

The essentials of a service agreement

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Although different in nature, business services all have a very important aspect in common - the agreement regulating the service that is being rendered.



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As with many legal agreements, a bespoke service agreement is often thought to be a step (and expense) that is not all that important. That is of course, until something goes wrong.

By having a tailored service agreement in place, the parties are fully aware of their rights and obligations before they enter the agreement: they know what to expect and what their recourse is should there be a deviation from the agreed terms, and they can (hopefully) avoid nasty disputes and often expensive and time-consuming dispute resolution procedures, by referring back to the terms that they agreed to at the time of engagement.

There are some important aspects that you should always consider (and things that your attorney will certainly ask you about) when preparing your service agreements.

- **Type of language and style of drafting**

Though not an aspect of the services that you will be rendering, agreements should be drafted in language that is easy to understand, and in a style that is appropriate for your business and target clientele.

- **The description of your service offering**

Whether this is set out in detail in the body of your actual agreement, in an annexure to the agreement or even on your website, your service offering should be explained clearly. A good description of your service offering helps the client understand what they are paying for and what to expect from you.

Amongst other things, your service description can include the following:

- the exact service that you are offering – what exactly you do;
- if the services are made up of various parts/ steps, what is included and what is not;
- whether the service requires the client to make use of any third party products/ services in order for your

services to work, etc.

The description of your service offering may also overlap with the service levels that you agree to.

For example, if you offer English lessons online, your services may require the client to have access to a computer, a stable internet connection, a microphone and speaker. You would also need to outline how long the lessons are, what is included in the lesson and what is excluded, fees for extra time, etc. You may also have different service offerings available, for example, group lessons, beginner and advanced lessons, and different options with regard to homework or assignments, tests and feedback.

- **Duration and termination**

It is important that you clearly set out the duration of the agreement and how the parties can cancel the agreement. The services could be provided for a specific fixed period (for example, over fixed 30 day periods, such as a monthly subscription to an online streaming platform, or an annual subscription to a software programme) or for the time it takes for a specific project to be completed (for example, to develop a software programme according to the client's requirements). Where the services are for fixed periods, it is essential to regulate how the parties can end the agreement – for example, can the agreement be cancelled six months into the annual subscription? And if so, what happens if the client has paid for the year in advance? Will you give a refund and how will you calculate the amount to be refunded, or will they continue to have access for the rest of the subscription period? It is also important to specify whether the agreement will automatically renew at the end of each period, or terminate automatically.

- **Payment terms**

Other than the obvious importance of being paid for the services rendered, it is important that the client clearly understands:

- when payment is due (in advance or in arrears);
- how payment will be made (EFT, credit card, debit order etc.);
- when you may charge interest and at what rate;
- whether the client might be liable for additional expenses;
- how fees could change, etc.

- **Service levels (which can become a whole other agreement in itself where the services and service levels are very bespoke)**

By service levels, we mean the standards at which you are agreeing to perform. For example, if you provide an online payment processing platform, you might agree that the platform will be available 98% of the time, and that you will attend to general maintenance of the platform during a set number of hours each month on two days' notice to the client. You may also want to carve out time outside of the maintenance hours to attend to urgent issues on the platform. By setting service levels, the parties know when the services are available and when they aren't. You therefore make provision for some 'errors' without being in breach of the agreement, and you can also provide recourse for your client when you are in breach of the service levels.

- **Recourse**

These provisions set out the steps that you and the client can take when things go wrong, and should be carefully drafted so that they are appropriate for your business. For example, if the client doesn't make payment of the service fees when due, the agreement can include various remedies for the service provider, such as charging interest on overdue amounts (this in itself won't cause you to be a "credit provider" in terms of the law), suspending the services that are being rendered, applying to court for an order to force the client to perform, and cancelling the agreement. If you as the service provider don't perform as agreed, examples of remedies for the client may be a rebate in the fees paid where you have not met the service levels, or reperformance of the services and for the client to cancel the agreement.

We've all ploughed our way through agreements that have been drafted in the Queen's English, that are one sided, not specific enough or relevant to the circumstances and full of terms and concepts that we don't understand. As frustrating as these types of agreements may be, it is certainly possible to have a service agreement that takes your unique service offering and circumstances into account and presents fair terms that make sense.

By considering the above points, amongst others, you should be well on your way to get a service agreement in place that allows you to focus on the point of the agreement – revenue generation.

ABOUT THE AUTHOR

Jessica Patterson is an associate at Domisse Attorneys. She joined the firm in 2016 to begin her articles of clerkship. She was admitted in February 2018 and is currently practising across the various teams in the firm with a focus in the compliance and regulatory team and is gaining experience with financial and credit legislation, assisting with electronic communications queries, as well as consumer and personal information projects. Her other areas of practice include operational agreements and most recently international structuring.

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