

Tips for raising venture capital: commercial contract issues

By Jeff Lehrer

You started with a great idea and have built the technology to bring your idea to life. You have also addressed the critical intellectual property rights issues that will allow you to protect your idea in the commercial market. Here are some common commercial contract issues to watch out for as your company begins contracting with third parties and looks forward to the next venture round or potential acquisition.

When entering into a licensing agreement, consider the impact that the agreement may have on your company's ability to pursue subsequent contracting opportunities. For example, avoid granting exclusivity rights to customers, such as for a fixed period of time or in certain geographies. Similarly, avoid giving non-competes for broad fields or entering into a long-term agreement with no ability to adjust pricing during the term of the contract.

Be careful that your commercial agreements clearly and properly allocate ownership of IP, such as when entering into development agreements with developers and contractors. If you expect that your company will own the development, ensure that your contract clearly spells that out. For more information about ownership of IP in consulting agreements, please see our article on [consulting agreements](#).

Make sure that you are in compliance with open source licenses, and be wary of including so-called viral open source code in core products. Non-compliance with open source licenses could adversely affect the value of the company's software. For more on how this could happen when [open source software](#) is not carefully used, please see our article.

Further, avoid entering into commercial agreements where you may be on the hook for uncapped liability. Among the potential pitfalls in such agreements are overly broad indemnities and performance warranties, which may result in the company assuming a level of liability that scares away investors.

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