Understanding design contracts

Overview

Design is a business.

Contracts are a fundamental part of *doing the business of design*.

- If you work at a consultancy, or as a freelance contractor, a contract will guide what you do.

- If you work inhouse, a contract will guide what your vendors or partners will do.

- A contract *limits risk* and *improves relationships.*

- As a design leader, you will need to understand—and sometimes write—contracts.

Notes:

This content is written from the perspective of a consultant. It all still applies for inhouse work—just switch it all around.

The author is not a lawyer, and this should not be considered legal advice. The author is also not a CPA or tax professional, and this should not be considered financial advice. Nothing in this document constitutes legal, tax, accounting, investment or other professional advice. You should seek appropriate counsel for your own situation. The author will not be liable for any errors or omissions in this information and will not be liable for any losses, injuries, or damages from the use of this information.

Understanding the master service agreement

Understanding the master service agreement

What does it look like?
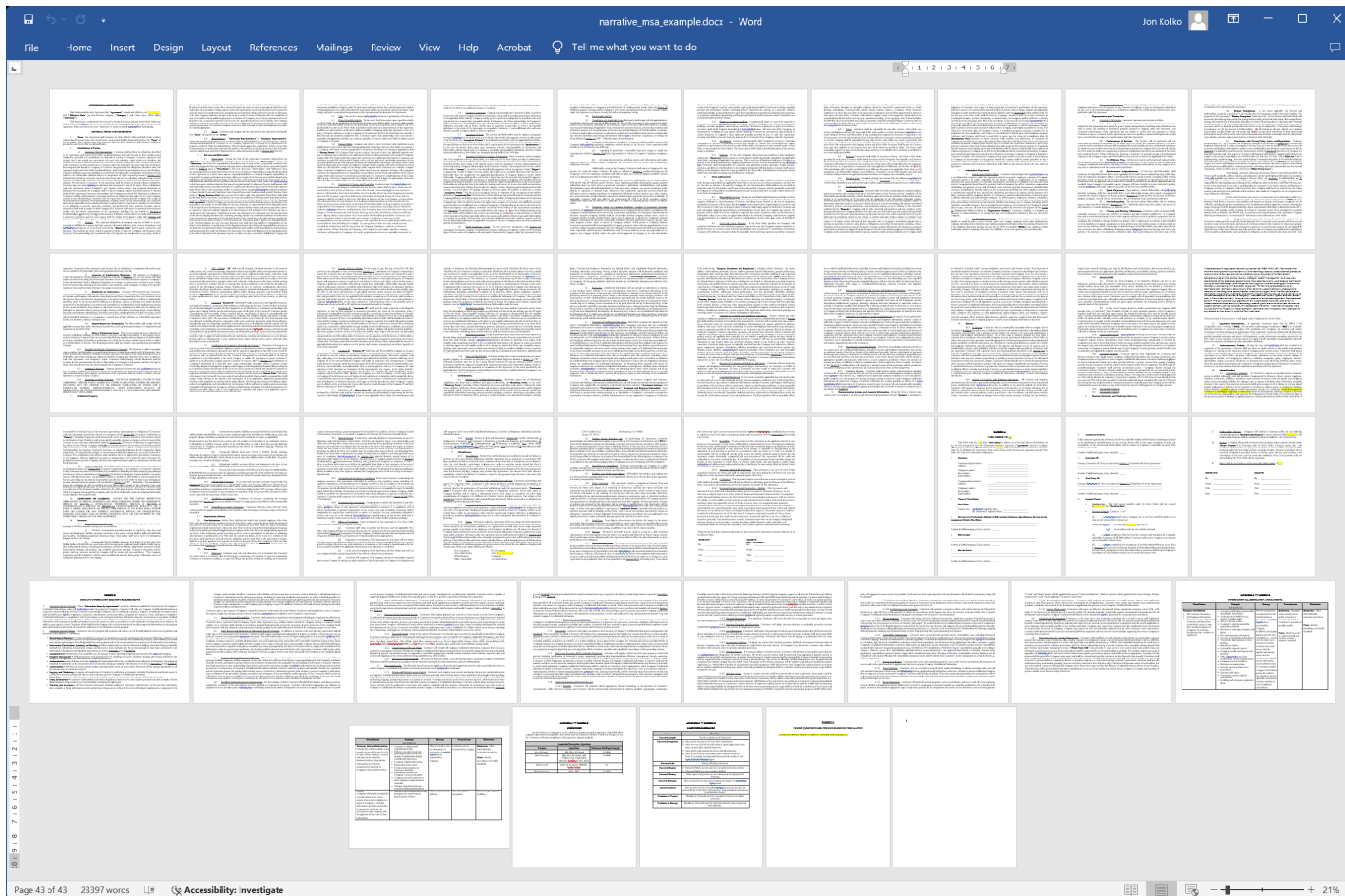
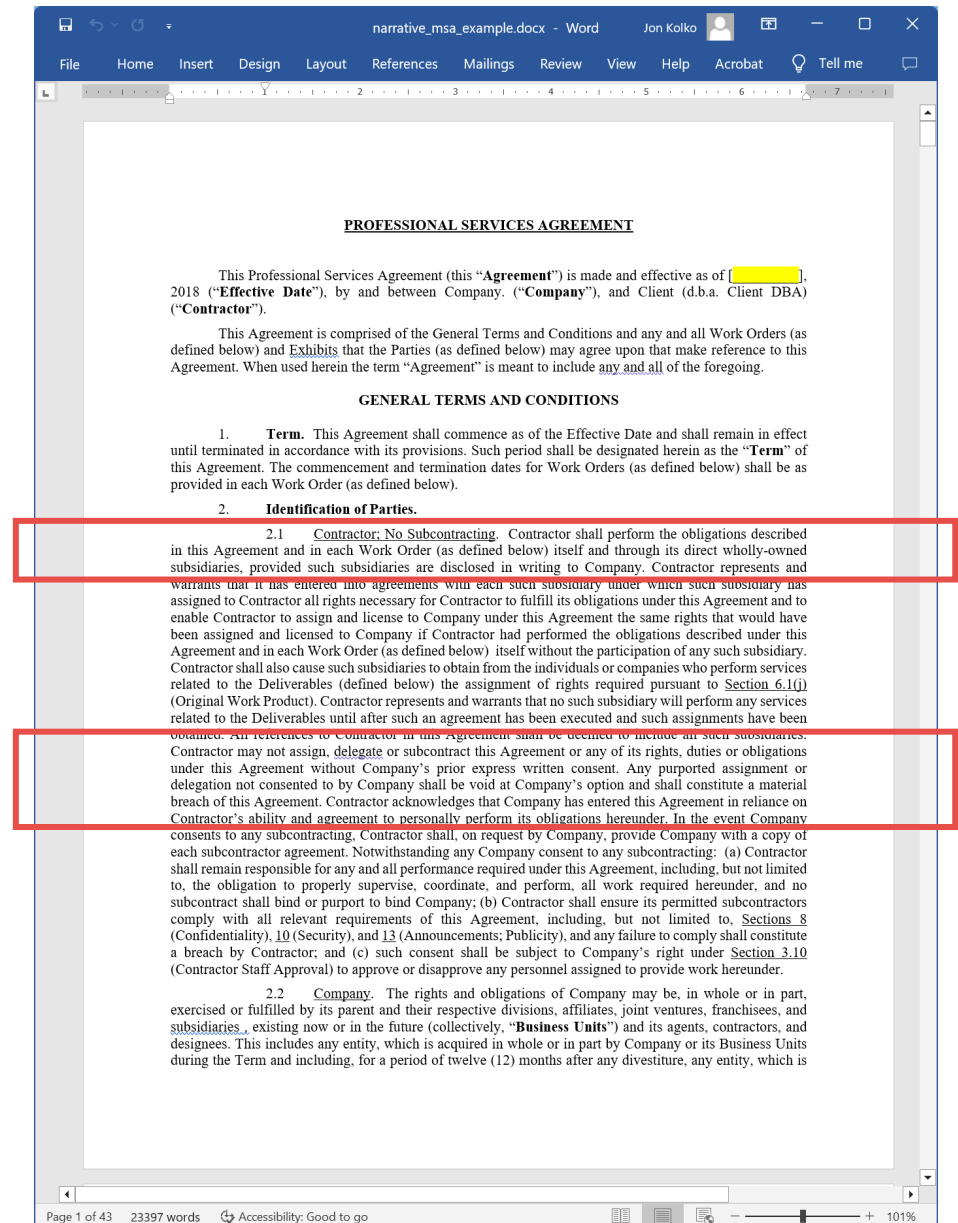Understanding the master service agreement

The MSA is written through a long back-and-forth process, and involves lots of lawyers. It's expensive (and no fun.)

