

**University of West Florida
University Commons and Student Activities**

The Big Book: Policy and Procedure Manual

Topic: Standard Policies and Procedures for Contract Development and/or Editing

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At one time or another each of us is expected to effectively draft a contract or revise an agency contract for signature. Contracts, though often tedious and detailed, do not have to be anxiety evoking. This guide is intended to be a resource which will hopefully provide our contractual procedures with a degree of standardization and simplicity.

An Overview

The following is not an exhaustive list of do's and don'ts but rather reflects several basic ideas.

1. All contracts are negotiable: you do not have to accept a contract as it is written. We typically must edit a contract to make it fit our needs, limitations, and requirements. Changes must be mutually agreed upon and reflected on each copy of the contract.

The recommended procedure for editing a contract is to first make a copy of the entire document, including any riders or addenda. Then, using this scratch copy, work through the agreement making additions, references to specific addendum items and deletions as necessary.

When a final form has been agreed upon, the scratch copy of the contract and the standard University Addendum along with the originals of the contract should be typed. While hand written changes are acceptable, contract revisions should be typed to enhance readability and professional appearance. It is recommended that a straight-edge and black pen be used to line out items to be deleted. This speeds up the process considerably.

When the finished documents are ready, carefully proofread to see that every change has been reflected on each copy and that the addendum is correct. All errors should be corrected at this point. As your high school English teacher might say, "neatness does count!"

2. Name, address, and capacity of hall or room should be typed on the face of the contract.

3. If an addendum is added to the original contract, a statement should be added to the bottom of the contract to the effect that the University Addendum is officially part of the agreement, i.e.: "The attached University Addendum is hereby incorporated into and made a part of this agreement."

4. In all contracts, avoid becoming the employer of the artist, speaker, etc. This will protect the institution from liability for future unemployment compensation claims, workmen compensation claims, and so forth. In the case of an agency/artist contract which uses terms such as employer, promoter, producer, or sponsor a single reference to the following addendum item placed next to the first use of the term will suffice: "In signing this agreement, The University of West Florida does so as PURCHASER of the entertainment and not as employer, producer, or operator regardless of any other nomenclature contained in the agreement."

5. Insure that the contract is worded so that the University is the contracting party, not an individual. This should be specified in the signature area of the contract. The contract should either read or be edited to read as follows:

FOR: The University of West Florida

BY: _____
Dr. James R. Hurd, Assoc. Vice President for Student Affairs

6. No contract should be drafted or accepted which stipulates any advance payment, either in full or in part. This is specifically related to the payment of deposits. The following addendum item should be referenced: Purchaser is not authorized to make advance payments of any nature including, but not limited to, deposits. This is simply a sound business practice.

7. The exact amount, type, and method of compensation must be clearly specified. Below are a few possible arrangements:

- a. Flat fee, inclusive: one amount covers professional fee and all expenses.
- b. Flat fee, plus expenses: professional fee plus additional amount for expenses. Always establish a listing of acceptable expenses and dollar limit, i.e. "\$1,000.00 plus travel, lodging, and meals not to exceed \$200.00." Consider this a negotiating point early in the contracting process. Even if the committee is arranging travel, lodging, etc., establish the dollar limit to protect against unforeseen expenses such as room-service. All expenses must be made on original invoices/receipts and in the case of airfare with the carbon stub. This is fiscal policy and cannot be deviated from. One additional important point regarding expenses: avoid the term "including, but not limited to" in relation to the artist expenses. This could open a Pandora's Box of "related" expenses.
- c. Guarantee plus percentage: a guaranteed professional fee plus a percentage of the revenue. The percentage could be of Gross or after a split-point. The split-point is a negotiable dollar figure usually based on expenses plus local "profit" (typically 10%). After ticket revenue has surpassed the split-point, the contract calls for splitting further proceeds by the agreed upon percentage. This arrangement is very common in concerts, but rather rare in other types of contracts.

There are certainly other possibilities beyond the three listed above, although they are likely the most Common. Regardless what arrangement is agreed upon, make sure that it is clearly stated in definable terms. If the agency/artist contract does make some adjustment try first to do so on the face of the contract. If there is not sufficient room, do it on the "Additional Terms" item of the University Addendum.

One final point regarding compensation: periodically an agency/artist contract will use the term "wage." Delete any reference to wage and insert "compensation." The use of "wage" might serve to establish an employer-employee relationship.

