Contract Language

I Agree
When presented with a contract, remember that this is a starting point. You can negotiate the terms of nearly every agreement. Understand the purpose and scope of the contract and ask for what you want. You want to make the deal happen, but so does the other person. The worst that can happen is they say “no”.

The Basics:
Make sure the scope of work is clearly defined

If you are unclear about the scope of work, ASK QUESTIONS
Agenda

- Identify the Parties
- Rights and Responsibilities
- Confidentiality
- Remedies
- Mitigating Risk
- Indemnification
- Causes for Termination
- Resolution of Disputes
- Specific Clauses
Identify the Parties

**Include the Names and Addresses of Any Subsidiaries that Will Provide Services**

**Clearly Define Start and End Dates**

**Avoid Auto-Renew Clauses**
Rights and Responsibilities

It’s important to capture who’s responsible for what and who is liable if something doesn’t happen according to the contract.

Never rely on an oral understanding.

Know all of your rights and responsibilities under the contract.
Confidentiality

- Confidentiality involves a set of rules or a promise usually executed through confidentiality agreements that limits access or places restrictions on certain types of information.

- Confidential information includes, but is not limited to, student, alumni, financial or health data.

- If the other party will have access to any of our nonpublic, personal or protected health information and, include a provision requiring them to handle and secure the information in a commercially reasonable manner consistent with applicable federal and state laws.
What happens if something goes wrong?

- Put necessary mechanisms in place in the Agreement
- Explore ways to limit your liability
- Determine what types of remedies you need in the event of default by the other party
Mitigating Risk

- Understand USNH Policies
- Whenever Possible, Use Templates and Standard Provisions
- Review with Business Owner
- Insurance Requirements
Indemnity

- Security or protection against a loss or other financial burden
- To indemnify someone is to absorb the losses caused by that party, rather than seeking compensation from that party, or to compensate that party if something you do (or fail to do) causes them to experience loss, damages, or a lawsuit from a third party
- An indemnity clause typically states that one party agrees to “indemnify” (and often also to “hold harmless” and “defend”) the other party
- Make sure there is mutual indemnification; or add “except as a result of negligence by Contractor and their employees, agents, and/or subcontractors”
Causes for Termination

- **Termination for Cause** - If one party should fail to perform any provision of the Agreement, the other party may give written notice of such default (Notice of Default) to the breaching party.

- **Termination for Convenience** - When a contract is terminated when there is no default or breach of obligations by the other party.
Resolution of Disputes

**Mediation**: The parties to the dispute retain the right to decide whether or not to agree to a settlement. The mediator has no power to impose a resolution.

**Arbitration**: The parties give the power to decide the dispute to the *arbitrator*.

**Litigation** implies a method in which dispute between two parties is resolved by going court, for the judgement.

In any USNH contract, New Hampshire should be the jurisdiction. If the other party to the contract will not agree to this, consult with the USNH General Counsel’s Office before proceeding.
Specific Clauses
Limitations of Liability

• A limitation of liability clause limits the amount of exposure a company faces in the event a lawsuit is filed or another claim is made. If found to be enforceable, a limitation of liability clause can "cap" the amount of potential damages to which a company is exposed.

• This will likely be a long paragraph but in place of “will not exceed total payments under the contract “or something like that, replace with “Company’s liability for damages to Customer will not exceed the coverage provided by Company’s General Liability insurance policies at the time of the claim”
Warranties

• A list of promises. If seller doesn’t provide as promised, it’s a breach of the contract. Warranties can be extended beyond the life of the contract

Severability

• Refers to a provision in a contract which states that if parts of the contract are held to be illegal or otherwise unenforceable, the remainder of the contract should still apply
Assignment

• Determines whether rights, obligations and duties under an agreement may be transferred in whole in or part to another, and under what conditions

• Should be applicable to BOTH parties – if not, change it

• “Neither party shall assign, in whole or in part, their duties and responsibilities under this contract without the advance, written notice of the other party”
Force Majeure

• A common clause in contracts that essentially frees both parties from liability or obligation when an extraordinary event or circumstance beyond the control of the parties, such as a war, strike, riot, crime, or an event described by the legal term act of God (hurricane, flood, earthquake, volcanic eruption, etc.), prevents one or both parties from fulfilling their obligations under the contract.

• Most force majeure clauses do not excuse a party's non-performance entirely, but only suspend it for the duration of the force majeure.

• The language should be mutual (i.e. BOTH parties).
Personal Liability

- If something goes wrong with the contract, the individual who signed it or who is named in the contract is responsible. There is no recourse to USNH’s insurance or counsel.
- If the other party to the agreement will not remove the personal liability clause, the contract should be abandoned.