Understanding the master service agreement

Common terms: subcontracting & assignment

Implications

- You will do the work yourself—you can't hire a friend to work for you, without the client agreeing in writing

- If you sell your company, you can't sell this contract to the buyer without the client agreeing in writing (but you are still responsible for completing the work)

Understanding the master service agreement

Common terms: penalties for missing deadlines

Implications

- If you miss a deadline, you will owe the company money per day missed (and you still have to finish the work)

Narrative
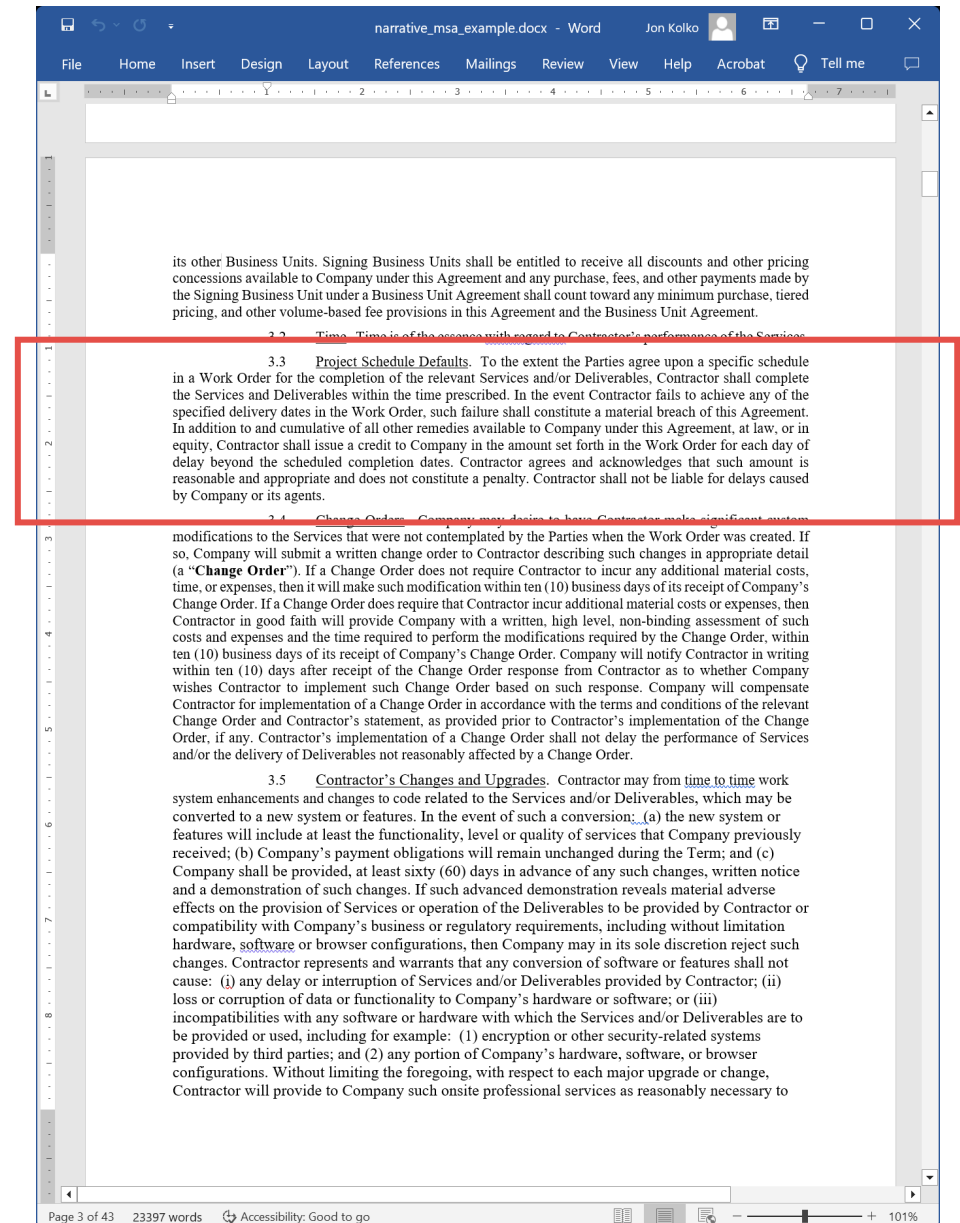
Understanding the master service agreement

Common terms: acceptance of deliverables

Implications

- If the client doesn't like what you made, they can reject it, give you a list of things to fix, and then you have to fix them, at your own expense
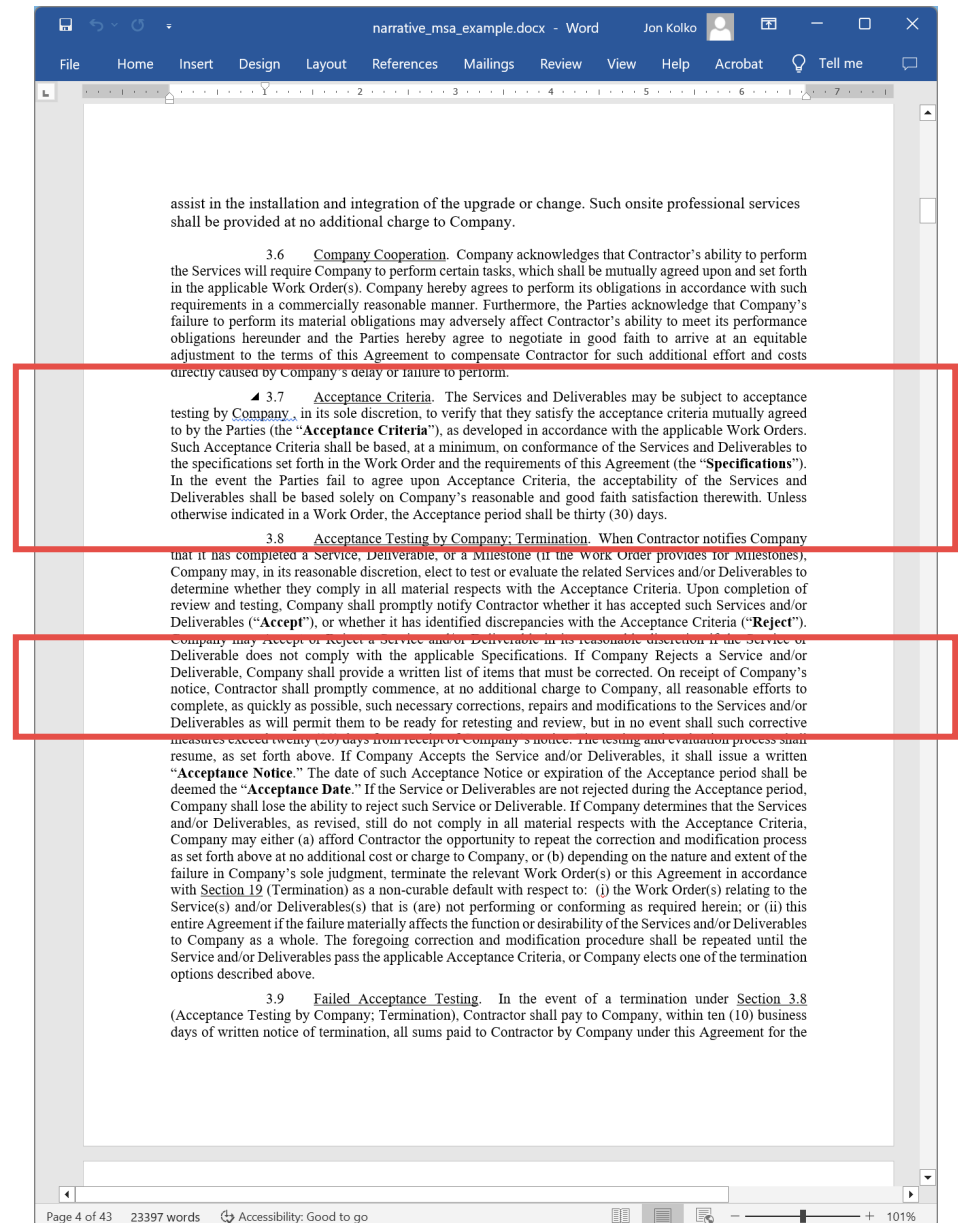
Understanding the master service agreement

Common terms: invoicing and payment terms

Implications

- If you don't submit an invoice, you won't get paid

- After you submit the invoice, the company doesn't have to pay you for 30 days
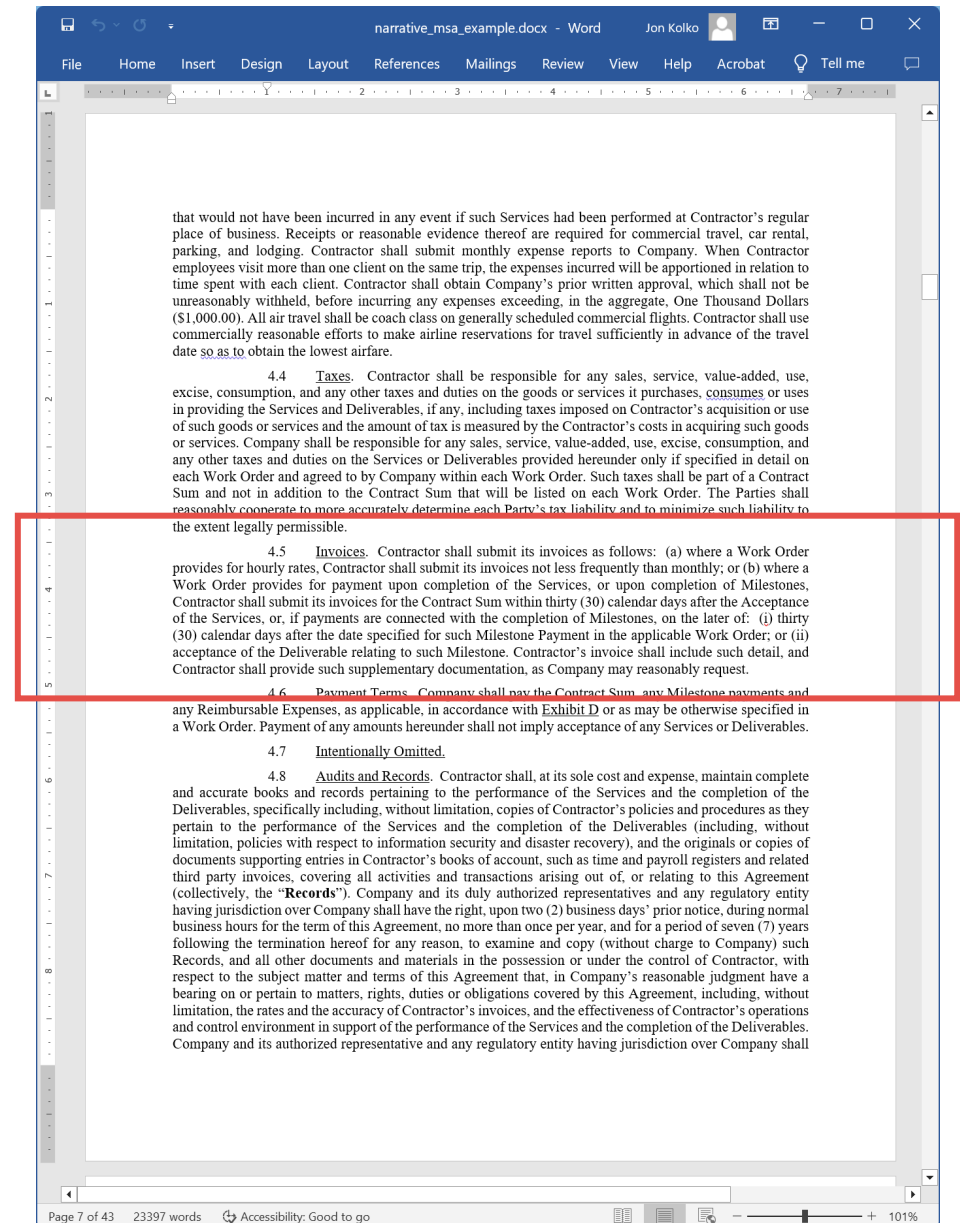
Understanding the master service agreement

