

Understanding Education Abroad Vendor Contracts: What You Need to Know

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Scott Manning, Susquehanna University

Sandy Schoeps Tennes, Great Circle Global Education Consulting

Group work may be more useful if you sit at tables based on institution type:

- Large public
- Large private
- Small public
- Small private
- Community college
- Providers/others: sit with institution type that you're interested in learning about

Who We Are

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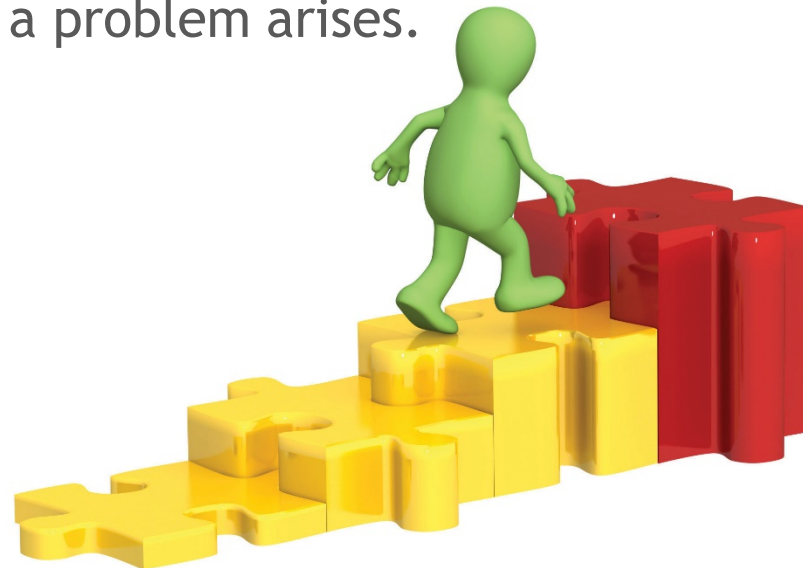
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Learning Objectives

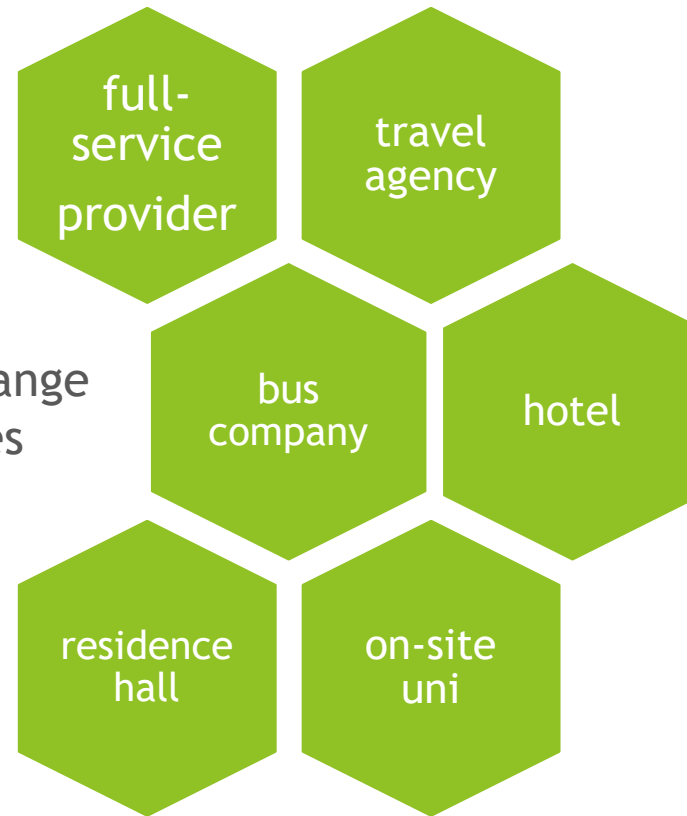
- Identify and understand the common components of a typical vendor contract.
- Understand the need to clarify campus processes and policies for negotiating and signing contracts, including the role of legal counsel.
- Learn how to negotiate contractual terms as an advocate for your institution and leverage these terms when a problem arises.



