Contracts

by

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### 19 Contracts

A contract is an agreement between two parties (individuals or companies) with terms and conditions. It constitutes a valid legal obligation. Typically, a valid contract requires a meeting of the minds of two competent parties; an exchange of something valued by each party, such as a promise, product, or service; and signatures of both parties. Businesses frequently enter into contracts and the person who signs the contract should have a thorough understanding of the content.

NNBA member and nurse attorney Tonia Dandry Aikin, RN BSN JD, is president and co-founder of Nurse Attorney Resource Group, Inc., adjunct faculty of the Louisiana State University Health Science Center School of Nursing, and past president of The American Association of Nurse Attorneys. Her book Legal, Ethical, and Political Issues in Nursing expertly covers nursing and the law, nursing ethics, liability in professional practice, and professional issues helping the nurse enter into a contract. Samples of consulting, independent contracting, and expert witness contracts are included. The book also helps the reader understand and locate standards of care. I highly recommend the book for any nurse starting or operating a business. The book is available at physical and online bookstores.

**Contract Elements**

All legal contracts contain the same basic elements.
• Identify the parties
  · Name
  · Type of entity
  · Contact information such as address, phone, etc.
• Recitals
  · Background or history of the agreement
  · Purpose for entering into the contract
  · Key assumptions for the contract
• Obligation
  · Who is required to do what?
  · By what date?
  · Whose obligation is it to deliver the product and what will it cost?
• Terms
  · What is the length of term of the contract?
  · How will the term be renewed or extended?
• Costs
  · What is the cost of the product or service?
  · How is the cost determined if not a fixed price?
  · By the hour
  · By a formula
• Payment terms
  · When is the payment due?
  · Will there be deposits, partial payments, balloon payment, or installment payments?
  · Will interest be charged or late payments be charged?
• Representations and warranties (an assurance by the seller that the goods are as represented or will be as promised)
  · What warranties and representations are claimed?
  · Are any representations or warranties not allowed?
  · What is the length of the representations and warranties?
• Liability
  · What liabilities exist?
  · Under what circumstance is one party liable?
• Termination
  · What happens if one person wants to terminate the con-
tract early?
· What are the consequences of termination?
· Are there any post-termination obligations?

• Confidentiality
  · Are there any confidentiality obligations?
  · Is there any exclusion from confidentiality?

• Default
  · What are the events that constitute a default?
  · Is there a length of time to cure the default?
  · What are the consequences of a default?

• Disputes
  · How will disputes be handled?
  · What rules will govern?

• Indemnification (damage, loss, or injury)
  · Is there indemnification for certain breeches or problems?
  · What is the procedure to obtain indemnification?
  · Is there a cap or exclusion from indemnification?

• Miscellaneous but important clauses that can make or break a contract
  · Governing law
  · Fees for the attorneys
  · How to modify the agreement
  · What constitutes notice
  · Severability
  · Time of the essence
  · Waiver
  · Headings
  · Necessary acts and further assurances
  · Force majeure, an unexpected or uncontrollable event
  · Jury trail waiver
  · Specific performances
  · Assignment

• Signatures
  · Name and company position
  · How many signatures are required
  · For corporations the typical signature block: Company,
signature, name typed or printed and the person and the position held in the company, e.g., president

**Independent Contractor’s Consulting Contract**

Healthcare facilities do not hire independent contracts for staff. The IRS and Medicare regulations prohibit using an independent contractor for nursing staff.

The following text represents the types of clauses found in an annual nurse consultant contract. This is an example of a contract and is intended only as an example of the type of information covered. Sample contracts can be obtained online, from the library, or with legal business software. Starting with a sample contract and adding your unique information can save time for your attorney and that means money saved for you.

**Sample**

**Name the parties involved**

This agreement is made and entered into this 5th day of January, 2004, between AAA Healthcare Facility whose address is 5600 North Jackson Street, Anywhere, CA, 23009, hereinafter referred to as the Corporation and Jane Doe, RN, of 6470 North Main Street, Anywhere, CA, 20042 hereinafter known as the Nurse Consultant.

Corporation owns and operates Upstate Regional Hospital at the address above and the Corporation desires to have nursing consulting services performed for Corporation’s business by Nurse Consultant.

The Nurse agrees to perform nursing consulting services for the Corporation under the terms and conditions of this contract.

In consideration of the mutual promises contained herein, it is
agreed by and between the Corporation and the Nurse.

**An outline of duties and responsibilities**
The Nurse Consultant will perform consulting services on behalf of the Corporation with respect to all matters relating to planning of an effective and efficient triage department (include complete description of duties and responsibilities).

**Location of work**
Nurse Consultant’s services will be rendered at 6470 North Main Street, Anywhere, CA, 20042, but that Nurse Consultant will, when requested, come to the Corporation’s address of 5600 North Jackson Street, Anywhere, CA, 23009, or other locations as designated by the Corporation to confer with representatives of the Corporation.

**Time**
In the performance of the consulting services, the Nurse Consultant is to work will be completely under the Nurse Consultant’s control and Corporation will rely that the Nurse Consultant work the number of hours necessary to fulfill the intent of this contract. It is estimated that the work will take approximately twenty (20) days of work per month. However, there may be some months when the Nurse Consultant may not provide any services or, in the alternative, may work more than twenty (20) days.

**A payment schedule**
Corporation will pay Consultant Nurse the total sum of one-hundred-and-twenty-five-thousand dollars ($125,000.00) each year payable in equal monthly installments on or before the first (1) day of each month for services rendered in the prior month. In addition, Nurse Consultant will be reimbursed for all traveling and living expenses while away from City of Anywhere, State of California.
Status of consultant
The services performed by the Nurse Consultant under this contract will be as an independent contractor and Nurse Consultant will not be considered an employee of the Corporation for any reason, including payment of taxes and insurance.

Service to others
Because Nurse Consultant will acquire or have access to information that is of confidential and privileged nature, Nurse Consultant shall not perform any services for any other person or firm without Corporation’s prior written consent.

The length of time that the contract is in force and termination clause
The parties to this contract agree that this contract is intended to be for five (5) years, but the contract shall be considered as a firm commitment on the part of the parties hereto for a period of one (1) year commencing on the first of January 2004. At any time before the 1st of January of any year, either party hereto can notify the other in writing that the arrangement is not to continue beyond the 1st of February of that year; otherwise, the contract shall run from year to year, up to a maximum period of five (5) years.

Notice
Any notice required to be given hereunder shall be deemed given on the third (3rd) business day following mailing of any such notice, postage paid, registered overnight mail to the address set out herein above.

How any dispute may be resolved
For all disputes arising under or in connection with this contract, which cannot be resolved through good faith negotiations, the par-
ties shall mediate those disputes with the assistance of a third party neutral. If the parties cannot resolve any such disputes in mediation, they shall submit such disputes to binding arbitration.

**Income tax designation**
In the event that the Internal Revenue Service should determine that the subcontractor is, according to the IRS guidelines, an employee subject to withholding and social security contributions, the Nurse shall acknowledge that all payments from the Corporation are gross payments and the Nurse is responsible for all income taxes and social security payments thereon.

**Signatures and dates of each signature**
In Witness Whereof, the parties have hereunto set their hands and seal the day and year first above written.

Every company, whether new or established, is involved with many contracts. The person signing those contracts is responsible for knowing the content. A good contract protects the business.