
Professional Certificate in Legal Research and Writing

Drafting Legal Documents

Affidavit – A written statement made under oath, usually sworn before a notary public or other authorized officer. It is used to present factual evidence in a variety of proceedings, such as motions, summary judgments, or investigations. The affidavit must contain a clear introduction identifying the affiant, a statement of facts presented in chronological order, and a concluding paragraph where the affiant swears the truth of the statements. Precision is essential; any ambiguity may be exploited by opposing counsel to challenge credibility.

Pleading – The formal document filed with a court that initiates or responds to litigation. Common pleadings include the complaint, answer, counter-claim, and reply. Each pleading must comply with jurisdiction-specific rules regarding format, caption, jurisdictional allegations, and service. For example, a complaint must contain a jurisdictional statement establishing the court's authority, a concise statement of the claim, and a demand for relief.

Complaint – The plaintiff's primary pleading that outlines the factual basis for the lawsuit, identifies the parties, and specifies the relief sought. Effective drafting of a complaint requires a "facts-first" approach: begin with a brief narrative of the events, then articulate the legal theories that connect those facts to the plaintiff's entitlement. Avoid "legalese" that obscures the core narrative; clear, plain language improves the chances of surviving a motion to dismiss.

Answer – The defendant's responsive pleading that admits, denies, or partially admits each allegation in the complaint. The answer must also raise any affirmative defenses, such as statute of limitations or accord and satisfaction. Including affirmative defenses early prevents waiver and preserves issues for later stages of the case.

Counter-claim – A claim filed by the defendant against the plaintiff within the same proceeding. Counter-claims may be compulsory (arising out of the same transaction) or permissive (independent of the plaintiff's claim). Drafting a counter-claim requires careful coordination with the answer to avoid contradictions.

Motion – A request made to the court for a specific ruling or order. Motions can be pre-trial (e.g., motion to dismiss, motion for summary judgment) or post-trial (e.g., motion for judgment notwithstanding the verdict). The motion must contain a concise statement of relief, a factual background, and a legal argument supported by authorities. An effective motion includes a clear statement of relief, a summary of key facts, and a well-structured argument section.

Motion for Summary Judgment – A request that the court decide the case without a trial because no genuine factual dispute exists. The moving party must show that the undisputed facts, when viewed in the light most favorable to the non-moving party, entitle them to judgment as a matter of law. Supporting affidavits, deposition excerpts, and admissible documents are essential.

Brief – A written advocacy that presents legal arguments and authorities to support a motion, appeal, or other procedural request. The brief includes an introduction, statement of facts, argument, and conclusion. Proper citation to primary authority (cases, statutes, regulations) follows the jurisdiction’s citation guide (e.g., Bluebook or ALWD). The brief should be organized with headings that guide the reader through each point.

Memorandum of Law – Similar to a brief, but often used for internal analysis or to accompany a motion. It provides a thorough discussion of legal issues, citing precedent and policy considerations. While less formal than a brief, a memorandum must still be meticulously referenced and free of typographical errors.

Deposition – The sworn, out-of-court testimony of a witness, recorded by a court reporter. Depositions are a key source of discovery and can be used to impeach a witness at trial. The deposition transcript must be accurately transcribed and may be attached as an exhibit to motions or pleadings. When drafting a deposition summary, use precise quotations and indicate any objections raised.

Exhibit – Any document, photograph, or object submitted as evidence. Exhibits are labeled sequentially (e.g., Exhibit 1, Exhibit 2) and referenced in pleadings and motions. The exhibit list must include a brief description, the source, and the purpose for which it is offered. For example, “Exhibit 3 is a copy of the lease agreement dated January 1, 2020, offered to prove the parties’ obligations under the rental clause.”

Clause – A distinct provision within a contract that addresses a specific issue, such as payment terms, termination, or confidentiality. Clauses are the building blocks of a contract; each must be drafted to be unambiguous and enforceable. When drafting a confidentiality clause, define the scope of confidential information, the obligations of the receiving party, the duration of the duty, and remedies for breach.

Provision – Synonymous with clause, often used in statutes or regulations. A provision may be a single sentence or a multi-paragraph section. In legislative drafting, each provision should be numbered for easy reference (e.g., § 3.1).