Introduction

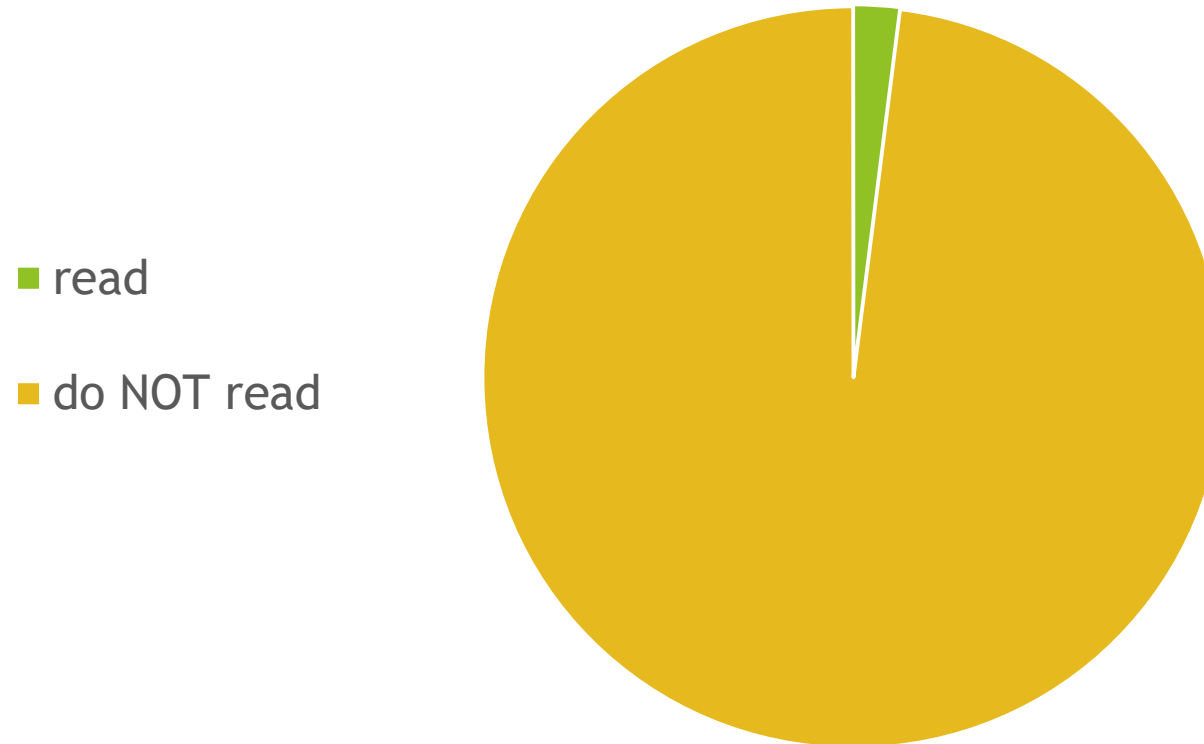
contract =

a written agreement between entities that elaborates the terms and conditions of exchange for goods and services between those entities



Contracts 101

People who Read the Online Terms of Service Agreement



Contracts 101

- ▶ What do we mean by contracts?
 - ▶ oral
 - ▶ written
- ▶ What provisions deserve particular attention?
 - ▶ business terms
 - ▶ indemnification/hold harmless
 - ▶ limitations of liability
 - ▶ insurance requirements
 - ▶ choice of law/venue



Help Legal Counsel Help You

What should you do before contacting legal counsel?

- ▶ understand the business terms
- ▶ negotiate business terms favorable to your operation
- ▶ explain the contract
 - ▶ Who is the vendor?
 - ▶ For what activity is the contract?
 - ▶ Will the vendor have access to student data or other confidential information?
 - ▶ Has the institution worked with this vendor before?
 - ▶ Is there potential for conflict of interest?



