**Contract Review Guidelines**

The following guidelines and recommendations are to assist Fiscal Sponsors when reviewing third-party expense and revenue-generating contracts for their Model A or L Projects.

What is a contract? Valid and legally enforceable contracts require the following elements which are easily met and often assumed but warrant mention:

* M[utual assent](https://www.law.cornell.edu/wex/mutual_assent) expressed by a valid [offer and acceptance](https://www.law.cornell.edu/ucc/2/2-206) - the parties, by their own free will, agree to be bound by the terms of the contract;
* Adequate consideration - one party promises to do something or refrain from doing something in exchange for something else;
* Capacity - parities are of legal age and of sound mind to enter into the contract; and
* Legality - the purposes for which the parties are entering into the agreement are legal.

What to confirm when reviewing contracts.

* If an expense contract is being reviewed and the contractor is an individual, it has been determined that they do not need to be classified as an employee.
* The contract names the parties, includes an accurate legal description of them, and provides basic context on the engagement. The ‘Model A’ fiscal sponsor, as the party entering in the contract on behalf of a Project should be a named party and signatory.
* All terms are clear or at least understood by the reviewer.
* The contract sufficiently describes the activities to be undertaken.
* For revenue-generating contracts, the Fiscal Sponsor is confident the Project has the capacity to provide agreed-upon deliverables and, for expense contracts, Sponsor is confident the Project is able to oversee and make use of deliverables for exempt purposes.
* There is a defined period of performance that is reasonable to accomplish the work being performed. The contract states amendments require sign off by authorized parties.
* The level of compensation is clear and reasonable given the level of effort and if an expense contract, there are funds available to pay.
* The invoicing process describing how and when money is exchanged is clear and reasonable and conforms with upper-tier funding arrangement(s), if any.
* Ownership of work products including IP is clear and conforms with upper-tier funding arrangement(s), if any. Typically, the deliverables produced are a “work made for hire” and owned by the entity paying for the deliverable but sometimes the work is co-owned or released under a Creative Commons license so it’s publicly available at no cost.
* The contract includes a requirement that both parties protect confidential and sensitive information that is shared.
* Insurance requirements are reasonable and can be compiled with.
* If there is indemnification language or a provision limiting damages or limitation on liability, it is commensurate with the risk profile contemplated by the arrangement.
* It is clear whether or not the contract can be assigned to third parties. Ideally, permission should be required by the non-assigning party.
* It is clear who official notifications should be sent to.
* The contract speaks to circumstances under which either party can terminate and what happens, including provisions that survive termination of the contract.
* The provision(s) around resolving disputes are clear, ideally compelling the parties to work together and failing that, use a mediator before taking legal action.
* For expense contracts, the contract terms comply with the terms of any upper-tier agreements such as grant awards paying for the work.
* The reviewer is comfortable with the governing law/venue provisions.

Additional Recommendations.

* Contracts should be well organized, easy to understand, and reasonable. Our [blog post on this topic](https://www.socialimpactcommons.org/ideas-blog/equitable-contracting-patterns-of-practice) covers considerations to help engage in more equitable contracting.
* The role of the Fiscal Sponsor in reviewing contacts for its Projects can (and should!) go beyond simply confirming acceptance to the contract terms and include:
  + Educating Projects on the importance of contacts and the implications of particular terms (e.g. IP, payment timing).
  + Supporting the Projects in negotiating language that will best position them to accomplish their objectives and protect them.