Boilerplate – Standardized language that appears in many contracts, such as “entire agreement” or “severability” clauses. While boilerplate saves time, it must be reviewed for relevance to the specific transaction. Over-reliance on boilerplate without customization can create unintended gaps.

Entire Agreement Clause – A clause stating that the written contract constitutes the complete and exclusive agreement between the parties, superseding all prior negotiations. This clause helps prevent parties from introducing extrinsic evidence to alter the agreement’s terms.

Severability Clause – A provision that ensures that if one part of the contract is deemed unenforceable, the remainder of the contract remains in effect. Drafting a robust severability clause involves specifying that the invalid provision will be replaced with a valid one that reflects the parties’ original intent.

Force Majeure Clause – A clause that excuses performance when extraordinary events beyond the parties’ control occur (e.g., natural disasters, war, pandemic). Effective drafting requires a clear definition of qualifying events, the procedures for notice, and the remedies available to the non-performing party.

Indemnity Clause – A provision whereby one party agrees to compensate the other for losses arising from specified claims. The clause should delineate the scope (e.g., “third-party claims arising from negligence”), the limits of liability, and any procedural requirements for indemnification.

Warranty – A promise that certain facts are true or that a product will meet specified standards. Distinguish between express warranties (explicitly stated) and implied warranties (arising by law). In drafting, specify the duration, the remedy for breach, and any exclusions.

Arbitration Clause – A clause that requires disputes to be resolved through arbitration rather than litigation. The clause must identify the arbitration institution, the rules governing the process, the seat of arbitration, and the scope of arbitrable issues. Including a “binding” language signals that parties intend the award to be final and enforceable.

Governing Law Clause – A provision that designates the jurisdiction whose substantive law will apply to interpret the contract. This clause is critical in multi-state or international transactions to avoid uncertainty. For example, “This Agreement shall be governed by and construed in accordance with the laws of the State of New York.”

Jurisdiction Clause – Also known as a “forum selection clause,” it determines which court will have the authority to hear any disputes. The clause should state the specific court (e.g., “the federal courts of the Southern District of New York”) and whether exclusive or non-exclusive jurisdiction applies.

Recital – An introductory statement in a contract that sets out the background and purpose of the agreement. Although not enforceable as a term, recitals aid in interpreting ambiguous provisions. Draft recitals concisely, focusing on material facts that give context to the operative clauses.

Consideration – The value exchanged between parties that makes a contract enforceable. In drafting, identify the consideration for each party (e.g., “payment of \$10,000” for “delivery of goods”). Failure to articulate consideration may render the agreement void for lack of mutual assent.

Assignment – The transfer of contractual rights or obligations from one party to another. An assignment clause may either permit or restrict assignment. When drafting restrictions, use language such as “no assignment without the prior written consent of the non-assigning party.”

Novation – The substitution of a new party for an original party, accompanied by the extinguishment of the original contract. A novation clause must expressly state that the original contract is terminated and a new contract is formed.

Waiver – The intentional relinquishment of a known right. A waiver clause often clarifies that a party’s failure to enforce a provision does not constitute a waiver of that provision. For instance, “No failure or delay by either party in exercising any right... shall constitute a waiver of such right.”

Amendment – A modification to an existing contract. The amendment clause should specify the method for making changes (e.g., “in writing signed by both parties”) and whether electronic signatures are acceptable.

Termination Clause – A provision that outlines the circumstances under which the contract may be ended,

the notice required, and the consequences of termination (e.g., payment of outstanding fees). Include both termination for cause (e.g., breach) and termination for convenience (e.g., unilateral termination with notice).

Notice Provision – A clause that defines how formal communications between parties must be delivered (e.g., by certified mail, email, or courier) and the addresses to be used. Proper notice provisions help prevent disputes over whether a party received required communications.

Entire Agreement Clause – (Repeated for emphasis) This clause is a safeguard against “parol evidence” arguments. Draft it to read: “This Agreement, together with any schedules and exhibits attached hereto, constitutes the entire agreement between the parties and supersedes all prior understandings.”