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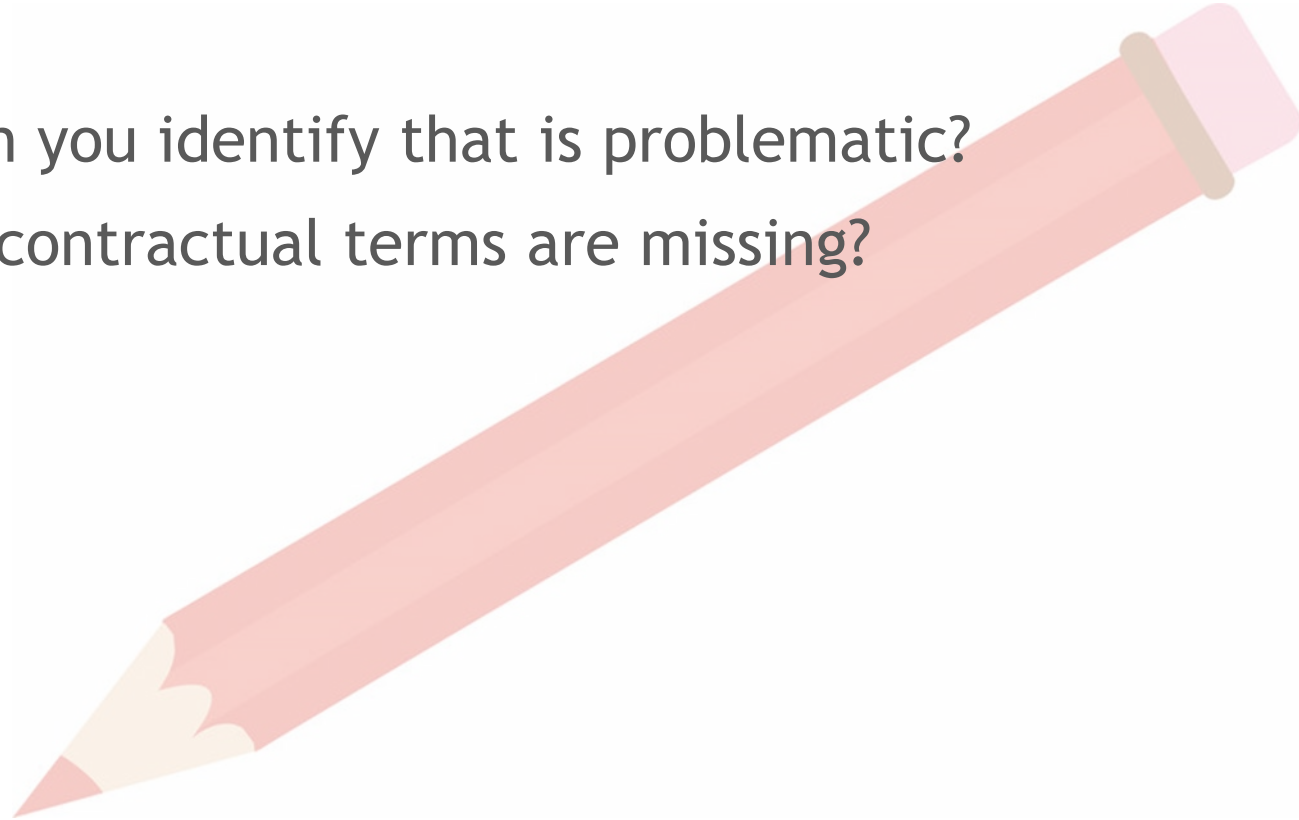
Legal Counsel's Role

- ▶ Legal counsel does not approve contracts (may vary by institution).
- ▶ Legal counsel does explain risks and give advice.
- ▶ Legal counsel will normally focus on:
 - ▶ indemnification
 - ▶ insurance
 - ▶ limitations of liability
 - ▶ data protection/confidentiality
 - ▶ choice of law/forum selection clauses



Pair/Group activity #1

- What text can you identify that is problematic?
- What crucial contractual terms are missing?



Pair/Group activity #1

- This Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware, without regard to conflicts of laws principles. Any suit, action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement may be brought against any of the parties in the courts of the State of Delaware, County of Kent, or, if it has or can acquire the necessary jurisdiction, in the United States District Court for the District of Delaware, and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein.
- This Agreement shall be governed by and construed in accordance with the internal laws of the **State of Delaware**, without regard to conflicts of laws principles. Any suit, action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement may be brought against any of the parties in the courts of the **State of Delaware, County of Kent, or, if it has or can acquire the necessary jurisdiction, in the United States District Court for the District of Delaware, and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein.**

Pair/Group activity #1

- The SCHOOL agrees to indemnify, hold harmless and, not excluding PROVIDER's right to participate, defend PROVIDER and its governing board and their respective directors, officers, employees, agents, volunteers, and members, from claims, suits, or actions of any character or any nature arising out of (1) the work done in performance of this Agreement; (2) claim or amount arising or recovered under workers' compensation law; or (3) any other act omission of the SCHOOL.
- The PROVIDER agrees to indemnify, hold harmless and, not excluding SCHOOL's right to participate, defend SCHOOL and its governing board and their respective directors, officers, employees, agents, volunteers, and members, from claims, suits, or actions of any character or any nature arising out of (1) the work done in performance of this Agreement; (2) claim or amount arising or recovered under workers' compensation law; or (3) any other act omission of the PROVIDER.

