



ACCESSIBILITY:

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Contract Review Checklist

This document is intended to assist when reviewing documents so that you have a better understanding of what you are committing to and what you are signing.

Negotiate the terms: When presented with a contract, remember that this is a starting point. You can negotiate the terms of nearly every agreement. Ask for what you want. The worst that can happen is they say “no”.

Identify the parties: The Contract must be in the name of the Waterloo Catholic District School Board and signed by the appropriate signing approval level. The school is not an independent legal entity but is part of the Board. Use the complete name of the other party/business to avoid confusion.

Business Terms: Check the business terms of the contract such as price, increase/decrease provisions, currency, duration including extensions, square footage, termination options etc. to determine whether the contract accurately reflects the agreement of the parties. Typical Board agreements are three years with 2 one-year extension options dependent on vendor performance.

Auto-Renewal Clauses: Beware of auto renewal clauses. Do you have to give the supplier notice if you do NOT want to renew? Are there penalties if notice is not given in the timeframe outlined in the contract? Is renewal on the same terms as the original agreement? Are there price increases? **Remove the auto renewal clause!** Do NOT agree to auto-renewal. Instead consider adding options to renew or extend the agreement on favourable terms.

Consistency: Make sure that terminology used is consistent throughout i.e. Board or WCDSB.

Pre-printed form with blanks: Complete all areas of a pre-printed form either with a response or strike through the area. Items left blank on a form can be inappropriately filled in by someone else. Be sure that all changes or deletions are initialed.

Amendments: Can the contract be amended ONLY with the written approval of the authorized Board personnel?



Incorporated Documents: When another document is incorporated by reference, always read the incorporated document. For example, a privacy policy is often incorporated into the contract. Make sure you understand all documents.

Remedies Provisions: Review remedies provisions. Determine the worst that can happen to you if you default. Explore ways to limit your liability. Also determine what types of remedies you need in the event of default by the other party.

Termination: Review the causes for termination in the agreement. Consider adding terminology to the contract that allows you to terminate if it is not working for you. For example: 'The Board may opt out of the Program at its sole discretion, at any time without penalty upon thirty (30) days written notice.'

Dates and Deadlines: Regularly check dates and deadlines. Keep a calendar of dates and deadlines for important events and anything required to be done by you or the other party.

Warranties and Representations: Review and understand warranties and representations given by you and the other party. Don't give any representation if you do not actually know that the representation is true. If you must give warranties, limit them as much as possible.

Support: Is ongoing support included (how much and for how long)?

Audit rights: What are your audit rights?

Data: How do we get data back at end of term?

Source code escrow: Will the supplier agree to deposit the source code with a third-party?

Training: Ensure where applicable that training provisions are included in the contract.

Assignment: Supplier should not be able to assign the agreement without permission from the Board, such permission not to be unreasonably withheld.

Insurance requirements: Ensure where applicable, the Board is provided with a certificate of insurance in the appropriate amounts and for the appropriate types (cyber extortion is new).

- **Insurance Example:**

Insurance – Supplier agrees to provide a Certificate of Insurance annually to the customer indicating that it carries: General Liability Insurance in the minimum amount of \$2,000,000



(aggregate of \$5,000,000) with the Customer to be shown on the policy as an additional insured; (b) Cyber Liability Insurance or IT (need to determine required amount), Professional Liability Insurance which includes (i) security & privacy liability, including privacy breach response costs, regulatory fines and penalties, and (ii) cyber extortion; and, (c) errors & omissions. If items (b) and (c) above are a component of the general liability insurance, the certificate of insurance must confirm this coverage. **As with all our suppliers, we require the WCDSB to be an additional insured on the CGL.**

Privacy: Does a **Third-Party Confidentiality Agreement** need to be completed and signed? 'Licensor agrees to the terms of the Licensee's Agreement for the Confidentiality of Personal Information' attached hereto as Appendix X.

Does a PIA (**Privacy Impact and Security Assessment Form**) need to be completed?

De-Identified Data: Is the data de-identified?

Liability and Indemnification: Check the hold harmless and indemnification provisions in the agreement. Indemnification is the act of making another party whole. Indemnification is an exemption from liability.

When you agree to hold someone harmless you are agreeing to hold them responsible for liability that may arise out of the transaction. When you indemnify someone, you are agreeing to protect them from liability or loss that may arise out of the transaction.

If you must indemnify the other party, limit the indemnification as much as possible. Negotiate the same indemnification for yourself. For example, if you as a buyer, agree to indemnify the seller of a business for losses they may incur, then the seller should indemnify you for losses you may incur.

Liability Questions to Ask:

- Negligence: Does the vendor take responsibility in the event of their negligence?
- Third Parties: Does the vendor take responsibility for third party software that is used in order to access or improve their services.
- Caps: Is there a cap on liability?
- Negligence or wilful misconduct is better than gross negligence (gross carries a much higher threshold to meet if the Operator is found to be liable).
- Carve-outs: are there carve-outs for areas that are important to the Board...privacy, intellectual property? Easiest way to address limitation of liability is to add a carve out to the clause detailing the exceptions that are important to the Board such as privacy/confidentiality.

Example:limit its liability in this software contract "other than with respect to liability arising under section X "Indemnities" or with respect to a breach of confidentiality.

Indirect damages are consequential damages, damages not directly traceable to the wrongful act. Direct damages are the result of the breach.



Samples:

XXX will indemnify and hold harmless the Board, its officers, trustees, employees and agents from any claims, damages, losses, or expenses (including without limitation legal fees and costs) incurred by any of them in connection with all claims, suits, judgements and any and all causes of action made because of its own negligence and/or the negligence of Third Parties with respect to Third Party Products used in the software.

Customer will indemnify and hold harmless XXXXX, its officers, trustees, employees and agents from any claims, damages, losses, or expenses (including without limitation legal fees and costs) incurred by any of them in connection with any and all claims, suits, judgements and causes of action made because of its own negligence in the operation of the Software.