Common terms: IP infringement responsibilities

Implications

- You are guaranteeing that you haven't used any third-party material that you don't have the rights to use

Narrative
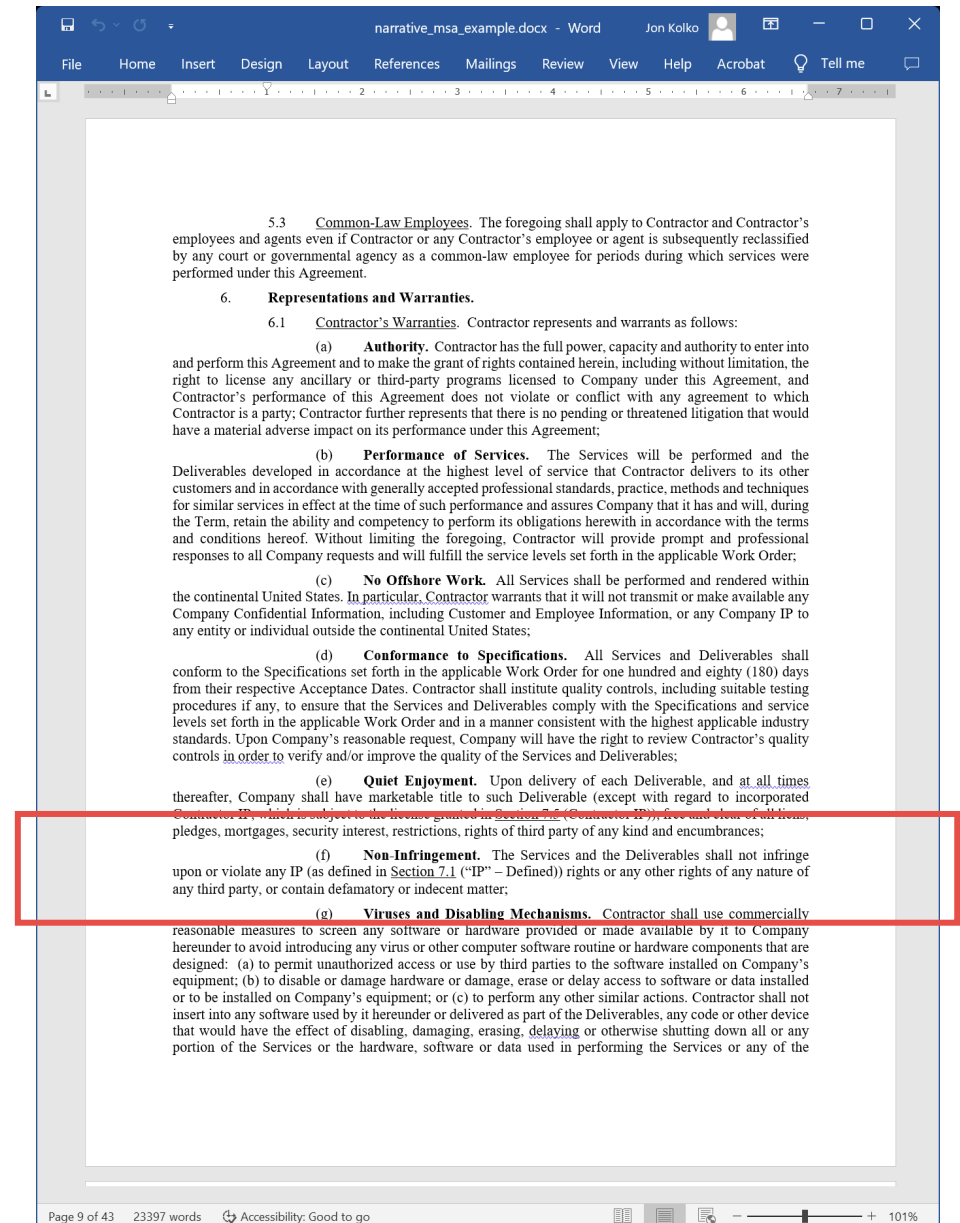
Understanding the master service agreement

Common terms: IP assignment & ownership

Implications

- You are giving the client everything you made, and have no rights to it after you make it
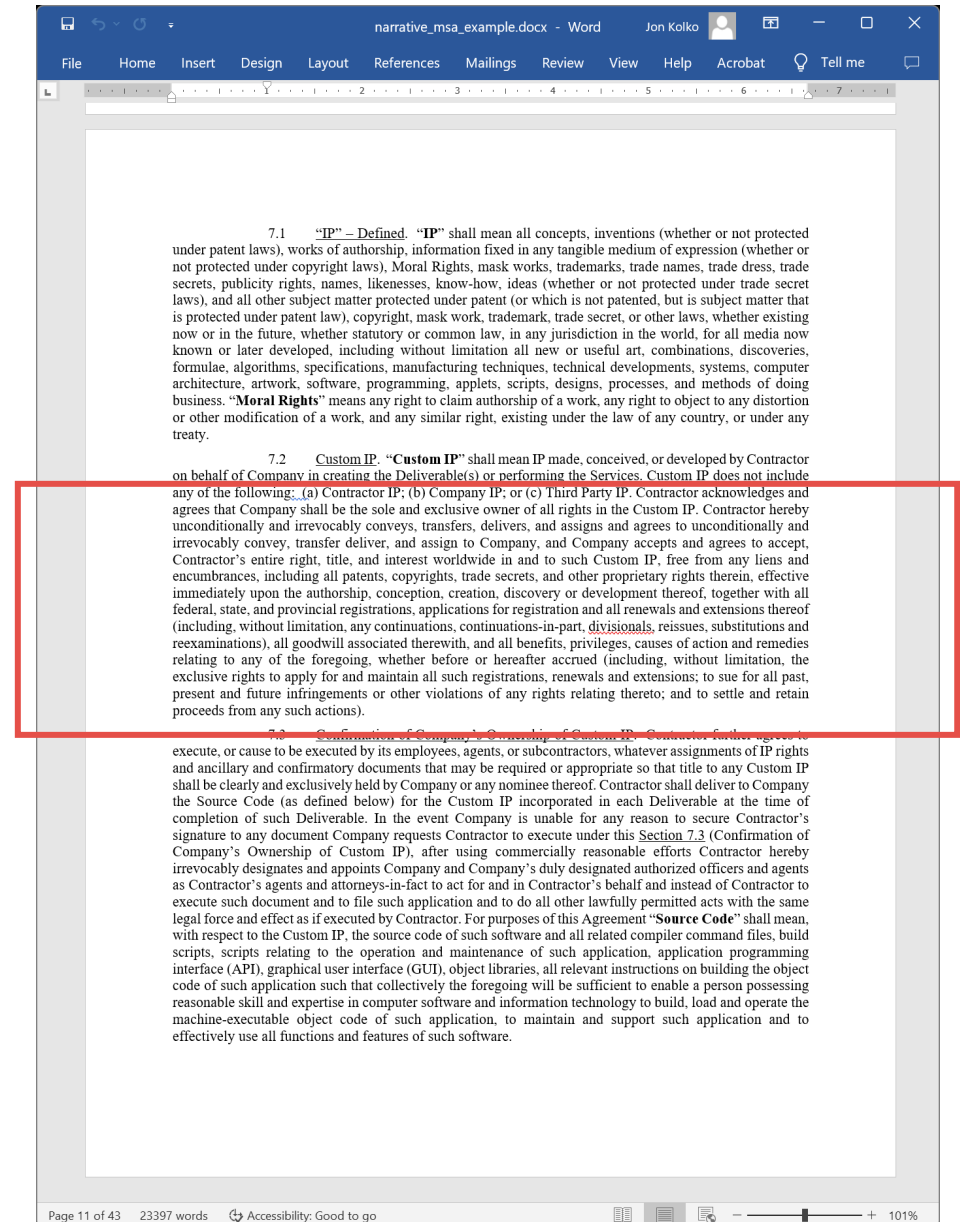
Understanding the master service agreement

Common terms: confidential information

Implications

- You cannot share anything that happens on the project, including the work you make.

