

Vendor Contract Considerations:

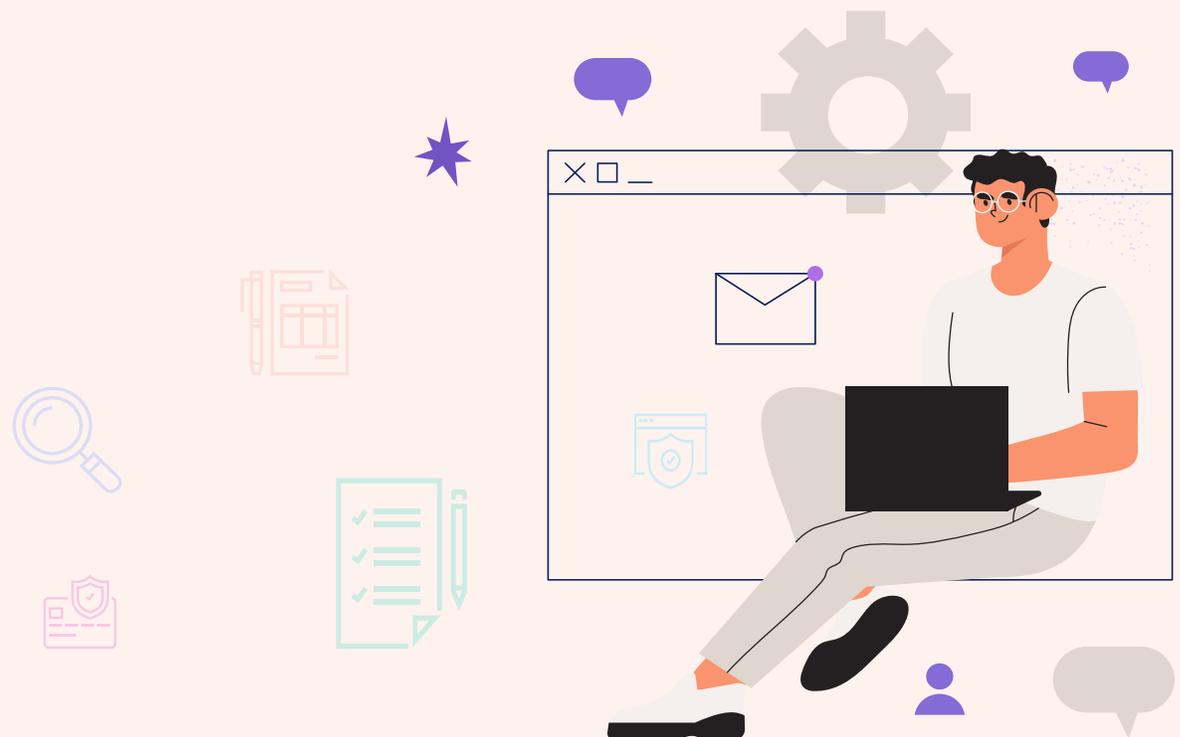
Sample Language and Recommended Tips



Vendor Contract Considerations: *Sample Language and Recommended Tips*

Contract management can often be a challenging process within third-party risk management, but it's a critical activity that protects your organization from vendor risk. While every organization will have *unique needs* when it comes to their vendor contracts, it helps to understand some basic guidelines and sample contract language to ease the process.

Consider using this eBook as a tool to obtain a general understanding of vendor contract components and some helpful sample clauses.



Vendor Contract Objectives

Before we get into some sample contract language, it's important to have a basic understanding of a contract's purpose. This legal document serves many functions that protect both parties, your organization and the vendor, for the duration of the engagement.

Here are just a few of the objectives:



Defining the scope:

It's critical to establish the scope of the vendor relationship including what product or service you're purchasing, pricing and payment details and timeframes on onboarding and implementation. In general, you want to clearly understand the responsibilities of both parties.



Identifying performance standards:

Service level agreements (SLAs) should be established with optimal clarity. These should include details on your organization's expectations as well as any penalties and remediation strategies for vendor performance issues.



Securing data:

The truth is that every organization is at risk for a third-party data breach. It's important to consider how your vendor will protect your data and notify you when an incident occurs. The return or destruction of your data after the relationship is terminated should also be addressed. By including security and confidentiality provisions in your vendor contract, you can lessen the likelihood and impact of a significant cybersecurity incident.



