



Service, Vendor and Enterprise Agreements

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Start ups want everything to go quickly, and the agreement that everyone seems to focus on to provide or obtain a service to and from another start up is the service agreement. Sometimes the agreement is referred to as a vendor agreement or an enterprise agreement or a scope of work. Whatever the term used, the agreement accomplishes two main purposes: what is the scope of services being provided to a third party and the pricing governing the services, and what are the terms and conditions that govern the services being provided.

While this sounds simple, the agreement usually turns into a battle of forms. Let's start out with the basics. You need an "exhibit" that describes the actual services or deliverables being provided, the pricing for the service, and any "SLA" (service level agreement) that applies. The Exhibit can be written in simple English: "company will provide 'x' number of widgets to Client each 24 hours and each widget will be delivered within 15 minutes of the scheduled time." You can be specific or vague as to what the "widget" is. Identify your price and identify when you expect payment (net 5 business days, net 15 business days. Money to be paid by PayPal, check, wire transfer, etc.) You need to come up with a solid exhibit.

Now that you have done that, you need to spend an hour or two with a lawyer and role play what general terms are a "must have" for your company. The terms and conditions are all legal terms that protect one party or the other. For example, are there representations and warranties that govern your service or product, or is the service or product being provided with no warranties? If you are on the receiving end of the services, do you require certain representations and warranties from the other party? What insurance do you have and what insurance do you require that your counterparty has? Is there intellectual property involved such that a separate software agreement is required or not? What is the term of the agreement—can either party terminate at any time or is there a fixed period following notice that is needed? One of the important provisions is whether you place a maximum amount on your liability in the event of a breach of the contract. It is not uncommon to see a limit that does not exceed the value of the services being provided or waiver of special or what lawyers refer to as "consequential" damages. What insurance do you carry and what insurance do you require your counterparty to carry? Finally, you should consider whether you or your counterparty is the exclusive provider of the services under the agreement.

Finally, there are several "miscellaneous" provisions that need to be in any contract to make it enforceable, and a service agreement needs to have those as well.

The bottom line is that the business terms of a well drafted vendor or service agreement can be stated in 2 pages, one of which is to describe the services to be provided and payment structure and a second page to put names and contact information of business people involved, payment and notice addresses, effective date and term of the contract. The General Terms and Conditions can be attached and may run anywhere from 3 to 5 pages in small type. Going through the process of identifying key Terms and Conditions for your company is the value that is created in developing this agreement. You will likely use it often to start any business relationship and it will help you negotiate deviations from the base agreement.



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