assure legal compliance and protect the goodwill associated with the “PTA” name. Please do not rely on your memory, but review Texas PTA's policies from time-to-time.
2. **Do your “Due Diligence”.** Before entering into any agreement with a vendor, check the vendor's reputation carefully by doing the following: search the company on the internet, check references, check with the Better Business Bureau, and finally, check with the Secretary of State in which the vendor is incorporated. That office can tell you whether the corporation you are about to enter into an agreement with is in good standing. If not—do not do business with this company! Contracts are enforceable, even with bad companies!
3. **In Writing.** A contract must always be in writing with the responsibilities, duties and obligations of each party clearly spelled out in the document.
4. **State Legal Names of the Parties.** The first paragraph at the top of an agreement should provide the legal names of the parties to the contract and the date that the parties enter into the agreement. (This will be referred to as the “Introductory Paragraph”). For individuals, include the full first and last name, and middle name, if appropriate, address (no post office box number) where the individual resides, phone number, email address and any other identifying and contact information where the individual can be reached if there is a problem. But if at all possible, please avoid entering into contracts with individuals unless they carry proper insurance regarding their goods and/or services. For corporations, check with the Secretary of State in the state where the corporation is incorporated to find its correct legal name. Also include the state where the corporation is incorporated and the address and phone number of its principle place of business.
5. **Recitals.** Recitals are the “whereas” clauses that follow first Introductory Paragraph at the beginning of a contract. They should explain in a step-by-step format what the contract is about and the reasons why the parties desire to enter into the agreement. Because they are not part of the “terms” of the agreement, they are not actually a part of the agreement that can be enforced; it's as if they are not a part of the contract at all. Therefore, it is important to have a term that incorporates them into the contract (i.e., “The recitals set forth at the beginning of this document are incorporated herein (or into this contract) by reference.”).
6. **Clear Understanding and Clear Language.** Contract writing is clear, direct and precise. Do not let an agreement's “legal” language intimidate you. If you do not understand what the agreement is saying, then chances are that a judge or jury will not understand it either should there ever be a dispute over the language in a court of law. Ask the other party to rewrite the language and to document examples (see point no. 9 below), if necessary.
7. **No Vague or Ambiguous Words.** Avoid using words that can have more than one meaning, or make the meaning unclear. For example, “biweekly” can mean twice each week or every other week. Instead, say what you mean.
8. **Define Words and Be Consistent.** Define words when first used—capitalize the first letter of the word and initially put it into quotes (i.e., see the example of such a word in paragraph 4 above, and the use of the defined word in paragraph 5 that follows). Moreover, be consistent with the use of words. For example, if you refer to fundraising items as “goods,” do not refer to them later as “items.”
9. **Keep It Simple.** Do not repeat provisions unless repetition is necessary to improve clarity. When you say the same thing in a different way more than once, chances are you will create ambiguity—which creates more than one meaning and therefore, confusion. If you use an example to clarify a difficult concept or formula, be sure that the example is accurate and consistent with the concept as it has been worded.

10. **Specific Term.** What is the “term” of the contract? In other words, how long is the agreement to last? The agreement should have specific dates as to when it starts and when it ends (i.e., “This contract shall commence (or start) on _____ and terminate (or end) on _____.”). Avoid contracts that have automatic renewal terms, or automatic renewal terms unless each party gives notice of termination within a certain timeframe (i.e., “This contract shall automatically renew every two years” or “This contract shall automatically renew every year unless either party gives sixty (60) days written notice of termination before the renewal date.”).

11. **Termination Without Cause.** Be sure that the agreement allows your organization to terminate or get out of the agreement with or without cause (or for no reason—other than you simply want out of the agreement).

12. **Compensation.** What will be the payment for goods and/or services? What goods and/or services will be received in exchange for the payment? When will the payment be due? Will payment be broken into installments, and if so, when is each installment due? Does the compensation include any and all taxes? Make sure that the contract spells these details out, and that these provisions meet with the Texas PTA’s criteria.

13. **Arbitration Clause.** Consider including an arbitration clause when agreed to by the other party. Arbitration is a method of resolving disputes over the contract outside the courtroom. It is often cheaper and more efficient than litigation.

14. **Transfer the Risk (“Indemnification”).** Every agreement involves risk. Goods or services contracted for may be defective and cause injury or damage. Though not likely, it is probable, and known to periodically happen. Always transfer the costs that may arise from the risk to the other party. This is what is known as “indemnification.” For example, where the contract involves the selling of a vendor’s goods and/or services, the vendor should “indemnify” or protect the PTA from any claim that someone might bring in conjunction with the goods and/or services being sold. From Texas PTA’s Treasurer Chairman’s Guide 2009, “A variety of insurance policies are available to vendors to protect themselves and your PTA against injuries and accidents resulting from the use of their product. Other policies also provide proof of coverage for claims under the Deceptive Trade Practices Act. Consider requesting proof of coverage from your selected vendor before doing business.” Additionally, require that your local PTA and Texas PTA be added as “additional insureds for added protection.”

15. **Warranty of Goods and/or Services.** The vendor should warrant at the very least that the goods and/or services will be free of defects, and that it does and will abide by all local, state and federal laws applicable to the goods and/or services made the subject of the contract.

16. **Choice of Law, Venue and Jurisdiction.** What law will apply if there is ever a dispute between the parties about the contract? The “choice of law” should be Texas. Where will the contract be arbitrated or litigated to resolve the dispute? The “venue” should be your county in the State of Texas, and the jurisdiction should reside with the courts in your county.

17. **Approval and Signature.** The contract should always have the approval of the PTA’s local board. Moreover, parties should never sign the contract in their own individual capacity—otherwise the persons signing the contract can be held individually liable. Rather, each party should sign the contract with their title as an officer, along with the organization’s or corporation’s name. For example, if Jane Doe is president of her local PTA, signing as just “Jane Doe” is not appropriate. Here, Jane Doe will be personally liable should there be a dispute and finding of wrongdoing by her local PTA. Rather, Jane Doe should sign as “Jane Doe, President, Local PTA.”

18. **Seek Legal Advice Where Possible.** The “do’s and don’ts” listed above are merely tips that generally make for a good and enforceable contract. However, every factual situation is different, and the above information is not to be considered specific legal advice to any particular contract. Every PTA is responsible for the contracts that their officers execute on behalf of their PTA. Therefore, when possible, please consult with a lawyer—perhaps there is a member lawyer in your local PTA who would be willing to review your contract and give legal advice particular to your situation.