Defining term and termination:

The vendor contract is essential to define the term of the engagement so both parties understand the expected duties and responsibilities. The contract should also include details on termination including cause and any applicable transition services or transition plan.

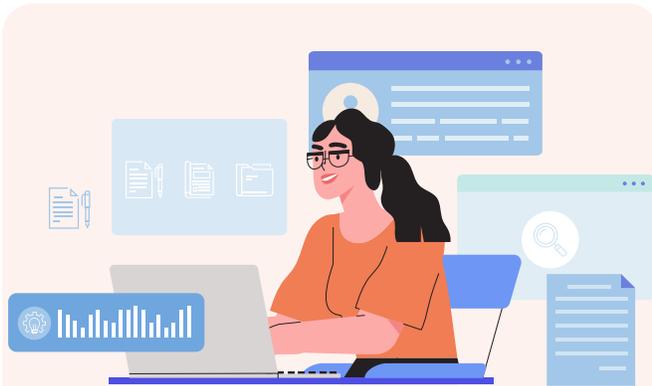


Protecting against liability:

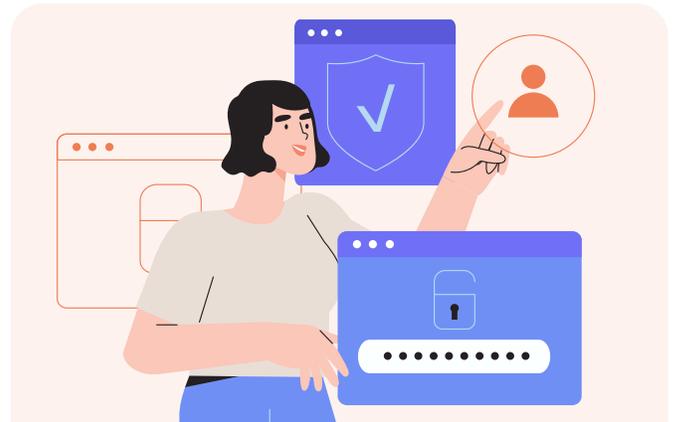
Indemnification clauses can be used to protect your organization from the liability that results from a negligent third party. Issues like infringement, breach of confidentiality or willful misconduct should all be included in the indemnification clause. These clauses should also specify the types of and insurance amounts that the vendor must carry to protect your organization from financial liability.

Special Considerations for Vendor Contracts

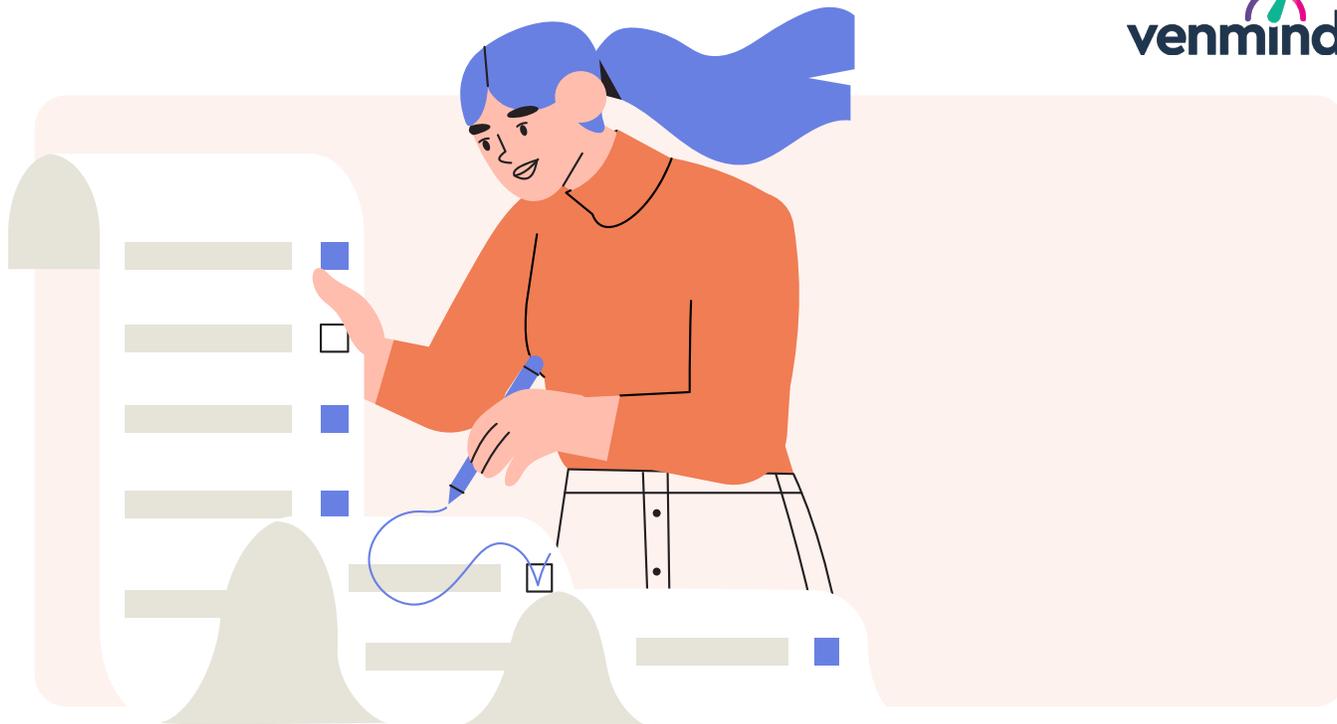
The style or format of a vendor contract may differ based on criticality, inherent risk level or even the product or service.



