

# Contract “Must-Haves” Checklist

## Top Contract Criteria that Proactively Reduce Risk

After vetting and selecting a partner vendor to support online programs, the next step is to formalize expectations and responsibilities in a legally binding contract. Full contracts can span fifty or more pages, covering every aspect of the partnership, from tuition splits and service level agreements to student information security and recruiting ethics. Below we itemize the most critical clauses to get right—those that, left unscrutinized, have most often led to misunderstandings and client dissatisfaction.

*This document provides general guidance in the structuring of contracts with vendor partners for online education programs, and does not substitute for professional legal advice. Always consult your institution’s general counsel to ensure complete and accurate legal language and compliance with all applicable state, institutional, or other regulations.*

### Revenue Splits

Critical Clauses	Problem Avoided
<b>Specify that the vendor’s revenue split is based upon tuition only</b> , giving participating academic unit(s) the flexibility to raise and retain additional revenue through student fees, if desired	Unexpected disagreements on the sources and amounts of revenue payments to the vendor
For public institutions, <b>specify that the vendor’s revenue split is based upon in-state tuition rates</b> , even if higher tuition is levied on online students from out-of-state	
<b>Specify that revenue splits remain constant over the life cycle of each student</b> , avoiding overly complex revenue calculations or unfavorable changes to revenue share	

### Intellectual Property

Critical Clauses	Problem Avoided
<b>Specify that full ownership over all course content is retained by the institution or academic unit</b> , depending on institutional precedent	Legal action or unexpected “buyback” fees upon early termination of contract

### Vendor Personnel

Critical Clauses	Problem Avoided
In addition to vetting an initial vendor personnel list, <b>require that the institution be notified in advance of any change to key vendor staff assigned to the contract</b> , and if desired, be given authority to explicitly approve or reject replacement candidates	Faculty and staff inability to access service after sudden, unannounced vendor staffing changes

# Contract “Must-Haves” Checklist (continued)

## Subcontractors

Critical Clauses	Problem Avoided
Require that all subcontractors used by the vendor (e.g., market research firms), are identified in the contract	Information sharing with unknown or unwanted subcontractors; service quality reduction due to proliferation of subcontractors
Specify that the lead vendor is the main point of contact for all service requests and issues	Unclear point of contact and lack of accountability for service failures

## Contract Renewal

Critical Clauses	Problem Avoided
Prohibit an automatic renewal of the contract at the date of expiration	Unexpected “passive” renewal of contract

## Contract Termination or Expiration

Critical Clauses	Problem Avoided
Provide an optional exit clause triggered by service failures, generally 30 or 60 days after notifying the vendor and seeing no good faith effort at improvement	Lack of legally binding accountability mechanism for service failures
Explicitly rule out multiyear “teachouts” and post-contract revenue splits, in which faculty must continue to teach programs and share revenue as a penalty for early termination	Costly barriers to exit that prolong an unproductive partnership
Require a phase-out timeline that includes gradual handoff of all student data (current and prospective), free LMS-to-LMS transfer of all academic content, transfer of website ownership, and cross-training of institution’s staff, preferably with a month or more of overlap to allow for troubleshooting	Lack of clear transition strategy results in significant decline in recruiting and major technical difficulties

Depending on the RFP obligations to which your institution is subject, it may make sense to include some or all of the above stipulations in the original RFP. This ensures that interested vendors are immediately on the same page as the requesting school or institution (even before contract negotiations), and also serves to weed out vendors who may find the stipulations unacceptable.