  You can't show it on a portfolio site, you can't include it in a presentation deck for sales, you can't write a blog post about it...
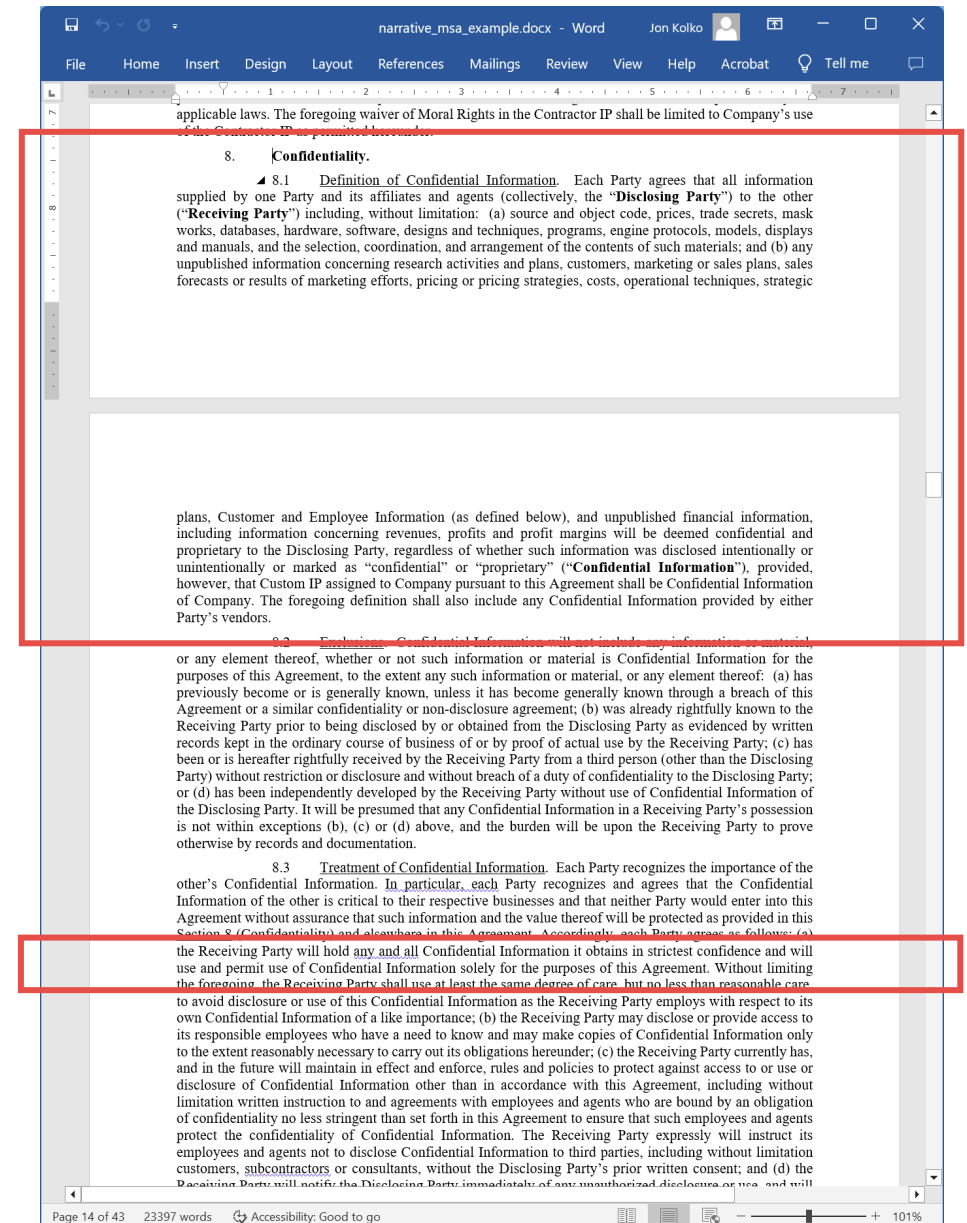
Understanding the master service agreement

Common terms: non-solicit of customers and employees

Implications

- You can't use information you learn about on the project to get more clients

- You can't recruit someone you worked with and have them come work for you

- Note the phrase "in perpetuity" – that's *forever*.
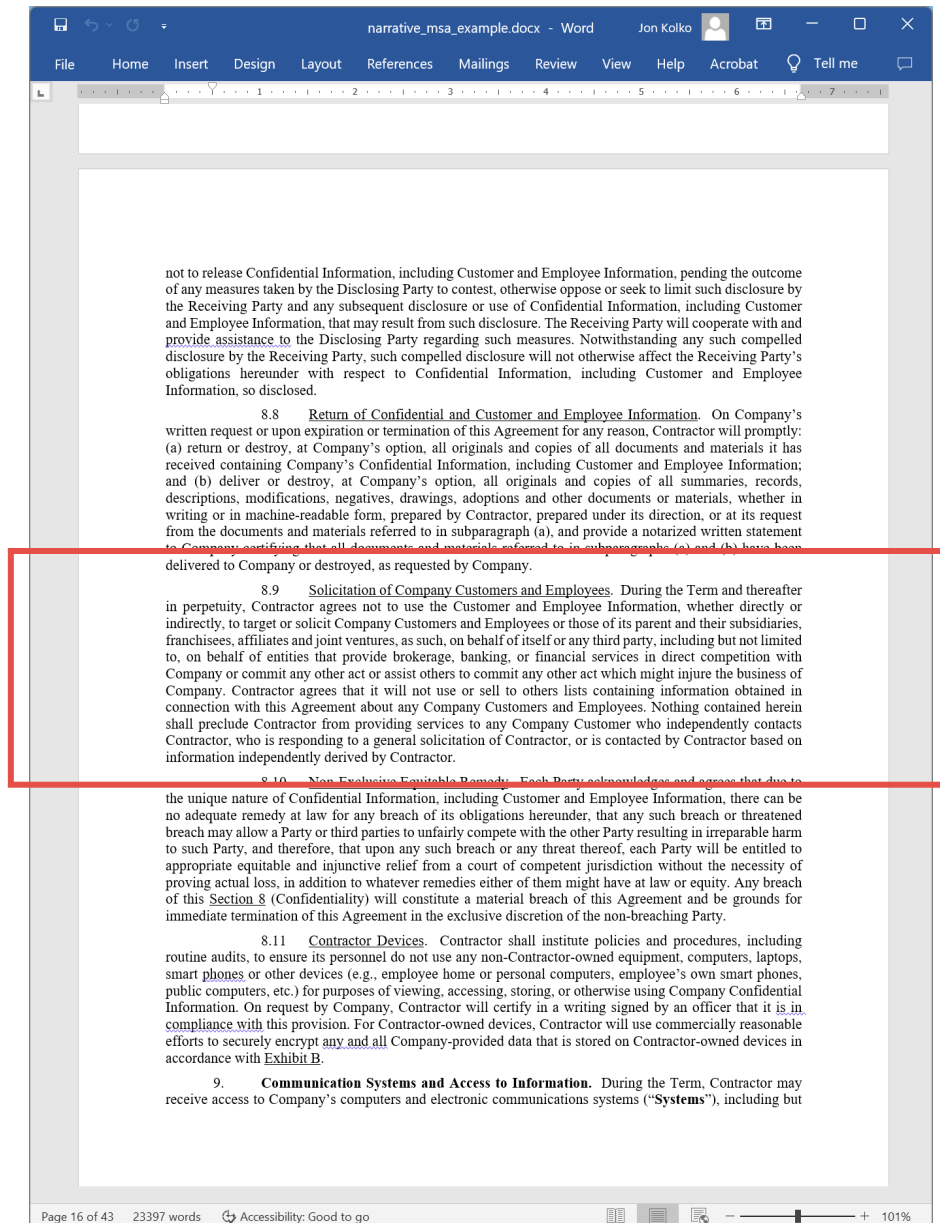
Understanding the master service agreement

Common terms: insurance

Implications

- You will hold insurance for all of the items listed, at your expense

- You will name the company on the insurance, and submit evidence of this to the company—no cheating
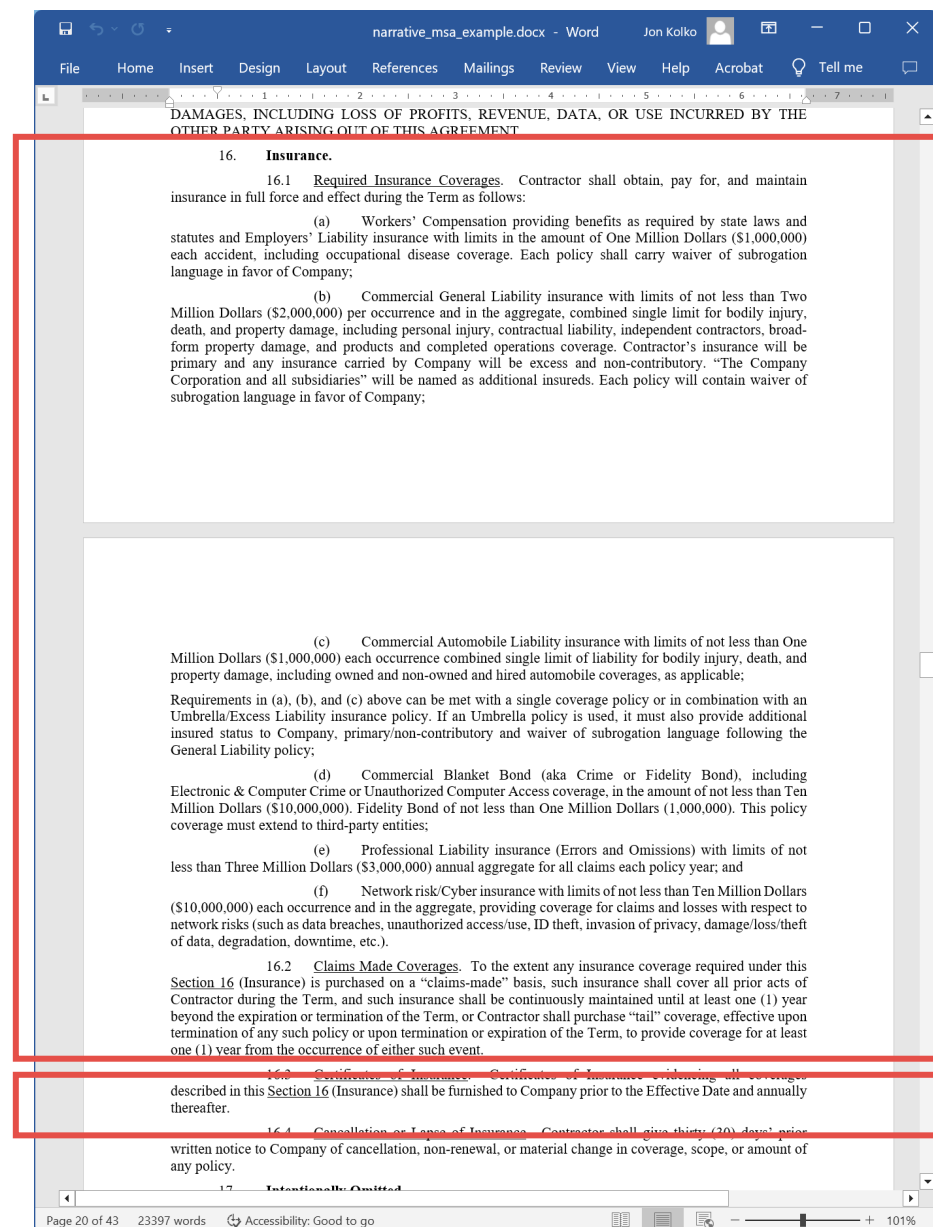
Understanding the master service agreement