Contracts for critical or high-risk vendors (core processors, SaaS or anything that impacts your ability to service your clients) are regulated at a higher standard and will require a lot more provision for security, business continuity (BC) planning, service levels, etc.



Sometimes different contracts are product based and not always vendor based. A contract for a marketing consulting firm or landscaping company won't require as much detail since they don't have much (if any) access to personal data or keep you from your day-to-day operations.



Sample Language and Clauses

It's highly recommended to consult with legal experts, either internal or external, when creating and managing your vendor contracts. Subject matter experts within your organization, such as those on your information security or business continuity teams, can provide valuable insight.

The following clauses may be used as samples to build your own contract framework:



Disclaimer:

The following are sample clauses only and aren't intended to be legal advice or legal services provided by Venminder. You should tailor contract verbiage to meet your organization's expectations and product or service needs.

Service Level Agreements

QUANTITY

Vendor will supply and distribute a minimum of X (X) units during each quarter.

COST

Price per unit cost is tied to raw materials costs. Any requested change to cost per unit is to be approved in writing by Client in advance of manufacturing.

Force Majeure

Neither party shall be liable to the other for failure to perform, or delay in the performance of, any of the Services or obligations in connection therewith under this Agreement when such failure or delay is caused by a Force Majeure Event provided that each party invokes its respective business continuity and/or disaster recovery plan as required hereunder. Upon the occurrence of a Force Majeure Event that materially impacts Vendor's ability to perform some or all of the Services, Vendor shall, as soon as reasonably possible, give written notice to Client describing the affected area of performance, and the parties shall promptly confer, in good faith, to agree upon equitable, reasonable action to minimize the impact on both parties of such condition.

Vendor shall use commercially reasonable efforts, including but not limited to implementing Vendor's business continuity/disaster recovery plan(s), to minimize the disruption and/or delay caused by the Force Majeure Event and resume full performance of the Services as soon as reasonably possible. If Vendor is unable to resume full performance of the Services within X (X) business days of the first date on which the Services were disrupted and has not provided a plan for resumption of the Services that is acceptable to Client, Client may terminate this Agreement upon written notice to Vendor.

Disaster Recovery/Contingency Plan

Vendor shall at a minimum implement and maintain business continuity, disaster recovery and backup capabilities and facilities as reasonably necessary to ensure Vendor's continuing ability to perform the Services and Vendor's obligations hereunder in the event of a natural or man-made disaster with minimal disruptions or delays.

Vendor will establish & maintain disaster recovery procedures sufficient to establish all applicable regulatory requirements and requirements of independent auditors. Vendor shall test its BC/DR plan at least once annually and provide results to Client upon request.

Audit

Vendor shall keep full and detailed accounts for a period of not less than X (X) and shall permit Client to audit up to two X (X) of reports, logs and records of all data at any time with respect to Vendor's charges, policies, procedures and transactions with Client.

Assignment

Neither party shall have the right to assign or subcontract any of its obligations or duties under this agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed.