Signature Block – The concluding part of a document where parties affix their signatures, titles, and dates. Ensure the block includes the full legal name, capacity (e.g., “President”), and any corporate seal if required. For electronic documents, reference the applicable e-signature law (e.g., ESIGN Act).

Electronic Signature – A signature in electronic form that is legally binding under statutes such as the Electronic Signatures in Global and National Commerce Act. When drafting an agreement that will be signed electronically, include an e-signature clause stating that the parties consent to electronic execution.

Redaction – The process of obscuring confidential or privileged information in documents before production. In drafting discovery responses, indicate redacted portions with a notation such as “[redacted]” and provide a privilege log describing the basis for each redaction.

Privilege Log – A document that lists all withheld documents or communications, stating the privilege claimed (e.g., attorney-client privilege) and a brief description of the document. The log must be sufficiently detailed to allow the opposing party to assess the claim without revealing the protected information.

Attorney-Client Privilege – A protected communication between a client and attorney made for the purpose of obtaining legal advice. When drafting correspondence that may be subject to privilege, include a confidentiality header and avoid unnecessary third-party disclosures.

Work-Product Doctrine – Protection for materials prepared in anticipation of litigation. Drafting notes, memos, and investigative reports should be labeled “Attorney Work-Product” to reinforce the claim of protection.

Statute of Limitations – The time period within which a legal claim must be filed. In pleadings, it is critical to verify that the claim is timely; otherwise, the defense can move to dismiss on limitation grounds. Draft a “timeliness” check list for each cause of action.

Cause of Action – A set of facts that gives rise to a legal claim. When drafting a complaint, each cause of action should be clearly labeled and supported by the elements required under applicable law. For example, a negligence claim must allege duty, breach, causation, and damages.

Damages – The monetary compensation sought or awarded. Distinguish between compensatory, punitive, nominal, and statutory damages. Drafting a damages section should include a precise calculation,

supported by affidavits or expert reports where necessary.

Equitable Relief – Non-monetary remedies such as injunctions, specific performance, or rescission. When seeking equitable relief, the pleading must demonstrate that monetary damages are inadequate and that the plaintiff has clean hands.

Injunction – A court order compelling a party to do or refrain from doing a specific act. Draft an injunction request by stating the nature of the conduct, the harm if the conduct continues, and the balance of hardships. Include a “temporary restraining order” (TRO) request if immediate relief is needed.

Specific Performance – An order requiring a party to fulfill its contractual obligations, typically used when the subject matter is unique (e.g., real property). The pleading must show that monetary damages are insufficient and that the contract is enforceable.

Rescission – The cancellation of a contract, returning the parties to their pre-contract positions. A rescission clause should specify the events that trigger rescission (e.g., fraud, mutual mistake) and the procedures for effecting it.

Novation – (Repeated) A contractual mechanism that replaces one party with another, extinguishing the original obligations. Include language such as “upon execution of this Novation Agreement, Party A shall be released from all obligations under the Original Agreement.”

Force Majeure – (Repeated) When drafting this clause, list specific events (e.g., “earthquake, flood, act of terrorism”) and outline the steps for notice and mitigation. Include a “material adverse effect” threshold to determine whether performance is excused.

Liquidated Damages – A predetermined sum agreed upon by the parties as compensation for breach. The clause must state that the amount is a reasonable estimate of actual damages and not a penalty. Courts scrutinize liquidated damages clauses for enforceability.

Penalty Clause – A clause that imposes an amount greater than actual damages to deter breach. Generally unenforceable in many jurisdictions; instead, parties should use liquidated damages.

Confidentiality Clause – (Repeated) When drafting, define “confidential information,” outline the obligations of receipt, specify the duration (e.g., “for five years after termination”), and identify permitted disclosures (e.g., to counsel or auditors).

Non-Compete Clause – A provision restricting a party’s ability to engage in competing activities for a certain period and geographic area. Draft with attention to reasonableness; overly broad restrictions may be deemed void as a restraint of trade.

Non-Solicitation Clause – A clause prohibiting one party from soliciting the other party’s employees or customers. Like non-compete clauses, it must be reasonable in scope and duration to be enforceable.

