

Master Services Agreement: Terms and Conditions and Statement of Work

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Synopsis: A master services agreement, typically with large-scale services vendors, is normally a lengthy, complex legal document. Statements of Work for any but the smallest tasks can be similarly complex. Attorneys drafting and negotiating services agreements should work towards greater clarity when drafting terms and conditions and integrating the project requirements at multiple stages to strengthen the negotiating team, avoid vendor-owner conflicts, and improve project delivery.

Many companies needing IT services find a need for a “master” services agreement which can bring relationship stability, reduced costs and less paperwork. This can evolve into a long and possibly overly complex legal document, drafted by a lawyer who started with an office template used for temporary help or janitorial services! Such an agreement can be unreadable, yet still miss important issues, then be filed away and ignored during contract performance

A Master Services Agreement should always have two major components - the stable, legal “terms and conditions” and Statement(s) of Work for each specific set of services. IT professionals’ input is critical to the drafting, review and performance of the Statement of Work, but these sections also are frequently ignored and unchanged after contract signing. A Statement of Work should be viewed as a natural evolution of the “project requirements” formulated first by the business needs and then by the IT professionals. Project Requirement should be improved during the following stages:

- In the planning “pre-acquisition” stage
- In reviewing the proposal of the services vendor, making a vendor selection and during discussions/negotiations
- For acceptance and payment of the software
- During any services warranty and maintenance periods

IT attorneys, IT contract administrators and IT professionals should stay fully engaged as a team during the entire life-cycle of a master services agreement software system and both the “owner” and “vendor” should adopt a continued improvement process for their respective documents.

MASTER SERVICES AGREEMENT

Introduction: The master services agreement “terms and conditions” should include:

- provisions for supplier ‘deliverables’ which are subject to owner ‘acceptance’;
- payments based on ‘milestones’ for these deliverables;
- supplier warranty for all deliverables and services to best industry practices; and
- clauses for changes to the license, project plan and specifications (requirements).

The first three related directly to project requirements!

1. AGREEMENT CONSTRUCTION

- 1.1** All services are obtained only through a Statement of Work (SOW)

1.2 SOW must be fully executed

2. SERVICES

2.1 Provision of Services only by SOW

2.2 Non-exclusive

2.3 Continued performance

2.4 Project Management

2.5 Reports and meetings

2.6 New or changed services – new SOW or start the change process

3. DELIVERABLES AND ACCEPTANCE.

3.1 Deliverables.

3.2 Acceptance.

a. Acceptance Criteria.

b. Acceptance Testing.

Developed software is a supplier ‘deliverable’, subject to owner ‘acceptance’. This includes the basic acceptance concept, acceptance criteria and the acceptance process. Acceptance should be in stages, with ‘final acceptance’ only occurring after the developed software is used for a specific time period in the complete ‘production’ system (that is, ‘Final acceptance will occur after 30 days of error-free software use in the final production system.’) If a supplier resists the ‘acceptance’ criteria, the bare minimum criteria should be conformance to supplier’s delivered software documentation. In other words, does the software do at least what the supplier previously agreed to?

4. TERM AND TERMINATION

How long will the agreement run and how can it be stopped early?

5. PAYMENTS

5.1 Payment for Deliverables.

Payments should be tied directly to the deliverables’ “milestones”. Make payments in stages, with a partial payment withholding for all deliverables until final acceptance.

6. RELATIONSHIP OF THE PARTIES; PERSONNEL; SUBCONTRACTORS

Quality and replacement of key personnel; any supplier personnel

7. INTELLECTUAL PROPERTY RIGHTS.

7.1 Ownership of Modifications and Enhancements.

7.2 Pre-existing Intellectual Property.

8. CONFIDENTIALITY AND PROTECTION OF DATA.

8.1 Confidential Information.

- 8.2 Ownership and Return of Confidential Information.
- 8.3 Privacy Act and Regulations.
- 8.4 Ownership and Use of Owner's Data.

9. DISPUTE RESOLUTION

- 9.1 Dispute Resolution Process
- 9.2 Informal Dispute Resolution
- 9.3 Mediation.

10. WARRANTIES

Require a warranty all deliverables to best industry practices, to warrant (fix) any developed software system errors for a reasonable period even after final acceptance. This is not the same level of correction service the owner should expect from any (optional) software maintenance agreement.

- 10.1 Software Deliverables.
- 10.2 Title.
- 10.3 Non-Infringement.
- 10.4 Work Standards; Personnel

11. AUDITS AND RECORD RETENTION.

- 11.1 Audit Rights
- 11.2 Records Retention

12. INSURANCE, INDEMNIFICATION AND LIMITATION OF LIABILITY.

- 12.1 Insurance
- 12.2 Indemnification by Supplier.
- 12.3 Infringement.
- 12.4 Liability.

13. GENERAL PROVISIONS.

14. TEMPLATE STATEMENT OF WORK

- 14.1 Project Description
- 14.2 Deliverables And Acceptance Testing

<u>Deliverable</u>	<u>Software Deliverable Acceptance</u> <u>Criteria</u>	<u>Milestone Date</u>

- 14.3 Project Requirements.
- 14.4 Deliverable Specifications.
- 14.5 Service Levels
- 14.6 Additional Warranties
- 14.7 Project Tracking and Oversight
 - Meetings, Reports
- 14.8 Pundit Responsibilities.
- 14.9 Pundit Facilities
- 14.10 Key Personnel
- 14.11 Supplier Personnel
- 14.12 Continuity of Personnel.
- 14.13 Permitted Subcontractors:
- 14.14 Pundit Project Manager:
- 14.15 Pricing

14.15.1 Fixed Price

14.15.2 Milestone-Based Payments.

<u>Deliverable</u>	<u>Milestone Date</u>	<u>Payment</u>

14.15.3 Not-To-Exceed Payment.

14.15.4 Time and Materials Payment.

SOURCES:

The International Association for Contract & Commercial Management (IACCM):
<http://www.iaccm.com>

CMMI: <http://www.sei.cmu.edu/cmmi/>

National Contract Management Association (NCMA): <http://www.ncmahq.org/>