Common terms: early termination

Implications

- The company can cancel this agreement for any reason, or for no reason

- But you can't...
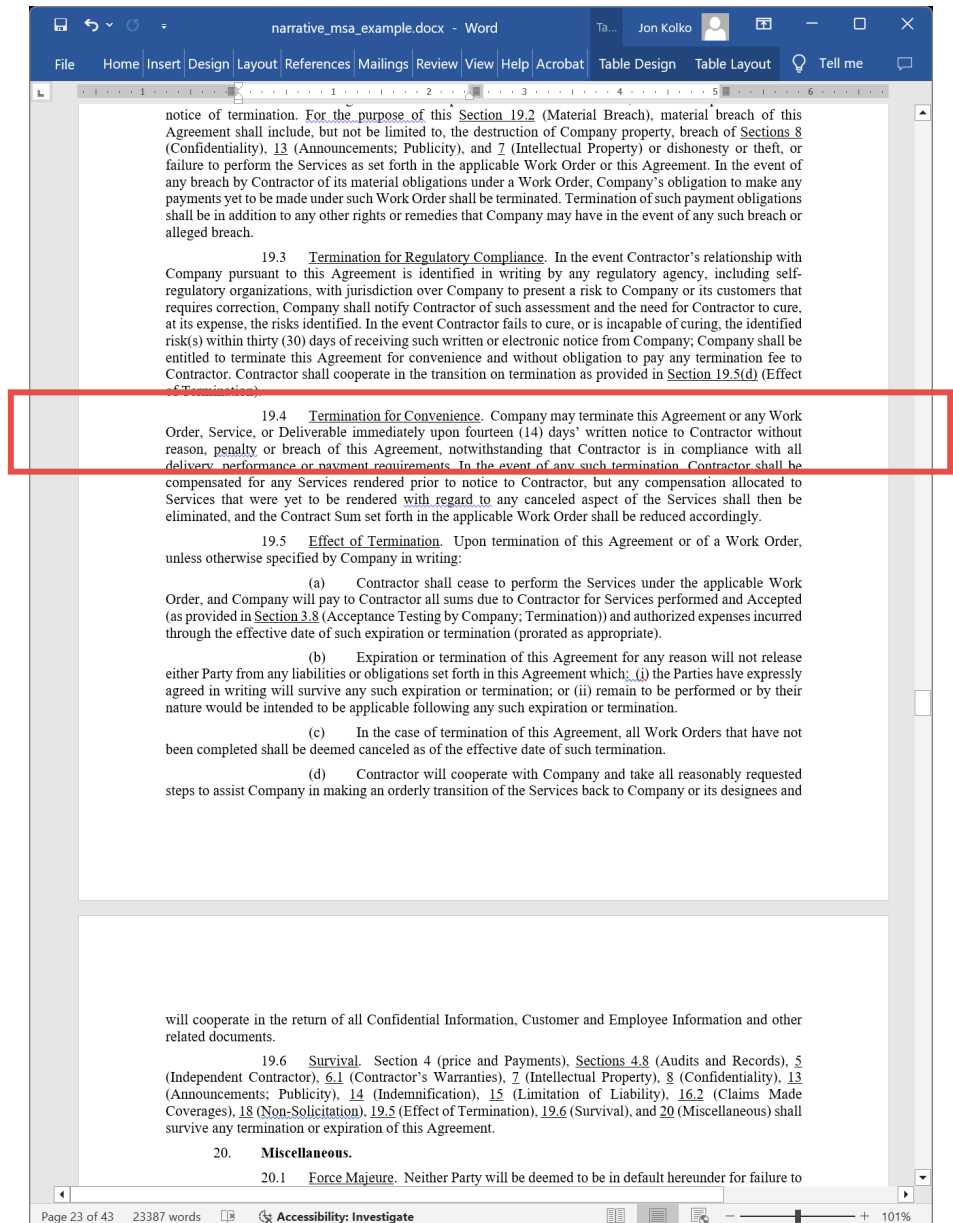
Understanding the master service agreement

Common terms: indemnification

Implications

- If the client is sued for your work, you will pay for them to protect themselves
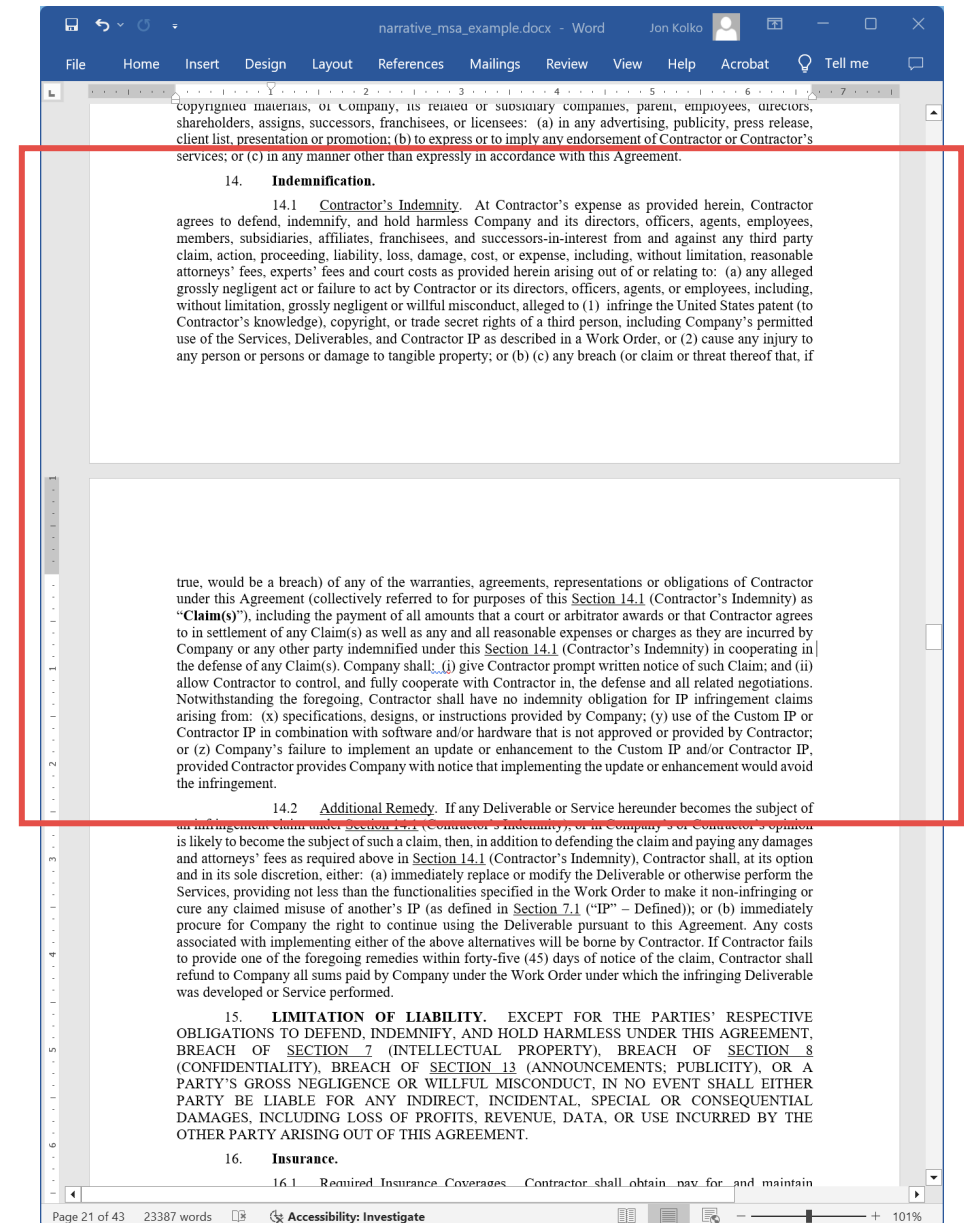
Understanding the master service agreement

An MSA governs your relationship with a big company. You will have no leverage. Is it worth it?

They have lawyers on staff. You don't.

Our lawyer charges $425/hour. You are incentivized to argue for your terms as little as possible, and as quickly as possible.

Their lawyer charges $0. They are incentivized to argue for their terms as much as possible; there's no (legal) hurry.

The rewards may be worth it

Companies that require comprehensive MSA documents are typically bigger, and have bigger budgets.

They also are often more recognizable brands—companies you may want to have in your portfolio.

Understanding the statement of work and change order

Understanding the statement of work

The statement of work (SOW) is your primary (and sometimes, only) vehicle for limiting creative risk.

Understanding the statement of work

Writing the statement of work is a collaborative, creative activity; it should be a fun, transparent process.

| Discuss the business goals | Show examples of the types of things you might make | Whiteboard a project approach | Draft a scope in a shared Google Document | Talk through the document, live | Revise your scope, add the remaining sections and legal content | Push for signature |

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Why does your client want to start a project, or why are you recommending a project?

Identify a timeframe.

Identify a budget.

Take verbatim notes.

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Ask questions; *are these the types of things you are thinking about?*

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Push towards a shared understanding of budget and timing.