Pair/Group activity #1

- The SCHOOL will ensure that each student participating in any PROVIDER program during the term hereof, and the student's parent or guardian, will sign PROVIDER' waiver of liability and other required forms as a precondition of the student's enrollment in the program.
- The SCHOOL will ensure that each student participating in any PROVIDER program during the term hereof, **and the student's parent or guardian**, will sign PROVIDER' waiver of liability and other required forms as a precondition of the student's enrollment in the program.
 - If the students are at least 18 years old, they can sign for themselves.

Pair/Group activity #1

- At the end of each program, PROVIDER will offer the SCHOOL's students the opportunity to receive information about other PROVIDER study abroad programs. Students will have the opportunity to decline to receive this information.
- At the end of each program, PROVIDER will offer the SCHOOL's students **the opportunity to receive information about other PROVIDER study abroad programs. Students will have the opportunity to decline** to receive this information.
 - How would a student know that they could decline to receive such information?
 - How would they actually do that?
 - Does the sending institution want the provider to market its programs to the students?

Contract Types and Scope

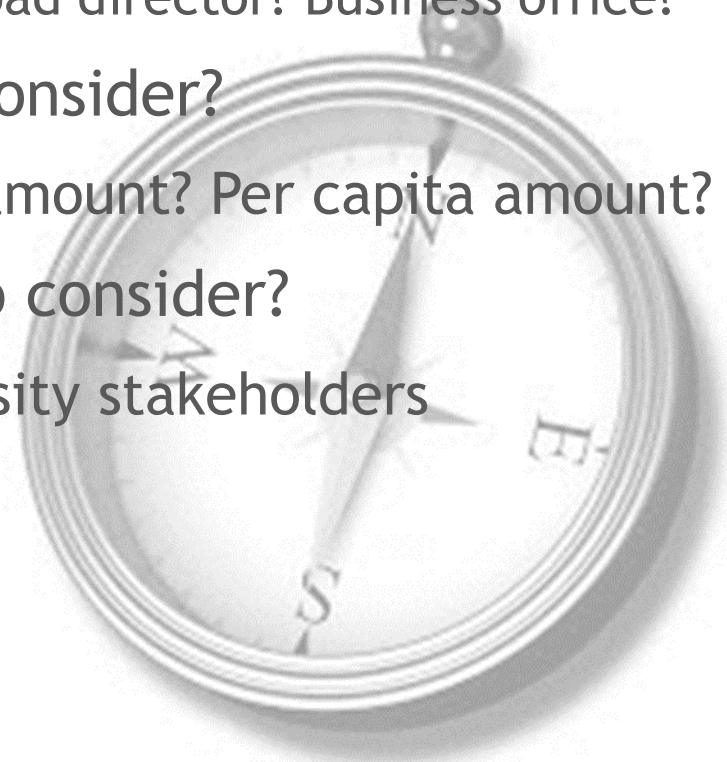
- a single service or event
 - bus trip, lecture, hostel, service activity
- a single program
 - faculty-led, provider semester program
- the study abroad unit
 - preferred travel agency, program provider agreement, faculty program director contracts
- university-wide
 - corporate credit card, institutional partnership/MOU



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Navigating Your Campus - before signing

- Who negotiates and signs a contract?
 - Faculty program director? Study abroad director? Business office?
- Is there a financial threshold to consider?
 - Against budgeted amount? Total amount? Per capita amount?
- Are there cultural perspectives to consider?
 - Between parties or among university stakeholders
- Who reviews the contract?
 - Risk Management, Legal Office



