

How Service Agreements and Service Level Agreements Protect Your Business

By Judith Silver, Esq., Coollawyer.com¹

Services agreements, and service agreements which set forth levels of service, can help clarify each party's goals, limit the liability of the parties and ensure that both parties get the services and payment expected. Both service agreements and service level agreement legal forms by the author are available for purchase [here](#).

Services

It is important to clearly define the services to be performed and any deadlines for work product or performance. Without clarity, each party, even in good faith, may have different ideas and not discover this until the work is completed and one party is not satisfied. The more detail stated in the contract about the relationship, the less risk of misunderstanding or unfulfilled expectations later.

Service levels to be designated for technical or other performance should be set forth in an exhibit to the agreement and stated in detail; these some times also include financial penalties or rewards. There is no set formula for determining these levels and numbers.

Payment

The agreement should include a provision that states how much is to be paid, when it is to be paid, what is included in the payment (expenses, taxes, travel), procedures for invoicing, and penalties for late payments.

Relationship

The agreement should include a provision that clearly states that the relationship is not a partnership, joint venture or employer-employee. Since some of these relationships can be implied by law, this is an important provision.

Confidential Information

The agreement should include a provision stating that the parties will exchange confidential information, how that information will be identified and handled, restrictions on disclosure and misuse, and exceptions to what is included in confidential information. Depending on whether the agreement is for provision of services or hiring of a service provider, and the party drafting the agreement, the exceptions may be more broad or more narrow.

Ownership of Work Product

¹ Readers are cautioned not to rely on this article as legal advice as it is no substitution for a consultation with an attorney in your state. Based on jurisdiction and time, the law varies and changes.

The service provider will want to make sure the agreement does not include a provision stating that the customer owns the work product, so that the Provider may continue to perform similar services for other customers without the risk of legal interference or restriction.

The company hiring a service provider will want to ensure that they fully own the work product and that the agreement contains the legal language as required by copyright law.

In either case, the owner of the work product, may agree to give a license to the other party to address its needed uses.

Representations and Warranties

These may include the following or other warranties:

- That the service provider will re-perform defective or non-conforming services for a time period indicated
- That the services will be performed at or above industry standards
- That the service provider will not infringe third party rights in performing services
- That the service provider is not violating any other agreement by performing services

Which warranties and the number included will depend on whether the agreement is drafted by the service provider or hiring company.

The service provider should be sure to include the correct legal language, in the correct font size (no I'm not joking) to waive the warranties implied by the Uniform Commercial Code. Despite its name, the uniform commercial code varies by state, but generally is uniform nonetheless. The UCC implied warranties include a that the item will do what it is intended to do, that it may be fit for a particular promise if so stated, that it does not infringe third party rights and that the seller has proper title to sell the item.

Indemnification

The hiring company should ensure that the agreement contains a provision stating that the service provider will indemnify the company for any breaches of the warranties.

Indemnification means that the provider will have to pay the company for any third party litigation costs resulting from its breach of the warranties.

Liability Limit

The service provider should include a provision limiting its liability to the maximum amount it receives under the agreement and for both direct and indirect damages. This wording must be attorney drafted to be effective. Properly drafted, this is an extremely beneficial provision to lower risk.

Termination and Term

The agreement should include a provision that regarding how long the agreement will be in effect, and the options and results for termination.

Insurance

The hiring company should require a minimum level of insurance coverage from the service provider so that it can be sure that any negligence or liabilities are financially covered.

Force Majeure

The service provider should ensure inclusion of a force majeure clause. Loosely translated from the French, this means a superior force. A force majeure clause means that in the event of war, acts of God, strikes, weather and other uncontrollable forces, the parties are excused from performing.

Non-Solicitation

To protect both parties, the agreement should include a mutual restriction on each party soliciting employment from the employees of the other.

Conclusion

Services level agreements and service agreements help to clarify goals and ensure a meeting of the minds, limit risk and ensure both parties get what they want. These agreements may be purchased from the author [here](#).