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Contracts 101:

A Brief Field Guide for the Uninitiated

Learn to speak the language and understand what your lease contract entails.

IN BUSINESS, the consummation of a relationship between parties is usually, if not always, in the form of a contract. And, while legally binding contracts can be implied simply based on the actions of two parties, in its formal version, a contract takes written form. This notion is almost universally well-understood, regardless of industry.

Interestingly however, the act of formalizing a written contract between parties can send shivers down the spine of even the most experienced business managers. Why is distilling an offer, the performance between parties, and the terms of payment for goods or services into written form so frightfully scary to many?

The answer is the same reason why few tend to perform surgery on themselves: Because an entire profession exists that specializes in providing exactly that service. In the medical field, those professionals all called doctors- or more apt to this example, surgeons. In the field of law by contrast, those professionals are called attorneys.

Specialized fields such as these- including aviation for that matter — have their own language. And that is what makes contracts utterly terrifying to some: If you don't speak the language, you're bound to make mistakes. And in business, a mistake within a contract can be costly. While it's good counsel to leave the legal heavy lifting to an attorney, I contend a business manager abdicates one of the key responsibilities of their role by leaving the *entire* contracting process to their legal department. Clearly a balance must be struck, but how?

That balance may be achieved through continuous learning, understanding the basics of contracts, and following a tried-but-true process that uses your legal counsel and other professionals, wisely. We'll explore each through the lens of a new FBO manager, though the methodologies that follow are applicable to literally any type of business in any industry — aviation or otherwise.

First, if you're reading this, you've already demonstrated a desire for continuous learning. Moreover, you're likely an aviation professional, which means you already understand specific aviation terminology and the regulatory framework of the industry. This is fundamentally important, and sets you apart from most attorneys, who unless specialized in aviation, do not. By contrast, the attorney understands law, but not necessarily aviation. To close your knowledge gap then, grab the nearest contract, a cup of coffee and start reading. I recommend starting by reading your FBO's ground lease with your airport — every single word of it, plus the general terms and condition at the end, including all amendments and attachments. Ground leases set out the operating rules for your FBO on airport, and other contracts executed by your FBO with its customers are subordinate to your ground lease.

By reading contracts frequently, a pattern will emerge that supports the next step, understanding the basics of contracts. Generically, contracts follow a pattern, beginning with the recitals which defines who the various parties. Note the capitalization of certain words- those are defined terms. Defined terms are used to make the interpretation of

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a contract easier, though to the uninitiated, it may initially create confusion. I'll provide an example. In a hangar sublease agreement, when the subject aircraft is introduced in the contract, it may be described as follows: *The subject aircraft is a Cessna 172, bearing FAA registration number N123AB, hereafter the ("Aircraft").* From this point forward in the agreement, the capitalized term Aircraft means that specific Cessna 172.

As patterns emerge from reading contracts repeatedly, confidence grows. Legal terms also come into focus, such as commercially reasonable efforts and best efforts, which are two very different standards of effort incidentally. Likewise, various standards of conduct such as negligence, gross negligence and willful misconduct begin to become familiar. Provisions that mitigate risk amongst the parties (or "Parties" as it says in the contract) such as insurance requirements, indemnification, and others are similarly structured. These patterns are what makes understanding contracts easier than they look. Remember, no one has ever won a Pulitzer Prize for creative contract writing. By definition, a contract is structured to remove ambiguity between parties, not add to it.

As a result, virtually every provision with a contract will also fall into one of three decision-making buckets for the FBO manager to interpret and decide how to proceed. The first bucket is a business decision. A business decision is exactly what it sounds like, and it's up to the business to make the call, not an attorney. This may include certain FBO services or products and the attendant pricing of each in the contract. Next is a risk-based decision, which may include involvement from your insurance broker and/or attorney. An example would be a proposed change to an insurance provision, such as a waiver of subrogation. The last bucket is a true legal decision, which is also a risk-based decision, but — returning to the wise use of counsel — requires an attorney, not necessarily an insurer. An example of this would be say, a proposed change in venue to a different state in which a disagreement over the contract would be handled. In such a case, it is still the business' call if they choose to accept a change in venue. The attorney's role is to advise their client (your FBO) what the associated risk is in a change in venue and make a recommendation.

Lastly, once a firm grasp on the basics of a contract is in hand including what decisions can be made solely by the FBO, and what decisions are better made after consulting counsel or your insurer, you're ready to execute on a tried-but-true contracting process with a customer. For the purposes of this example, let's assume the "deal," including the pricing of services and products to be provided, is already verbally agreed to between the FBO and customer.

The first step in the contracting process is for the FBO to follow with either a term sheet, or a letter of intent (LOI) to the customer. Binding or non-binding, the point of leading with a term sheet, instead of a contract, is to negotiate the business points of the deal up front. That way, when the deal points are agreed to, they can be inserted into the contract cleanly, allowing both parties can concentrate on the agreement itself. After term sheet acceptance, the customer should be provided with a draft contract, already pre-populated with the agreed-upon pricing and deal points, as well as all identifying aspects of the customer relevant to the contract.

After a few days, or weeks, the customer might send back the same agreement, except redlined by themselves or their attorney. As it arrives in your inbox, embrace the moment. This is why you practiced and read all those painfully long contracts the past few months, because instead of simply hitting "forward" and sending to an attorney to review and counter, you pour a cup of coffee, and begin your review. It's only *after* your review and redlines do you send the agreement to your attorney to finalize it. Once finalized, you're ready to send it back to the customer as a ready-to-sign agreement.

Despite the potential pitfalls, taming the contracting process can be enjoyable (hereafter "Fun").