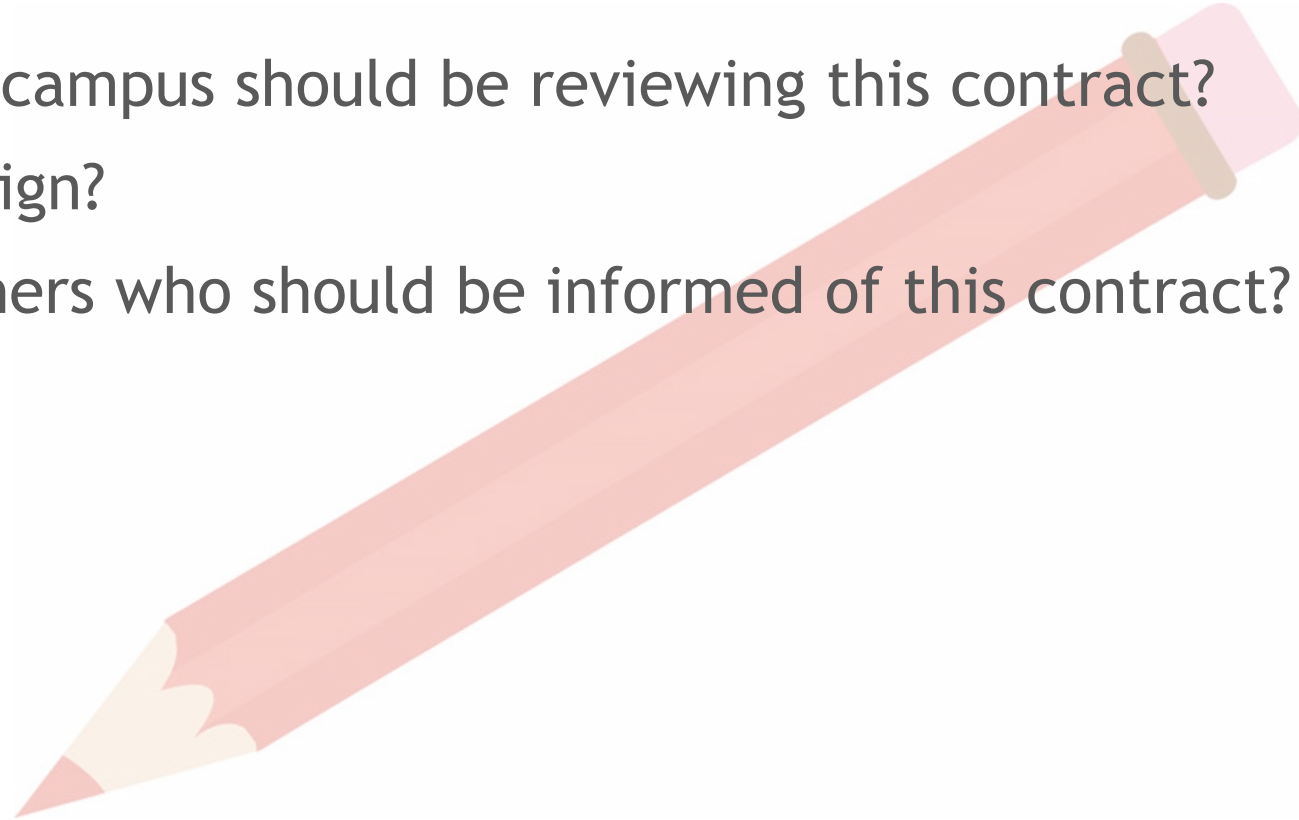
Navigating Your Campus - after signing

- Where do completed contracts live?
 - Contract library, with the signer, *who knows?*
- How is contract shared with key stakeholders?
 - Policy manual, handbook, webpage?
- What happens when it isn't followed?
 - By the other party
 - By stakeholders on your own campus



Pair/Group activity #2

- Who on your campus should be reviewing this contract?
- Who should sign?
- Are there others who should be informed of this contract?



Pair/Group activity #2

ABC Travel Agency

- The contract is for round trip airfare from Newark, New Jersey, USA, to Auckland, New Zealand, for 25 participants on an approved faculty-led program.
- It is a standard contract with deadlines for deposits and for canceling up to 10% of the served seats with no penalty, etc.
- Total cost of the contract is \$65,000. (\$58,000 was approved in the budget.)

- Who reviews this contract?
- Who signs?
- Who else should be informed?

Pair/Group activity #2

Experiences in Africa

- This provider contract covers an 8-day homestay and includes community work experiences in a tribal village that is part of a 2 week faculty-led program. It also includes bus transportation to and from Johannesburg.
- The provider retains absolute right to change or cancel any and all plans at their discretion.
- Who reviews this contract?
- Who signs?
- Who else should be informed?

Pair/Group activity #2

Americans Abroad

- This contract is from a large U.S. study abroad provider. Your home institution agrees to work only with this provider in 5 different countries around the world. Your institution will receive a \$1,000 discount per student on all participants attending this provider's programs in those 5 countries.
- A semester-length faculty-led program run by your institution in 1 country, and a long standing exchange program in another country, are exempt from this exclusive program agreement.
- Who reviews this contract?
- Who signs?
- Who else should be informed?