Indemnity – (Repeated) Distinguish between “broad” indemnities (e.g., “indemnify against any claim”) and “limited” indemnities (e.g., “indemnify for claims arising from negligence”). Include procedural steps for

making an indemnity claim, such as “notice within thirty days” and “control of defense.”

Limitation of Liability – A clause that caps the amount of damages a party may be required to pay. Commonly expressed as a multiple of fees or a fixed dollar amount. Ensure the limitation is not contrary to public policy (e.g., caps on liability for gross negligence).

Assignment Clause – (Repeated) Draft language that either permits assignment “without consent” or restricts it “unless the assignor obtains prior written consent.” Include a provision that any permitted assignment does not relieve the assignor of obligations.

Successor-in-Interest Clause – A provision that binds the parties’ heirs, assigns, and successors to the agreement. This clause ensures continuity when a party undergoes a merger, acquisition, or reorganization.

Merger Clause – Similar to an entire agreement clause, it states that the written contract supersedes all prior oral or written agreements. Use this clause to prevent parties from invoking prior negotiations as evidence of different terms.

Interpretation Clause – A provision that guides how ambiguities in the contract should be resolved. Common language includes “the contract shall be interpreted according to its plain meaning” and “in the event of an ambiguity, the provision shall be construed against the drafter.”

Construction Clause – (Often combined with interpretation clause) It may specify that any ambiguity will be resolved in favor of the non-drafting party, a principle known as *contra proferentem*.

Counter-Offer – A response to an offer that changes one or more terms, thereby rejecting the original offer and creating a new proposal. In contract negotiations, each counter-offer terminates the preceding offer; careful drafting of language such as “this offer is contingent upon acceptance within ten days” prevents inadvertent acceptance.

Offer – A manifestation of willingness to enter into a contract on specified terms, communicated to the offeree. An offer must be clear, definite, and communicated. Draft offers with explicit acceptance language (“this offer shall be deemed accepted upon receipt of a signed copy”).

Acceptance – The offeree’s assent to the terms of the offer, creating a binding contract. Acceptance must be communicated unless the offer specifies a mode of acceptance (e.g., “performance constitutes acceptance”). Use a “mirror image” rule to avoid unintended contract modifications.

Consideration – (Repeated) In drafting, ensure that each party receives something of value; otherwise, the contract may be void for lack of consideration. For gratuitous promises, include a separate enforceable consideration (e.g., a nominal sum) if the parties desire enforceability.

Promissory Estoppel – A doctrine that enforces a promise when the promisee has reasonably relied on it to their detriment. When drafting, identify reliance and the injustice that would result from non-performance. This doctrine is useful where consideration is lacking but equity demands enforcement.

Parol Evidence Rule – A rule that excludes oral or extrinsic evidence of a contract’s terms when a written

agreement is intended to be a complete integration. Draft an integration clause to invoke the parol evidence rule and protect the written terms.

Integration Clause – (Repeated) Also known as an entire agreement clause, it states the written document is the final and complete expression of the parties' agreement.

Governing Law – (Repeated) The selection of substantive law is critical in cross-border transactions. Draft a clause that specifies not only the state law but also any applicable federal statutes that may supersede state law (e.g., "subject to the United Nations Convention on Contracts for the International Sale of Goods").

Venue Clause – A provision that designates the specific court or district where any disputes will be litigated. This clause is distinct from jurisdiction; venue determines the proper location within the jurisdiction.

Arbitration Rules – When an arbitration clause references a specific set of rules (e.g., "American Arbitration Association Commercial Arbitration Rules"), include a statement that the parties agree to be bound by any amendments to those rules.

Choice of Forum – Similar to jurisdiction clause, but may also include "forum non-conveniens" language, allowing a court to dismiss a case if another forum is more appropriate.

Standard Form Contract – A pre-printed contract offered on a "take-it-or-leave-it" basis. Courts scrutinize such contracts for unconscionability, especially if there is a disparity in bargaining power. When drafting, include clear disclosures and avoid hidden terms.

Unconscionability – A doctrine that renders a contract unenforceable if it is overly harsh or one-sided. Drafting strategies to avoid unconscionability include providing negotiation opportunities, transparent pricing, and avoiding oppressive penalties.