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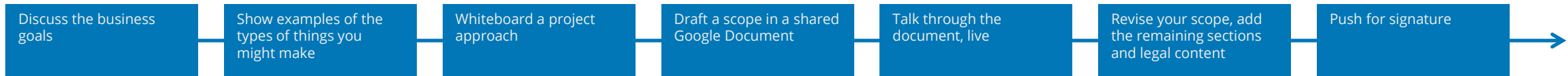← **Really, really, really important.**

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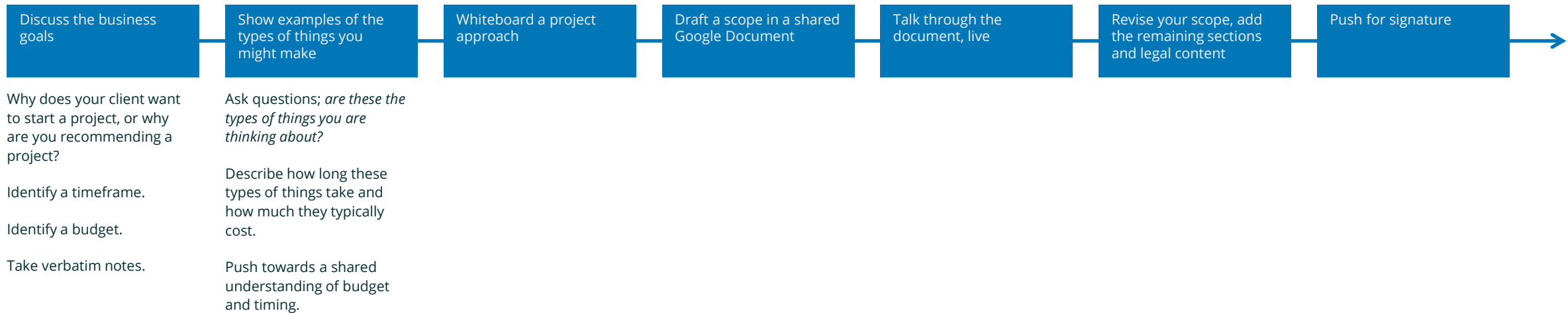
Avoid legal terms.
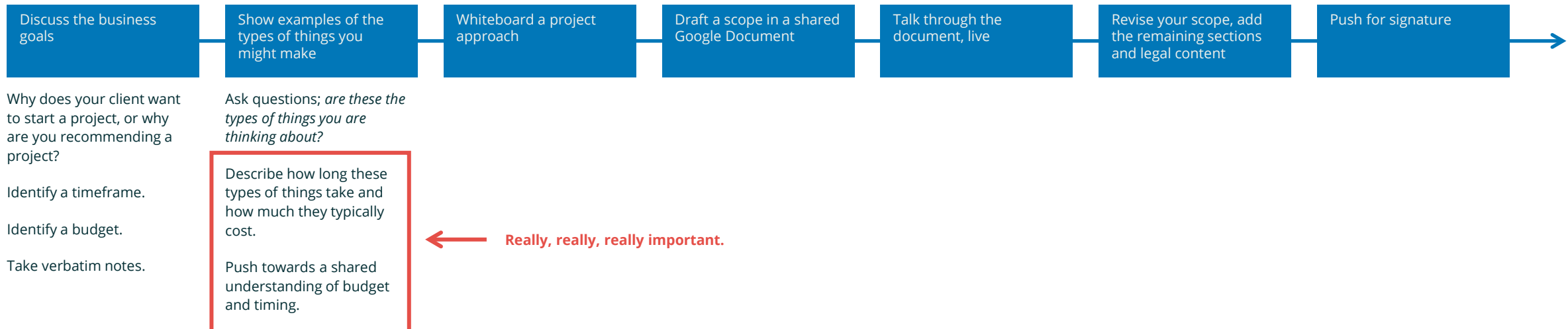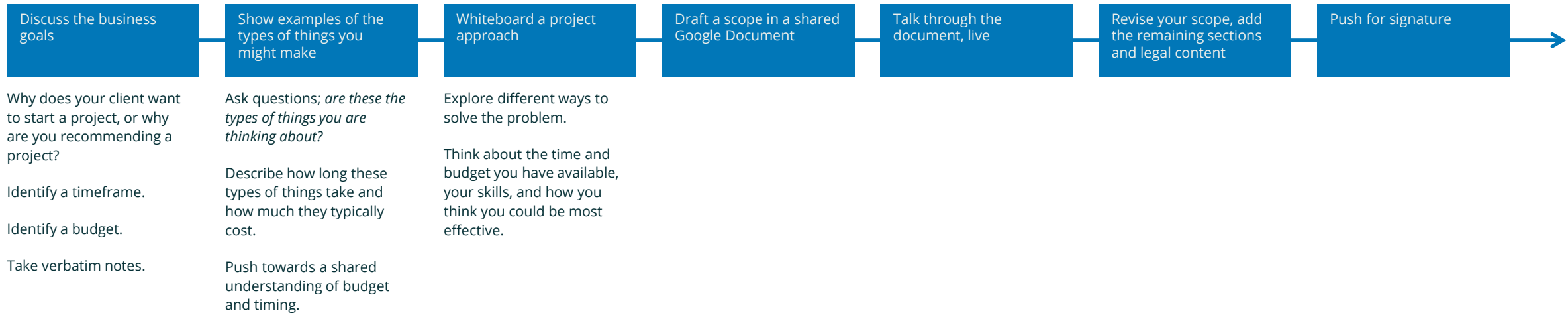
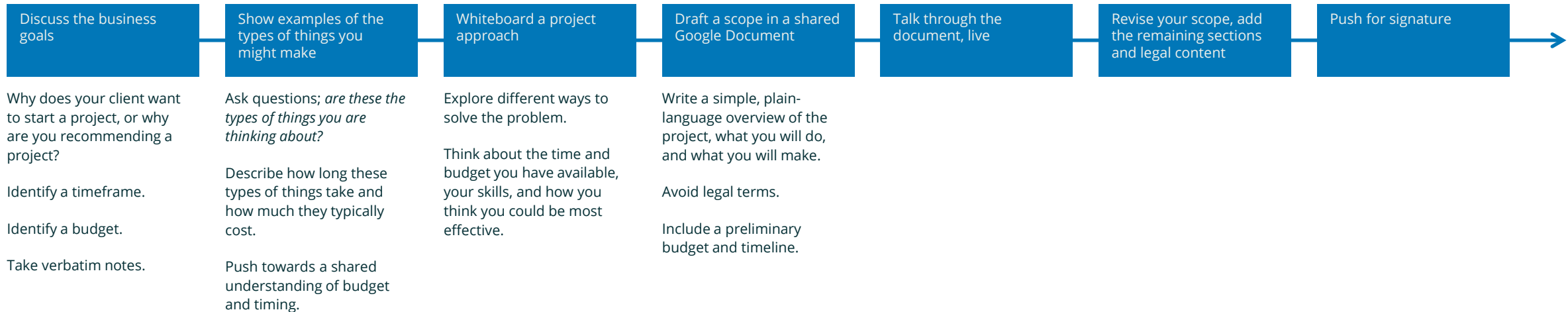Include a preliminary budget and timeline.

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Think about the time and budget you have available, your skills, and how you think you could be most effective. | Write a simple, plain-language overview of the project, what you will do, and what you will make.

Avoid legal terms.

Include a preliminary budget and timeline. | Make real-time edits based on what you hear.

Explain that you will create a revision, and that you will start to include more legal terminology.

Emphasize that the next revision is still a draft.