Pair/Group activity #2

World-wide Insurance

- This insurance contract is between the provider above and a faculty-led semester program in the College of Business at your institution. It covers medical issues, including office visits and mental health counseling, as well as hospitalization and repatriation. Coverage includes pre-existing conditions.
- Your institution already has an institution-wide policy which requires payment at most visits with a claim filed for reimbursement. It does not cover pre-existing conditions.
- Who reviews this contract?
- Who signs?
- Who else should be informed?

I can negotiate?



Learn from the Experience of Others



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Where is the power?

- ▶ What do you (your office, your students, your faculty, your employer) lose if this contract falls through?
- ▶ What does your potential partner lose if this contract falls through?
- ▶ How can you increase your leverage?

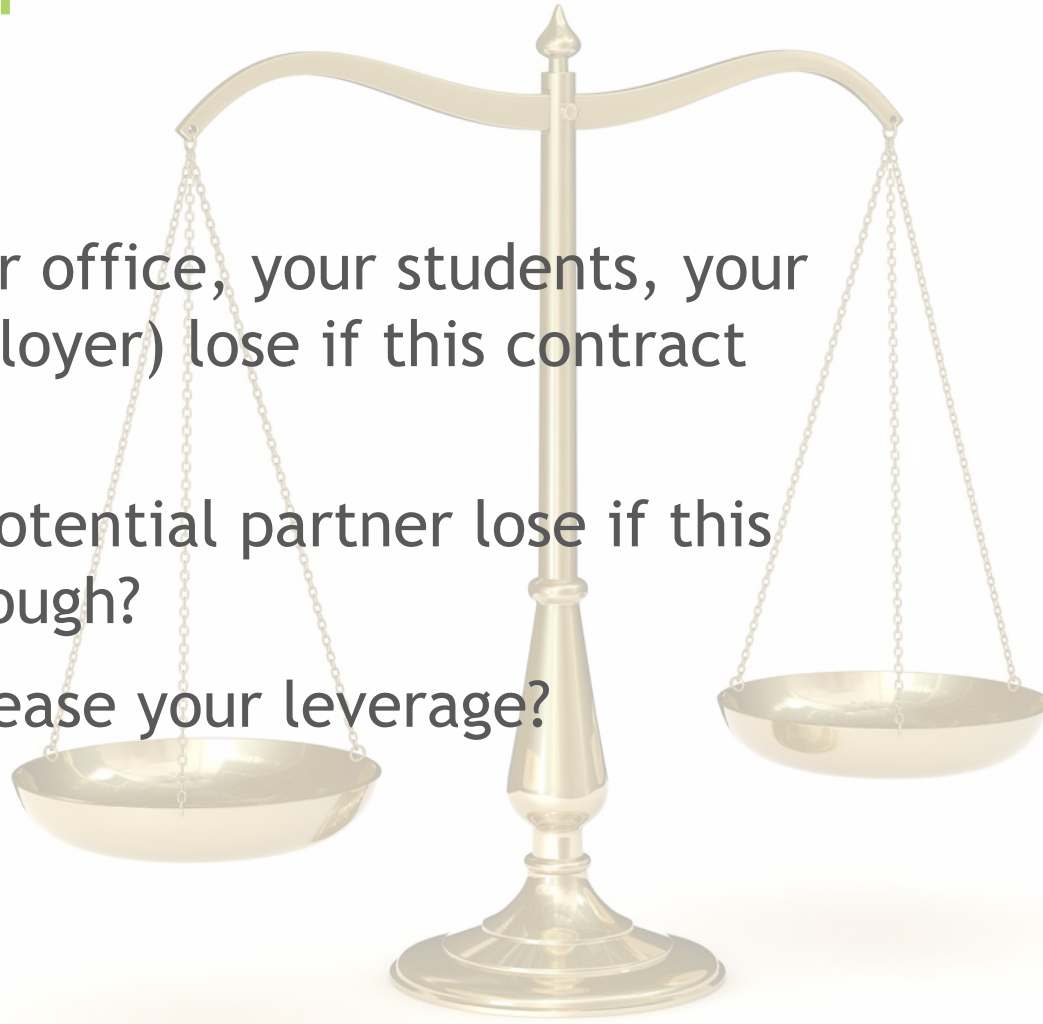


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What are the risks?