Public Policy – Contracts that contravene public policy (e.g., agreements to commit a crime) are void. When drafting, ensure that the contract's purpose aligns with legal standards and does not require illegal performance.

Deadlines – In procedural documents, precise dates are crucial. Use calendar calculations (e.g., "within thirty days after service") and specify the method of computation (e.g., "excluding weekends and holidays").

Service of Process – The delivery of legal documents to a party, providing notice of legal action. Draft summons and complaints with clear instructions for service, and include a clause stating that service shall be deemed complete upon receipt.

Notice of Appearance – A document filed by an attorney to indicate representation of a party. The notice should include the attorney's contact information and the parties represented.

Affirmative Defense – A defense that, if proven, defeats or mitigates the plaintiff's claim, even if the plaintiff's allegations are true. Examples include "contributory negligence," "statute of limitations," and "accord and satisfaction." Draft affirmative defenses concisely, each in a separate numbered paragraph.

Counter-Claim – (Repeated) A claim filed by the defendant against the plaintiff within the same action. Ensure the counter-claim meets the same pleading standards as the original complaint.

Cross-Claim – A claim asserted by one party against a co-party (e.g., a defendant suing another defendant) in the same proceeding. Draft cross-claims with the same rigor as other pleadings.

Third-Party Claim – A claim brought by a party who is not directly involved in the original action but may be liable. When drafting, identify the third party, the basis for liability, and the relief sought.

Discovery – The pre-trial process of obtaining evidence from the opposing party. Draft discovery requests (interrogatories, requests for production, and requests for admission) with specificity to avoid objections for overbreadth or undue burden.

Interrogatories – Written questions served on the opposing party that must be answered under oath. Effective interrogatories are narrowly tailored, avoid compound questions, and seek relevant facts. Example: "Identify each person who participated in the negotiation of the contract dated March 1, 2022."

Request for Production – A demand that the opposing party produce documents, electronically stored information, or tangible items. Include a precise description (e.g., "all invoices issued by the defendant from January 1, 2020, to December 31, 2020") and specify the form of production (e.g., "in native electronic format").

Request for Admission – A set of statements the opposing party must admit or deny. Use these to narrow the issues for trial. Example: "Admit that the plaintiff was employed by the defendant from June 2018 to May 2020."

Deposition Notice – A document that informs a party of the time, place, and scope of a deposition. Include a list of topics to be covered and any documents the deponent is expected to bring.

Subpoena – A court order compelling a non-party to produce documents or appear for testimony. Draft subpoenas with clear identification of the documents or testimony required, and include a notice of the right to object.

Protective Order – An order issued by a court to limit the disclosure of sensitive information during discovery. Draft a protective order that defines the scope of confidentiality, the parties authorized to receive the information, and the procedures for handling and returning the material.

Motion in Limine – A pre-trial motion seeking to exclude certain evidence. The motion should identify the specific evidence, the legal basis for exclusion (e.g., relevance, prejudice), and any supporting case law.

Rule 56 – The Federal Rule of Civil Procedure governing summary judgment. When drafting a Rule 56 motion, include a statement of undisputed facts, evidence supporting each fact, and a legal argument that no genuine issue of material fact exists.

Rule 12(b)(6) – The motion to dismiss for failure to state a claim. Draft this motion by demonstrating how each element of the plaintiff's claim is deficient, referencing case law that sets the pleading standard.

Rule 11 – The sanction rule for frivolous filings. When drafting pleadings, ensure all factual contentions are supported by evidence and all legal arguments have a basis in law to avoid sanctions.

Rule 26(g) – The duty of attorneys to ensure that discovery responses are complete and accurate. Include a signature certification in each response: “I certify that to the best of my knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, the response is complete and correct.”

Affidavit of Service – A sworn statement confirming that documents were properly served. The affidavit must include the date, method, and recipient of service, and be notarized if required.

Certificate of Service – Similar to an affidavit, but typically filed with the court to attest that a document has been served. Use a standard format: “I hereby certify that on [date], a copy of the [document] was served on [party] by [method].”