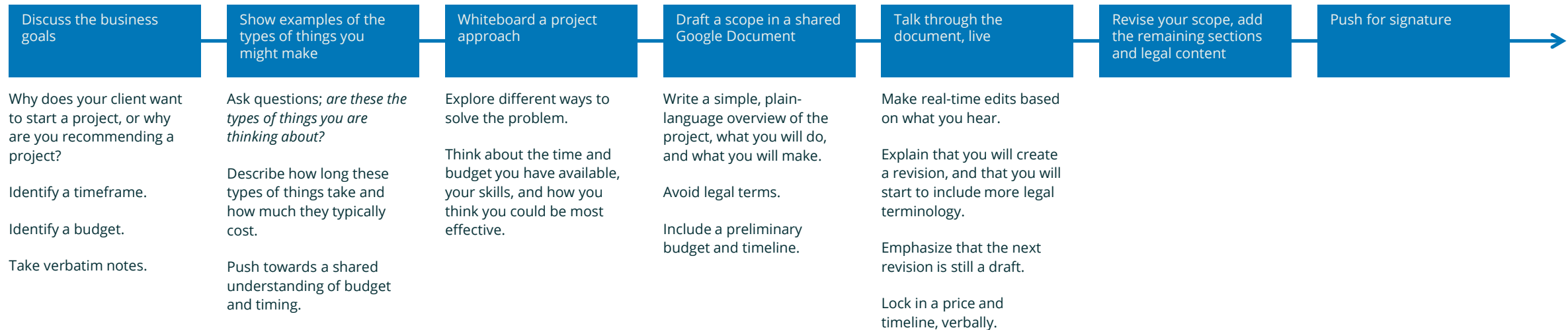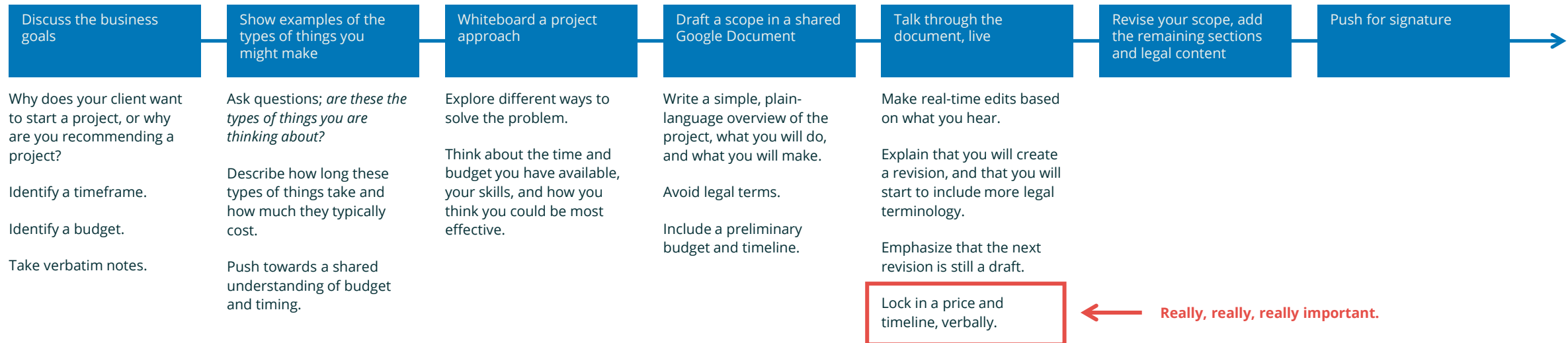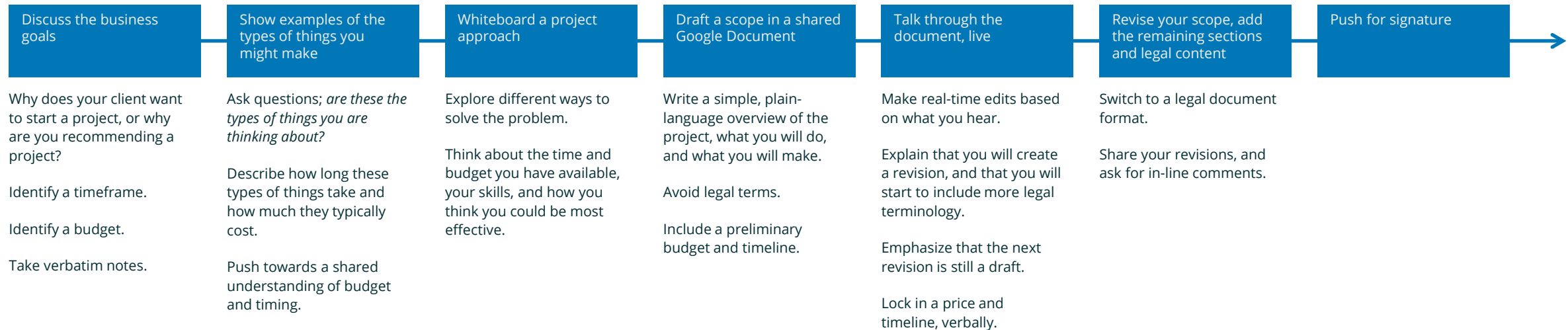Lock in a price and timeline, verbally. | | |

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Understanding the statement of work

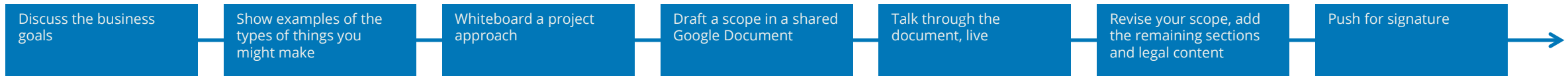# Writing the statement of work is a collaborative, creative activity; it should be a fun, transparent process.
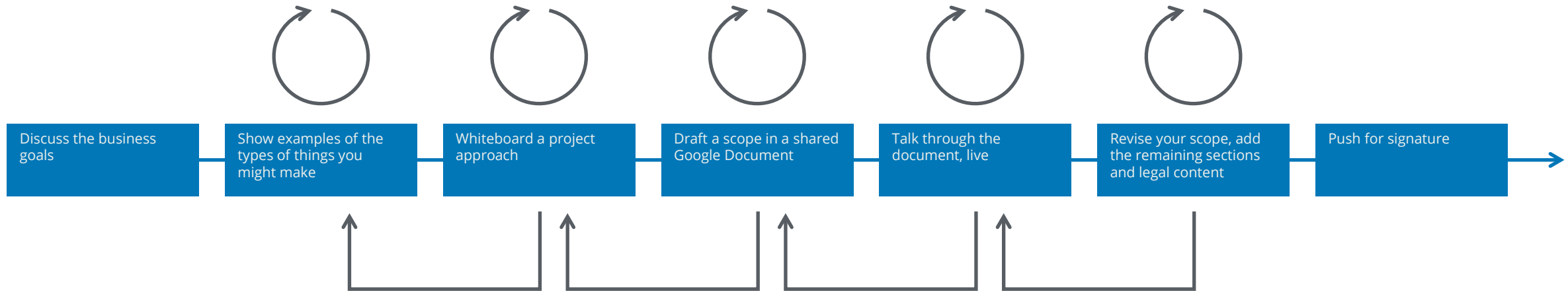
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Emphasize that the next revision is still a draft.

Lock in a price and timeline, verbally.

Switch to a legal document format.

Share your revisions, and ask for in-line comments.

Understanding the statement of work

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Send via DocuSign.

Understanding the statement of work

Exploratory, free, fun, creative → Practical, objective, clear, definitive

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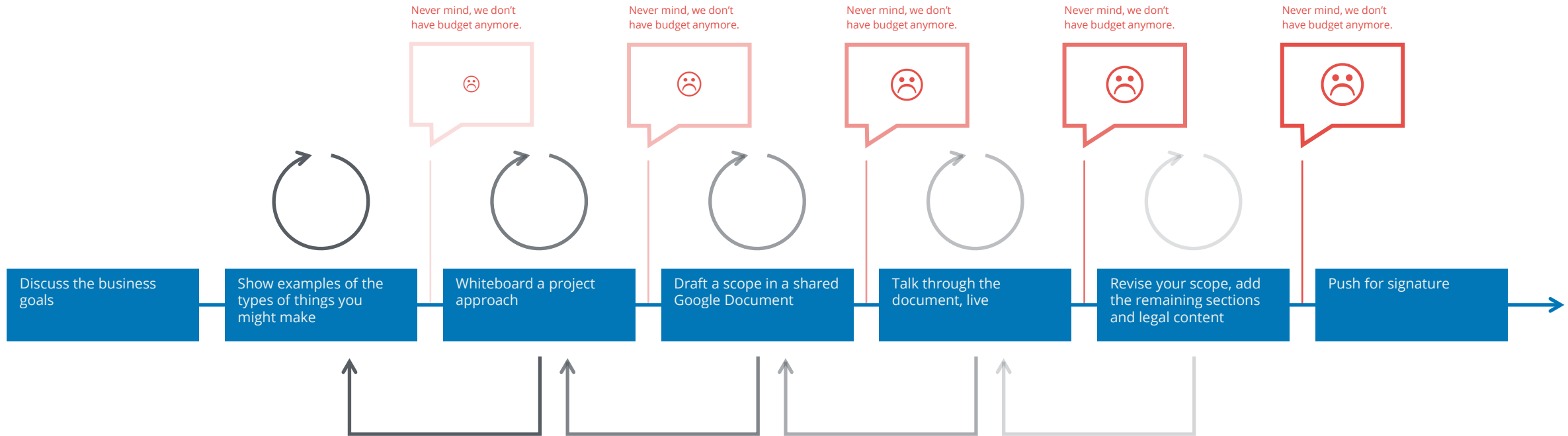
Understanding the statement of work

The SOW follows a standard format, and includes the things you will do, the things you will make, and how much you will charge.

Understanding the statement of work

Activities are the *things you will do.*

Activities are the actions you will take throughout the project, typically broken into phases.

- Includes, and describes, methods or processes

- Defines jargon or design-specific tasks

- Breaks a project into smaller, clearly identifiable pieces

- Can be verbose as necessary

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For example...

During this program, Narrative will perform the following activities:

Plan research. Narrative will work with (client) to create a detailed research approach. The team will identify the participant profiles, outreach methods, specific probe prompts, and interview questions to be asked during the interviews.

Conduct research. Narrative will conduct the research according to the plan. One-on-one research sessions (of up to 2 hours each) will be conducted in person at participants' homes, with up to 12 participants, to identify their behaviors surrounding (topic).

Synthesize research. Narrative will work asynchronously, using an online tool like Miro, with (client) to synthesize research into a set of observations, insights, and design principles.

Conduct a share-out workshop. Narrative will facilitate an in-person working session at (client's office), of up to 6 hours, for up to 10 participants, to explore the implications of research data on the core business.

Understanding the statement of work

Activities are the *things you will do.*

Our research planning won't focus on the core business, technology, competitive analysis, go to market strategy...

We will be conducting interviews, not focus groups, intercepts, surveys, or other forms of research.

We will be in people's homes.

Our synthesis will be aimed at strategic elements; we won't be designing anything yet.

We'll be discussing the relationship between the research and the business. We will be facilitating.

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<u>Always</u> place limitations on activities

Place subject-matter limits on <u>Research topics, Analysis & synthesis topics, and Workshop and meeting topics.</u>

Understanding the statement of work

Activities are the *things you will do.*

Our research sessions won't be longer than 2 hours, but might be shorter.

We'll conduct research with 12 people or less.

Our workshop will be no more than 6 hours long, but might be shorter.

A maximum of 10 people can attend the workshop.

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Always place limitations on activities

Place upper caps on all:

- Quantities. How many interviews you will conduct? How many analyses will you perform? How many workshops will you hold? How many attendees will attend the workshops?

- Durations. How long will the interviews take? How long will the workshops be?

- Timeframes. How long will you spend synthesizing data? How many hours of consulting time will you provide?

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Identify locations for where you will be, both physically and digitally.

Our research will be in homes, not in an office.

We'll be working independently to synthesize the data. The synthesis will be online.

The workshop will be in the client's office, not ours.

Understanding the statement of work

Deliverables are the *things you will make.*

Deliverables are your work product: the artifacts you've created during the project.

