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THE PRIVATE BRIEF · BUSINESS

The Contracts a Growing Company Signs in Year Two

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IN BRIEF

- Four kinds of document dominate a company's second year: the customer master services agreement, recurring vendor contracts, the first employment and freelancer agreements, and the first commercial lease.
- Each sets a pattern that repeats. The customer terms attach to every customer who signs them, vendor renewal windows come back every year, and a lease guaranty can follow a founder personally.
- New York adds specific rules at this stage: pay ranges in job postings for employers with four or more employees under Labor Law section 194-b, and written contracts and payment deadlines for freelancers under the Freelance Isn't Free Act.

Year one was formation: a certificate, an operating agreement or bylaws, founder paperwork, perhaps a first round of investment on a simple instrument. This is the year a big customer sends back your contract covered in red ink, a vendor's renewal notice lands with three weeks to spare, you post your first job for someone senior, and a broker emails a lease with a personal guaranty attached.

Four kinds of document arrive together: the **customer master services agreement** (the standing contract that governs every order a customer places), a stack of **recurring vendor contracts**, the first real **employment and contractor agreements**, and the first **commercial lease**. Between them they set how much risk the company carries, what it costs to run, and whether it owns its own product. Usually nobody holds a meeting to decide any of it.

The reason this year matters more than its volume suggests is repetition. A term you accept once in year two is a term you may accept two hundred times by year four, because it lives in a template. This is the work a standing counsel relationship is built around. The firm's General Counsel page sets out how that is priced.

Your customer agreement

Your master services agreement is the legal document your company will repeat more than any other. Five provisions decide what it is worth:

- **The cap on what you can owe.** A limitation of liability clause sets the most you can be made to pay if things go wrong. Is there a cap, what is it measured against, and what is carved out of it? Caps are often expressed as some period of fees paid, and the number is a negotiation that varies deal to deal. A cap that says nothing about your indemnity promises may leave those promises outside it.
- **What you promise to cover.** An indemnity is a promise to pay for the other side's losses from certain claims. Promising to stand behind your own product if someone says it infringes their rights is a familiar ask. Promising, without limit, to cover whatever the customer does with your product is taking on someone else's risk.
- **Who owns what gets built.** Configurations, integrations, and the suggestions customers send you. If the contract is silent on feedback, your product roadmap can become a point of argument.

- **Walking away, and what survives it.** A right to end the contract "for convenience" (for any reason) on thirty days' notice with no refund is a different business from the same right with a refund for the unused months.
- **Automatic renewal and the notice window.** Often the term customers push hardest on, and the one your finance team cares about most.

Then come the security addendum and the data processing terms, which increasingly arrive as the customer's own standard attachments and increasingly contain promises the company has not checked it can keep. The rule we give clients is simple: nothing goes in a security exhibit that someone in the company cannot demonstrate on a screen share.

Your vendor contracts

Vendor contracts are dull, which is why nobody manages them and why they cost money. Three things to control:

1. **Renewal dates.** The term, whether it renews automatically, and how much notice you must give to cancel. Every one of those dates belongs on a shared calendar the day the contract is signed, not the week you want out.
2. **Which document wins.** When there is an order form, a set of online terms linked by web address, and a negotiated addendum, say in the addendum which one controls. Otherwise the online terms, which the vendor may be able to change on its own, may end up deciding.
3. **Your customers' data.** Which vendors touch it, under what terms, and do those terms match what you promised your own customers? A gap here is not the vendor's problem. It is a promise you made and cannot keep.

Your first real hires and freelancers

This is where New York law arrives with specific requirements rather than general principles.

Ownership of what people make. Everyone who creates anything for the company should sign an agreement handing ownership of that work to the company, ideally before they start. Buyers and investors look for it, and it costs almost nothing to prevent.

Pay ranges in job postings. New York Labor Law section 194-b requires an employer that advertises a job, promotion or transfer opportunity to include the pay, or a pay range, and the job description if one exists. It applies to employers with four or more employees. It reaches internal promotion and transfer postings as well as public ads, and it covers jobs performed at least partly in New York, including remote roles performed elsewhere that report to a supervisor, office or work site in New York. For a role paid only by commission, a general statement that pay is commission-based satisfies the pay part.

Freelancers. New York's Freelance Isn't Free Act, in the General Business Law, protects freelancers who are individuals or one-person businesses hired for $800 or more, counting that job together with every contract between you and the same freelancer in the 120 days before it. Section 1412 then requires a written contract that names both parties and their mailing addresses; itemizes the services, their value, and the rate and method of pay; states the date payment is due or how that date will be set; and states the date by which the freelancer must submit a list of services rendered. You must give the freelancer a copy and keep the contract for at least six years, and the Department of Labor is required to publish free model contracts. Section 1411 requires payment by the contract date or, if the contract sets none, no later than thirty days after the work is complete. The Act does not cover sales representatives, licensed medical professionals, construction contractors, or lawyers practicing law under that contract who are in good standing with a U.S. bar and not under a court order restricting their practice.

Employee or contractor. Whether someone is really an employee is the question whose cost grows fastest with time, because the exposure builds with every person and every year. Year two is when a review is cheap.

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Your first lease

A first commercial lease is often the largest fixed commitment the company has ever made, and it is usually signed by people who have never read one.

- **The personal guaranty.** A landlord may ask a founder to guarantee the company's rent personally. One form you will hear about in New York City is the "good guy" guaranty, meant to limit the founder's exposure so it ends once the company hands back the space on agreed terms. The phrase has no fixed legal definition, and the conditions vary from deal to deal: how much notice you must give, what state the space must be in, whether rent must be paid through the day you leave, and whether there is a dollar cap. Read what the rider actually says. A guaranty for the whole term can carry the same label.
- **Rent increases and building costs.** A fixed yearly percentage increase is predictable. Clauses that pass through rises in the building's operating costs or labor costs are not, and how they are measured, including the starting year, varies lease to lease and is negotiable.
- **Putting the space back.** What must you undo when you leave? A duty to restore the premises to their original condition can cost more than the build-out did.
- **Moving the lease.** If the company is sold or shrinks, can the lease be transferred or the space sublet? A landlord's consent "not to be unreasonably withheld" is worth asking for.

One week in year two

This is a composite, not a client. A twenty-two-person company is in its second year of real revenue. In one week, four things cross the desk. A customer's procurement team sends back the services agreement with an uncapped indemnity and the liability cap deleted. A software vendor's cancellation window closes in nineteen days. A senior engineer's offer needs to go out, and the job was posted without a pay range. And a broker sends a lease rider with "good guy" in the heading and a full-term guaranty in the text.

Four documents, one week, and each sets a precedent. The customer position becomes the template. The vendor renewal becomes a yearly cost. The job posting is a compliance question with a deadline running. The guaranty follows a founder personally for years. None of them is a crisis, and together they are why companies at this stage often stop buying legal help by the matter and start buying it by the month.

Usually nobody holds a meeting to decide any of it.

Where to start

This week, open a shared calendar and add every contract renewal and cancellation date you can find, starting with your five largest vendors. Then pull your current job postings and check each one against the pay-range rule above.

This is general information about commercial contracting in New York, not legal advice about your company or your lease. Statutory thresholds and requirements change; check the current text before relying on them.

WRITTEN BY

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Anthony is the Managing Partner of Clemenza Law Group and serves as general counsel to a wide range of companies and philanthropic organizations. Nearly every essay here began as a real question from a real client: the contract that landed at 4 p.m., the board that meets on Thursday. He writes them the way he would answer you across the table, plainly and with care.