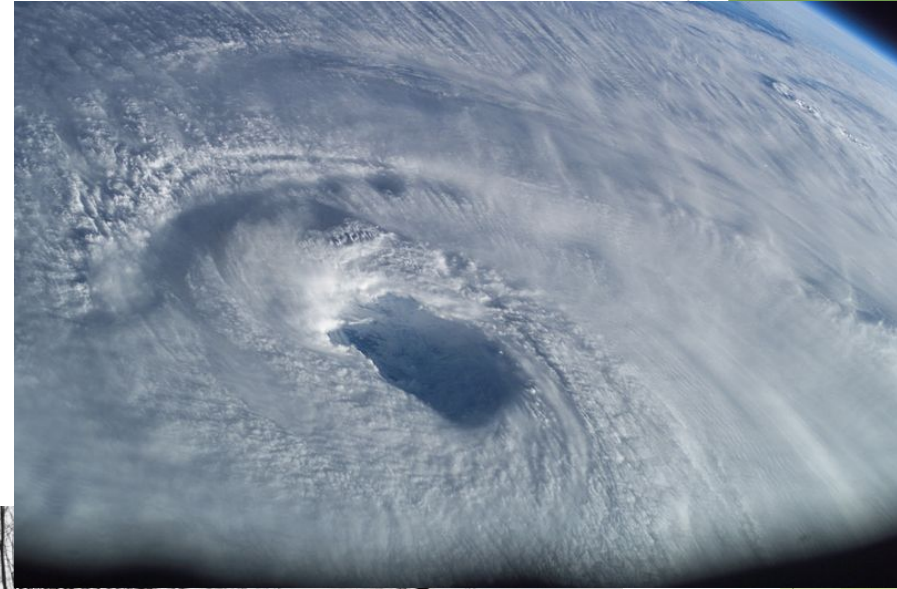


Image by Sandy Tennies.

NAFSA annual conference Washington DC, May 31, 2019

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The Contract as a Tool

- ▶ How does this contract support us in general?
 - ▶ What protections are in place for us? For our partner?
 - ▶ What requirements help us work together smoothly?
- ▶ What happens when something goes wrong?



Negotiating to Your Advantage

- Propose new language or edits
- Ask for clarification
- Start the process early
- Talk through hypotheticals to clarify questions
- Be clear when requesting a proposed contract about your institution's/organization's needs and requirements

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Pair/Group activity #3

- How will the language protect (or not protect) you and your partner in the event of a problem?
- What changes will you want to propose to strengthen the contract to both partners' advantage?
 - Where is your leverage? How can you increase it? What are your priorities? What is non-negotiable?
- What processes can you put in place to help avoid this with future contracts?

Pair/Group activity #3

- Students from SCHOOL participating in the program will remain matriculated at SCHOOL and registered as non-degree students at PROVIDER. SCHOOL students will participate under the same academic and personal conduct rules and regulations as do all other Program participants and will fall under the jurisdiction of the Provider Director.
- Students from SCHOOL participating in the program will remain matriculated at SCHOOL and registered as non-degree students at PROVIDER. SCHOOL students will participate under **the same academic and personal conduct rules and regulations** as do all other **Program** participants and will fall under the jurisdiction of the **Provider Director**.

Pair/Group activity #3

- This agreement shall be effective upon signature by both parties and will remain in effect for five (5) years, or until either SCHOOL or PROVIDER notifies the other party in writing at least six months prior to the date of its intent to terminate this agreement.
- This agreement shall be effective upon signature by both parties and will remain in effect for five (5) years, or until either SCHOOL or PROVIDER **notifies the other party in writing** at least six months prior to the date of its intent to terminate this agreement.

Pair/Group activity #3

- The SCHOOL shall be responsible for ensuring that timely payment is made to PROVIDER for all charges due to PROVIDER pursuant to this Agreement and any addenda hereto. The SCHOOL shall also ensure that reimbursement is made to PROVIDER in a timely manner for any damages caused by individual program participants, faculty or assistants, PROVIDER-approved guests and for other debts incurred by SCHOOL's students, faculty or assistants including, without limitation, excessive or outstanding telephone or utility bills, funds advanced in emergency or other situations, and fees for cleaning and/or repairing accommodations.
- The SCHOOL shall be responsible for ensuring that **timely payment** is made to PROVIDER for all charges due to PROVIDER pursuant to this Agreement and any addenda hereto. The SCHOOL shall also ensure that reimbursement is made to **PROVIDER in a timely manner** for any damages caused by individual program participants, faculty or assistants, PROVIDER-approved guests and for other debts incurred by SCHOOL's students, faculty or assistants including, without limitation, excessive or outstanding telephone or utility bills, funds advanced in emergency or other situations, and fees for cleaning and/or repairing accommodations.