Legal Citation – The system for referencing statutes, cases, and secondary sources. In the United States, the Bluebook provides the dominant citation format; other jurisdictions may use local citation manuals. Draft citations accurately: “Smith v. Jones, 123 F.3d 456 (9th Cir. 2020).”

Case Law – Judicial decisions that interpret statutes and establish precedent. When citing case law, include the full case name, reporter volume, page, court, and year. Use parenthetical explanations to clarify relevance (e.g., “(holding that a breach of contract requires a material failure).”).

Statutory Authority – The specific law that governs a legal issue. For example, when drafting a motion for a temporary restraining order, cite the applicable statutory provision (e.g., “28 U.S.C. § 1631”). This anchors the argument in statutory text.

Secondary Source – Materials such as law review articles, treatises, and legal encyclopedias used to support arguments. While not binding, secondary sources can be persuasive, especially when interpreting ambiguous statutes.

Footnote – A reference note placed at the bottom of a page. In legal drafting, footnotes are used to provide additional authority, explanations, or citations without interrupting the main text. Keep footnotes concise and relevant.

Table of Contents – An organized list of headings and page numbers. In lengthy briefs, a table of contents aids the reader in navigating the document. Follow the court’s formatting rules for font size and indentation.

Table of Authorities – A list of all cited cases, statutes, and secondary sources, grouped by type and arranged alphabetically. This table is required in many jurisdictions and must reflect the exact citations used in the brief.

Headings – Structured titles that divide a document into logical sections (e.g., “I. Statement of Facts,” “II. Standard of Review”). Use consistent formatting (bold or caps) as required by the court’s style guide.

Paragraph Numbering – Sequential numbers that allow easy reference to specific arguments. In most briefs,

each paragraph is numbered in the margin; this is essential for oral arguments and for the judge's notes.

Short Form Citation – A condensed citation used after the full citation has been provided. For example, after first citing "Doe v. Roe, 456 U.S. 789 (2021)," subsequent citations may appear as "Doe, 456 U.S. at 791."

Electronic Filing (E-Filing) – The submission of court documents through an online portal. When drafting for e-filing, ensure that files are in the required format (PDF), that hyperlinks are functional, and that the document size does not exceed limits.

Signature Page – The final page of a brief where attorneys sign, certify compliance with rules, and list contact information. Include a certification clause: "I certify that this brief complies with the applicable rules of professional conduct and local court rules."

Certificate of Compliance – A statement affirming that the brief conforms to page limits, font size, and margin requirements. Many courts require a specific form; copy the template accurately.

Proofreading – The final review for typographical errors, citation accuracy, and formatting consistency. Even a single misplaced comma can alter the meaning of a clause (e.g., "The seller shall deliver the goods, if any, on the 15th day" vs. "The seller shall deliver the goods if any, on the 15th day"). Use a checklist to verify each element.

Redlining – The process of marking changes in a contract draft, typically using track changes or a different color. Redlining enables parties to see additions, deletions, and modifications. When sending a redlined version to opposing counsel, include a clean copy for final execution.

Clean Copy – The final version of a contract without any markup. The clean copy is the document that parties sign. Ensure that all negotiated changes have been incorporated before producing the clean copy.

Execution – The act of signing the contract. In multi-party agreements, coordinate the signing sequence to avoid "partial execution" issues where one party's signature is ineffective until all others have signed.

Counter-Signature – The signature of a second party on a document that has already been signed by the first party. In some jurisdictions, a counter-signature may be required to validate the agreement.

Effective Date – The date on which the contract's obligations begin. Distinguish between "effective date" and "execution date." Draft a clause that specifies whether the effective date is the date of signature or a future date (e.g., "effective as of January 1, 2025").

Expiration Date – The date on which the contract terminates automatically if not renewed. Include language that clarifies whether the contract can be extended by mutual consent.

Renewal Clause – A provision that allows the contract to be extended for additional periods. Draft renewal terms with clear notice requirements (e.g., "either party may elect to renew this Agreement by providing written notice at least thirty days prior to expiration").

Amendment Procedure – (Repeated) The method by which parties may modify the contract. Include a

requirement that amendments be in writing and signed by authorized representatives.

