



INSIGHTS

6 Degrees Of Service Agreements

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The properly written service or vendor agreement can help companies stay competitive, execute effective business strategies and protect their strategies and investments as they grow through mergers and acquisitions, joint ventures, or other transactions.

Vendor service agreements, consulting agreements and engagement letters warrant close consideration to avoid unnecessary or unanticipated costs and liabilities down the road. When engaging in or drafting a service agreement, here are six best practices to keep top of mind:

1. Negotiate market language in the master agreement. Being aware of what is “market language” in terms of service agreements for the particular industry is helpful when negotiating an agreement and understanding your options. However, those are just standards which the vendor may or may not adhere to, so certain flexibility in this regard is indispensable.
2. Do not assume that the terms are nonnegotiable. You should review the standard terms and conditions carefully and bring up clauses that are excessively onerous, ambiguous or that conflict with your company's capabilities. You may be able to resolve the issues to your advantage if the vendor is able to understand your company's position.
3. Know what to expect from standard terms. It is important to understand all of the standard terms and conditions of the agreement, as they will affect future dealings between the parties.
4. Even if you are not able to change the standard terms, you may be able to negotiate better rates or better conditions for certain terms. Service providers frequently bake their positions into the standard terms and base the rates they charge on the limits that their

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nonnegotiable terms impose. You may be able to obtain certain concessions on the items that you are actually able to negotiate.

5. Negotiate schedules with the master terms in mind. When negotiating schedules attached to existing master services agreements (such renewal agreements), you should always refer back to the standard terms and clarify any ambiguities created by the addition of the schedules.
6. Work with your legal team to develop a uniform playbook to review and address issues. A proper playbook would include the rationale for your company's business positions and would facilitate negotiations by allowing you to understand the implications of the contract provisions and arm you to explain your company's position to the vendor.

Takeaways

Service agreements and their terms should not be taken lightly. While they may appear to be standard or unimportant, they need to be carefully considered, as they can result in significant costs and liabilities – and even potential litigation.

For more information, please contact the Barnes & Thornburg attorney with whom you work or Frances Rivera-Medero at 646-746-2029 or frivera.medero@btlaw.com.

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