Pair/Group activity #3

- On PROVIDER's acceptance of a Program Addendum, the SCHOOL will pay to PROVIDER the deposit of \$1,000 per student and the final balance on the dates set out for those payments in the Addendum.
- On PROVIDER's acceptance of a Program Addendum, the SCHOOL will pay to PROVIDER the deposit of **\$1,000 per student** and the final balance on the dates set out for those payments in the Addendum.

Pair/Group activity #3

- In relation to any matters concerning this Agreement, SCHOOL agrees that it and its employees, directors, consultants and contractors will not publish or communicate in any way (or cause any other party to), any statement of any kind, whether verbal, in writing, electronically transferred or otherwise, that might reasonably be construed to be derogatory or critical of, or negative toward, PROVIDER (including its employees, directors, consultants and contractors).
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Takeaways & final Q&A

- ▶ Pay attention to what you, your faculty, & EA staff are signing.
- ▶ Approach partners with win-win solutions.
- ▶ Learn who has authority to sign what at your institution.
- ▶ Counsel has that name for a reason! Make friends with yours.
 - ▶ Learn what Counsel wants to see in every contract and make sure your documents comply.



Hot Off the Press!

forumea.org/resources/guidelines



NAFSA annual conference Washington DC, May 31, 2019

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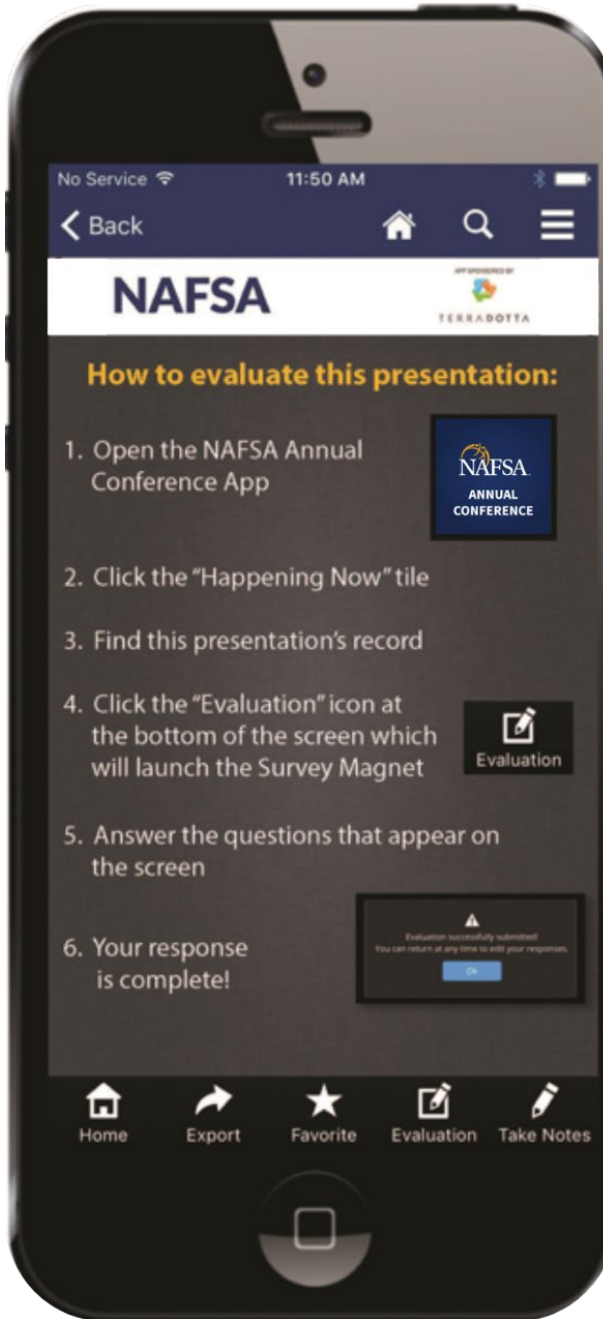


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Please complete
the
session evaluation
now!
Thank you!



Or FAVORITE now
and EVALUATE later!