8. No contract that calls for payment of special fees (music royalties, ASCAP, BMI, union pension funds, etc.) should be accepted. The UCSA pays all annual contracted performance fees to ASCAP, BMI, and SESAC. Fees other than these should be the responsibility of artist and/or agent. The University Addendum includes an item for this (#1)

9. Do not agree to abide by Labor Union regulations: strike all such clauses. If an agreement stipulates union arbitration as a method of settling disputes it should be edited to read that legal proceedings are the only acceptable methods.

10. If the artist intends to sell concessions, then the sponsor should receive a percentage of the gross sales less applicable taxes (we are tax exempt, the artist isn't usually). The typical percentage is 15%. The percentage and manner of sale should be clearly specified in the contract and/or addendum. Agency contracts often forbid the PURCHASER from realizing any revenue concessions sales. Delete as necessary and reference the appropriate addendum item (#10).

11. In preparing or editing a contract, you must look at the issue of indemnity from two perspectives. One, as a state institution, if a suit results from the institution's negligence then the courts will probably not hold the artist responsible, but should not agree in advance to indemnify the artist. On the other hand, we should attempt to require the artist or agent to indemnify the University from their negligence. This point is, of course negotiable, since negligence on our part would likely make the indemnity clause unenforceable.

12. A reference was made earlier that the University is tax exempt. In any contract it is important to delete any reference to the University being responsible for paying any sort of tax.

13. The laws of the State of Florida greatly effect the way we deal with contracts. This brings up the issue of jurisdiction of enforcement for the contract. Most contracts specifically state the jurisdiction of the contract, typically the home state of the agency. Always edit this to read Florida and/or Pensacola and/or Escambia County. As a state agency it is not wise to agree to abide by another state's laws.

14. Nearly every contract will have an "Act of God" or "force majeure" clause. Basically this item says that if events beyond the control of either party prohibit the fulfillment of the agreement, then neither party has any liability to the other. Always reference our version of this clause (# 2) because it clearly states our definition of Act of God and also states the notification procedure. It is not typically necessary to delete the existing clause unless it appears to be in conflict with our version.

15. It comes as no surprise that a state institution must prohibit the use of illegal substances, which on campus includes alcoholic beverages in some instances. Use appropriate judgment to determine if some statement should be made regarding drugs and alcohol in the contract or addendum.

16. Most contracts establish remedies should the institution in some manner breach the agreement. Typically these items allow the artists to refuse to perform but still collect their fee. If the state will not allow payment in advance, it certainly will not allow payment for services that were not rendered. The artist can legitimately refuse to perform but we must delete any reference to our continued financial liability. Let the courts determine if we should pay damages. Additionally, the artist should never be the sole judge, it should always be with the approval of the institution.

Breach can work both ways, so there is an addendum item that provides remedies for the institution should the artist breach.

17. Often, when an addendum is incorporated into an existing contract, some items are dealt with differently in each part. To insure the preferred interpretation, an addendum item has been developed to give superiority to the University Addendum over the original agreement: "In the event of any conflict, inconsistency, or incongruity between the provisions of the ARTIST'S contract and/or rider and the provisions of this addendum, the provisions of this addendum shall in all respects govern and control" (#13).

18. For the sake of clarity and professional appearance we should attempt to prepare contracts and addendum in a standardized format. The first step in establishing a format is to determine the basic elements that should always be present. The following list, though not exhaustive, should present an acceptably comprehensible list of items to include:

- a. **Heading, i.e.: "University Addendum"**
"Musical Performance Contract"
"Speaker Engagement Contract"
"Service Contract"
The Heading should be descriptive of what the contract is all about.
 - b. **Opening paragraph:** This should state the parties who are entering into the agreement and establish what nomenclature will be used to refer to each party, i.e. PURCHASER, ARTIST, PRODUCER, AGENT, etc.
 - c. **Program or Service Details:** Who, what, when, where.
 - d. **Compensation:** How much, payable to whom, payable when, ticket prices, house capacity, adjustments to capacity, adjusted gross potential. The underlined items are always necessary, the others may not be necessary for all situations. Remember, travel and other expenses are often part of compensation. A service contract might require an invoice in some instances.
 - e. **Additional Details:** Receptions, press conferences, specifics of services, etc.
 - f. **Standard Clauses:** Act of God, deposits, insurance, unions, etc., as discussed previously.
 - g. **Signature Blocks:** To be formatted as discussed earlier.
19. Probably the most important thing to keep in mind in preparing a contract, whether it be a familiar type or a unique, one-time only document, is to use clear, precise language and to include all essential elements