Signature Authority – A clause that confirms that the individuals signing the contract have the power to bind their respective organizations. Example: “Each signatory represents that they have been duly authorized to execute this Agreement on behalf of the party they represent.”

Corporate Seal – A formal embossing used by some corporations to authenticate documents. While many jurisdictions no longer require a seal, include a clause stating whether a seal will be affixed.

Reciprocity – In international agreements, reciprocity refers to mutual obligations. Draft reciprocal provisions carefully to ensure that each side’s duties are balanced.

Force Majeure – (Repeated) When drafting, consider “partial force majeure” language that allows performance of unaffected obligations while excusing those impeded by the event.

Change of Control – A clause that triggers certain rights (e.g., termination, acceleration of payment) upon a change in ownership of a party. Define “change of control” precisely (e.g., “the acquisition of more than 50% of voting stock”).

Escrow Agreement – An arrangement where a third party holds assets or funds until certain conditions are met. Draft escrow provisions that specify the escrow agent’s duties, the conditions for release, and the handling of disputes.

Bankruptcy Clause – A provision that addresses the rights of parties if one becomes insolvent. Common language includes “the non-defaulting party may terminate the agreement upon notice of bankruptcy.”

Assignment of Intellectual Property – When transferring IP rights, include a detailed schedule of the assets, the scope of the assignment (e.g., worldwide, perpetual), and any warranties regarding ownership.

License Grant – A clause that permits the use of intellectual property under defined terms. Specify the field of use, exclusivity, royalty structure, and any restrictions on sublicensing.

Royalty Clause – A provision that outlines payment calculations for the use of IP. Include the royalty rate, reporting frequency, audit rights, and methods for adjusting rates over time.

Audit Rights – The right of a licensor to inspect the licensee’s records to verify royalty payments. Draft audit provisions that set notice periods, the scope of the audit, and the party responsible for audit costs.

Confidentiality Agreement (NDA) – A separate contract that protects proprietary information. When drafting an NDA, include definitions of confidential information, the duration of confidentiality, exclusions (e.g., public domain), and remedies for breach.

Non-Disclosure – (Repeated) Use clear language to avoid ambiguity: “The Receiving Party shall not disclose Confidential Information to any third party without the prior written consent of the Disclosing Party.”

Data Protection Clause – A provision that addresses compliance with privacy laws (e.g., GDPR, CCPA). Include obligations to implement security measures, notify of breaches, and handle data subject requests.

Indemnification – (Repeated) Clarify whether indemnity is “direct” or “indirect,” and whether it includes “consequential damages.” Draft a carve-out for “gross negligence” if the parties wish to limit liability.

Limitation of Liability – (Repeated) Include a “cap” provision, such as “liability shall not exceed the total fees paid under this Agreement.”

Severance Pay – In employment contracts, define the calculation method (e.g., “one week of salary for each year of service”) and the conditions triggering payment (e.g., termination without cause).

Non-Compete Enforcement – Courts evaluate enforceability based on reasonableness. Draft non-compete clauses with a limited geographic scope (e.g., “within a fifty-mile radius”) and a reasonable duration (e.g., “two years”).

Choice of Law – (Repeated) When dealing with international contracts, consider “public policy exceptions” that may override the chosen law. Include a clause stating that “any dispute shall be resolved in accordance with the laws of the State of California, without regard to its conflict-of-laws principles.”

Forum Selection – (Repeated) Ensure the clause is “exclusive” if the parties intend to prevent litigation in other courts. Example: “All disputes shall be resolved exclusively in the Superior Court of California, County of Los Angeles.”

Electronic Discovery (e-Discovery) – The process of collecting and producing electronically stored information (ESI). Draft e-discovery protocols that specify formats (e.g., “native XML”), preservation obligations, and the use of forensic experts.

Preservation Notice – A written directive to a party to retain relevant ESI. Include language that the notice is “subject to the provisions of Rule 26(b)(1) of the Federal Rules of Civil Procedure.”

Privilege Log – (Repeated) Provide a sample format: “Document No., Date, Author, Recipient, Description, Privilege Claimed.”