Indemnification

Client agrees to indemnify, defend, and hold harmless Vendor, its employees or agents from and against any loss, liability, damage, penalty or expense (including attorneys' fees, expert witness fees and cost of defense) they may suffer or incur as a result of (i) any failure by Client or any employee, agent or affiliate of Client to comply with the terms of this Agreement; (ii) any warranty or representation made by Client being false or misleading; (iii) negligence of Client or its subcontractors, agents or employees; or (iv) any representation or warranty made by Client or any employee or agent of Client to any third person other than as specifically authorized by this Agreement.

Subcontracting & Multiple Service Provider Relationships

Prior to engaging any Subcontractor, Vendor shall identify the Subcontractor and describe the services to be provided by the Subcontractor and identify any access the Subcontractor will have to Client's information systems, data or Confidential Information. Vendor shall cause Subcontractor to adhere to the requirements for Availability, Confidential Information, Data Integrity, Data Security and Safeguards no less stringent than those provided in this Agreement. Vendor shall provide Client with Independent Assessments and other applicable due diligence documents of Subcontractors.

Vendor shall remain liable for Subcontractor's performance, acts and omissions under this Agreement.

Vendor represents and warrants that to the extent Subcontractors or Agents are used to perform the obligations under this Agreement, Vendor shall be liable for the performance and all actions and inactions by such Subcontractors or Agents to the same extent that Vendor would be responsible under the terms of this Agreement for such performance as if it had been Vendor's own performance, including, but not limited to intellectual property rights, infringement and breaches of confidentiality.

General Compliance

Each party shall perform all of its obligations under this Agreement in compliance at all times with all foreign, federal, state and local statutes, orders and regulations, including those relating to privacy and data protection.

Vendor is solely responsible for and agrees to perform its obligations in a manner that complies with all applicable national, federal, state and local laws, statutes, ordinances, regulations, codes and other types of government authority (including those governing export control, unfair competition, anti-discrimination, false advertising, privacy and data protection, and publicity and those identifying and requiring permits, licenses, approvals and other consents).

Disclaimer of Warranties

The system is provided “as is” without any warranty whatsoever. Vendor disclaims all warranties, express, implied, or statutory, to client as to any matter whatsoever, including all implied warranties of merchantability, fitness for a particular purpose, title and non-infringement of third-party rights. No oral or written information or advice given by the Vendor, or its employees or representatives shall create a warranty or in any way increase the scope of Vendor’s obligations.

Mutual Warranties

Each party represents and warrants to the other that: (i) it has power, capacity, and authority to enter into and perform its obligations under the agreement and to make the grant of rights contained herein, (ii) its performance of its obligations under the agreement does not violate or conflict with any other agreement to which it is a party.

Warranty

Vendor warrants that all Services it performs will be performed consistent with industry practices and shall meet or exceed all requirements set out in the applicable Statement of Work. Client shall report any deficiencies in the Services (which are known to it) to Vendor in writing within X (X) days of completion of the Services as a condition of eligibility for warranty remedies.

Transition Services/Transition Plan

Upon expiration or termination of this Agreement, Vendor will at Vendor's expense: (i) cooperate with and assist Client in the orderly transition of the Services in a manner that causes no material disruption to Client's business or operations, (ii) continue uninterrupted provision of the Services to Client and assist Client to transition the Services either internally or to another third party supplier, and (iii) assist Client to develop and implement a transition plan to Client that is consistent with this Section and satisfactory to Client ("Transition Plan"). Vendor will deliver the preliminary Transition Plan to Client within X (X) days of Client's notice of termination.

Vendor will continue to provide the Service until the later of: (i) expiration of the then current Term, and (ii) such time that all Client Data has been transferred to Client or other third-party supplier is complete. Vendor will provide the transition services described in the Transition Plan for a period of up to X (X) months from the date of the notice of termination or expiration.

Insurance

Vendor shall maintain insurance policies in the minimum amounts stated below. During the term of this Agreement, Vendor shall not permit such insurance to be reduced, expired, or canceled without reasonable prior written notice to Client. Upon request, Vendor shall provide a Certificate of Insurance to Client.

Security

Vendor shall maintain an information security program that is designed to meet the following objectives: Protect security/confidentiality of Client information; Protect against anticipated threats to security and integrity of such information; Protect against unauthorized access to or use of the information; Ensure proper disposal.