- Includes planning documents, usability reports, training content, and presentation material

- Includes "creative" material: scenarios, wireframes, visual comps, branding elements, prototypes, functional code

For example...

During this program, Narrative will create the following deliverables:

D1. Research plan and discussion guide. A 15-20 page written document (.doc/.pdf) including a) the research methodology, b) a participant profile description and screener, suitable for identifying and recruiting participants, and c) a discussion guide for the interview.

D2. Research raw materials. Includes typed transcriptions of the interviews and various digital images taken during research. (.pdf/.png)

D3. Stories from the field document. A 40-60 page visual document (.doc/.pdf) of stories, highlighting key observations and experiences discovered during research. Includes an overview of each participant, the main points extracted from their interviews, and highlighting unique or valuable quotes and statements from the participant.

D4. Initial wireframe explorations. Black and white schematics of new design capabilities driven by the research, presented in sequences to tell a story of a person interacting with new [client software]. Up to 6 flows, of up to 12 screens each (.png/Figma)

Understanding the statement of work

Deliverables are the *things you will make.*

We will deliver four unique items, and we will be able to tell when we have delivered them. They have names ("Research plan and discussion guide") and deliverable numbers.

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Always place limitations on deliverables

Name the artifacts, to clearly delineate them.

Understanding the statement of work

Deliverables are the *things you will make.*

For example...

This will be limited to method, profile, screener and discussion guide.

This will be limited to transcripts and images from research.

This will be limited to content from research and quotes.

The design will be focused on capabilities *driven by the research,* not other things that the business is working on.

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Always place limitations on deliverables

Place subject-matter and content limits on all of the materials.

Understanding the statement of work

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For example...

Always place limitations on deliverables

Indicate the format of the deliverables.

During this program, Narrative will create the following deliverables:

This will be a written Word or .pdf document.

D1. Research plan and discussion guide. A 15-20 page written document (.doc/.pdf) including a) the research methodology, b) a participant profile description and screener, suitable for identifying and recruiting participants, and c) a discussion guide for the interview.

Transcripts will be delivered as .pdf documents; images will be provided in .png format.

D2. Research raw materials. Includes typed transcriptions of the interviews and various digital images taken during research. (.pdf/.png)

This will be a visual Powerpoint or .pdf document.

D3. Stories from the field document. A 40-60 page visual document (.doc/.pdf) of stories, highlighting key observations and experiences discovered during research. Includes an overview of each participant, the main points extracted from their interviews, and highlighting unique or valuable quotes and statements from the participant.

The presentation of software will be limited to wireframes, and delivered as .png files and in a shared Figma canvas.

D4. Initial wireframe explorations. Black and white schematics of new design capabilities driven by the research, presented in sequences to tell a story of a person interacting with new [client software]. Up to 6 flows, of up to 12 screens each (.png/Figma)

Understanding the statement of work

Deliverables are the *things you will make.*

For example...

This document will be between 15-20 pages long.

The raw materials are indeterminate in quantity.

This document will be between 40-60 pages long.

While we may explore more ideas, our formal software designs will be limited to 6 flows, with no more than 12 screens in each flow.

During this program, Narrative will create the following deliverables:

D1. Research plan and discussion guide. A 15-20 page written document (.doc/.pdf) including a) the research methodology, b) a participant profile description and screener, suitable for identifying and recruiting participants, and c) a discussion guide for the interview.

D2. Research raw materials. Includes typed transcriptions of the interviews and various digital images taken during research. (.pdf/.png)

D3. Stories from the field document. A 40-60 page visual document (.doc/.pdf) of stories, highlighting key observations and experiences discovered during research. Includes an overview of each participant, the main points extracted from their interviews, and highlighting unique or valuable quotes and statements from the participant.
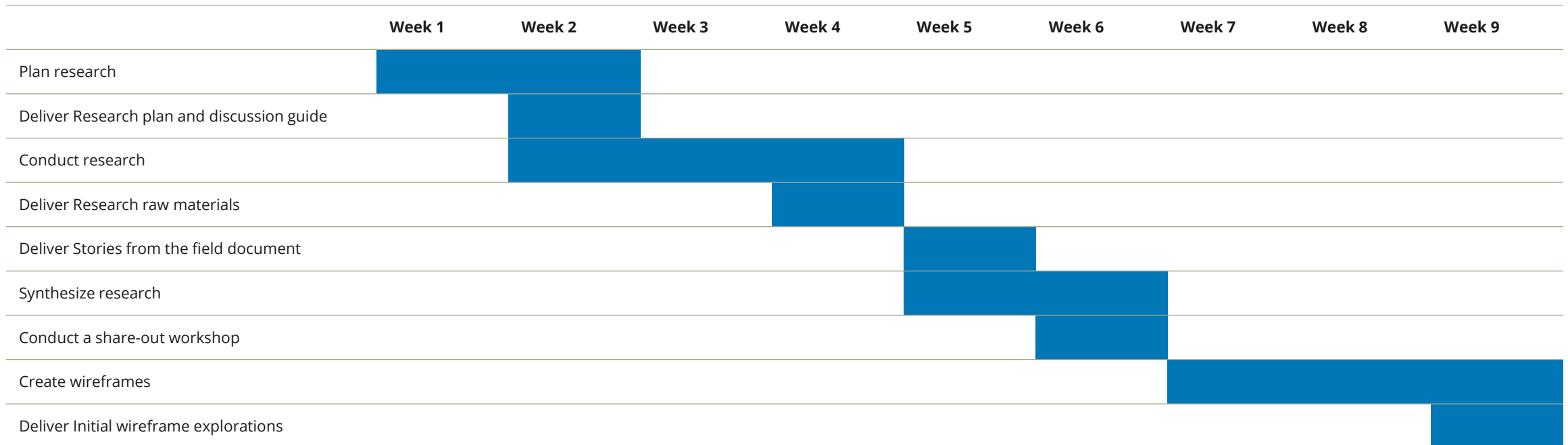
D4. Initial wireframe explorations. Black and white schematics of new design capabilities driven by the research, presented in sequences to tell a story of a person interacting with new [client software]. Up to 6 flows, of up to 12 screens each (.png/Figma)

Always place limitations on deliverables

Place upper caps on all:

- Lengths of documents. How many pages will you include?

- Number of screens or flows. How in-depth will the work be?

Understanding the statement of work

The timeline is a *high level* commitment of how long activities will take, and when you will complete deliverables.

	Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	Week 8	Week 9
Plan research	███	███							
Deliver Research plan and discussion guide		███							
Conduct research		███	███	███					
Deliver Research raw materials				███					
Deliver Stories from the field document					███				
Synthesize research					███	███			
Conduct a share-out workshop						███			
Create wireframes							███	███	███
Deliver Initial wireframe explorations								███	███

Understanding the statement of work

Cost is the amount you will charge.

When costing a program, consider…

- What are *all* of the costs you will incur?

- What is your work worth, comparative to industry?

- What is your work worth, objectively?

- How important is this program to you—are you willing to sacrifice cost for other things (repeat business, relationship building, a portfolio piece)?

- How important is this program to *them?*

- How much money do they have to spend?

- How normal or crazy are they?

For example…

This project is presented at a cost of $100,000.00 (One hundred thousand dollars and no cents.)

This cost does not include expenses, which will be pre-approved and passed through without markup. Anticipated expenses include:

- $1,500 travel for on-site meetings

- $2,400 compensation to research participants

- $2,000 recruitment fee for outside firm

- $800 research transcription

Understanding the statement of work

The Invoice Schedule shows when you will get paid.

An invoice describes what you did, and how much is owed to you.

- "Time and materials" is typically invoiced at a regular cadence, like once a month.

- A deliverable-based SOW is invoiced when a specific deliverable is completed.

- "Net" terms indicate when you will get paid—it's the number of days *after* you invoice.

For example...

Milestone	Amount
Upon signature	$10,000
Upon delivery of D1. Research plan and discussion guide.	$20,000
Upon delivery of D2. Research raw materials.	$20,000
Upon delivery of D3. Stories from the field document.	$25,000
Upon delivery of D4. Initial wireframe explorations.	$25,000

Understanding the statement of work

Assumptions describe your qualitative expectations (and agreements) about the project.

List the expectations you have.

- Think about, and list, things that will have an impact on the cost of your project.

- Identify boundaries that aren't obvious or explicit in your deliverables and activities.

- Limit expectations the client may hold about what they will have when the project is finished.

For example...

This proposal makes the following assumptions:

- This project is a design project; no code, scripts, markup, or other development work will be completed.

- Client will be responsible for recruiting, scheduling, and compensating research participants.

- All screens will be designed for one size (1194x834); mobile design and responsive design is not in scope.

- All screens will be designed in English and designed for left-to-write reading.

- Narrative will leverage a royalty-free icon library for any necessary iconography; custom icons are out of scope.

- Narrative will leverage a royalty-free stock photography for any necessary imagery; custom photography is out of scope.

- Narrative's designs will include accessibility best practices, but Narrative makes no guarantee that the screens will pass a formal accessibility audit.

Understanding the change order

A *change order* is a way to contractually document changes, or termination, after a project has started.

You should *always* have a signed change order when:

- A project is cancelled early

- Cost changes in any way

- Scope changes in a material way, particularly if scope has become *smaller*

- Timeline and delivery dates change in a material way

- You sense an antagonistic or negative attitude from your client about a change

You can *sometimes* avoid a signed change order when:

- Scope changes in a small way, such as an extra flow or several more participants

- Timeline changes in a small way, such as a few days or a week

Takeaways

Takeaways

Design is a business. Contracts are just as important as your creative work.

Key points to remember:

- Nothing in a contract should be a surprise to anyone, because everyone participated in planning the project

- When you write your contracts, assume your primary contact quits or is replaced

- Put upper limits on everything, and then over-deliver

- The longer a contract remains unsigned, the less likely the project is to happen

- Get things in writing

- Don't start working until you have a signature

- Save a local, executed copy on Dropbox

- If you don't understand what you are signing, don't sign it

Thank you!

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