Vendor will provide safeguards to ensure against destruction of records and software by first or other disasters, loss of data in transit, or machine or human error or unauthorized manipulation of data or reports using then current and/or accepted business practices.

License to Use Trademarks

Subject to the limitations in this Agreement, Vendor grants Client a revocable, nonexclusive right and license to use Vendor's trademarks (the "Trademarks") during the term of this Agreement solely in conjunction with the use of the System and in accordance with Vendor's trademark usage guidelines. Vendor grants no rights in the Trademarks or in any other trademark, trade name, service mark, business name or goodwill of Vendor except as licensed hereunder or by separate written agreement of the parties.

Client agrees that it will not at any time during or after this Agreement assert or claim any interest in or do anything that may adversely affect the validity of any Trademark or any other trademark, trade name or product designation belonging to or licensed to Vendor (including, without limitation registering or attempting to register any Trademark or any such other trademark, trade name or product designation). Upon expiration or termination of this Agreement, Client will immediately cease all display, advertising and use of all of the Trademarks.

Dispute Resolution (with Arbitrator)

Disputes arising under this Agreement will be resolved by the parties through good faith negotiations in the ordinary course of business. Any dispute not so resolved will be submitted for binding arbitration, at the written request of either party, before a single arbitrator under the JAMS Streamlined Arbitration Rules and Procedures in the District of Columbia or at another location as mutually agreed. Selection of the arbitrator will be by mutual agreement of the parties or, failing agreement within X (X) days, by JAMS pursuant to its then-current rules. The amount and responsibility for payment of arbitration costs will be one of the issues decided by the arbitrator, whose decision will be in accordance with the terms and conditions of this Agreement. During any such arbitration, the parties will continue diligent performance of this Agreement.

The arbitrator will render a written decision stating reasons therefore in reasonable detail within X (X) days. Arbitration is the exclusive remedy for disputes arising under this Agreement; the Parties hereby waive their rights to bring a lawsuit to resolve a dispute arising under this Agreement.

4 Tips to Create a Clause Library

One option that may be helpful is to create a digital library of sample contract clauses. Whenever you come across a good contract provision, save it to a file where you can easily reference it for future use.

Consider these tips to help you along the process:

1 REFER TO REGULATIONS

Search for important provisions based on your regulatory requirements or guidance to help create sections for your library and compile them into a spreadsheet for easy searchability.

A few examples include:

FDIC

Guidance For Managing Third-Party Risk

HIPAA/HHS

Business Associate Contracts: Sample Business Associate Agreement Provisions

OCC

Third-Party Relationships: Risk Management Guidance

FFIEC

Information Technology Examination Handbook

2 CONSIDER REPUTABLE ORGANIZATIONS

Another source for sample contracts and language can be reputable organizations such as The American Bar Association which has a sample contract for SaaS agreements.

3 SAVE APPROVED SAMPLE CLAUSES

Don't forget to save approved clauses from your redlining process for future use.

4 STAY INFORMED OF REGULATORY CHANGES

Continue to add new and important clauses to your library as regulations change.

While these sample clauses can be used as a starting point, it's essential to consult with your legal team when drafting a contract. Every organization has unique needs and challenges, so it's unlikely to have identical contracts with your vendors. The contract process can often be laborious, but it's a critical activity that sets the standards for your vendor relationship.



Download a sample Contract Compliance Assessment and see how Venminder can help reduce your third-party risk management workload.

Download Now



Manage Vendors. Mitigate Risk. **Reduce Workload.**

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About Venminder

Venminder is an industry recognized leader of third-party risk management solutions. Dedicated to third-party risk, the company is the go-to partner for software, high-quality assessments on vendor controls, certified subject-matter expertise and education.

Venminder's platform provides a centralized location to execute a third-party risk management program. It enables users to store documentation, onboard a vendor, track contracts, manage SLAs, send and manage questionnaires, manage due diligence and oversight, complete risk assessments, create workflows, run reporting and more.

Assessments performed by Venminder's qualified experts, including CISSPs, CPAs, financial risk analysts, paralegals and more, are readily available in an online exchange library. The assessments enable customers to identify possible risks and understand areas of strength on their vendors' information security and privacy standards, SOC reports, financial viability, business continuity/disaster recovery preparedness, contractual standards, regulatory compliance and more.

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