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# Services Agreement Checklist

GLS Checklists – Knowledge Leverage Tools



## PART A: INTRODUCTION

### 1. SERVICES AGREEMENTS

- 1.1 A services agreement (“SA” defines the rights and obligations between a supplier and customer.
- 1.2 Service agreements can be unique in nature but certain concepts remain common to each agreement.
- 1.3 In **Part B** of this checklist we set out some common/key provisions we would expect to find in an SA.
- 1.4 This checklist is designed to signpost the most common clauses and associated issues that arise.
- 1.5 This checklist is designed to prompt your thinking to be “on target” in terms of typical SA considerations.
- 1.6 Please note that this checklist assumes English / common law principles.
- 1.7 Your application of the checklist must adjust according to your customer/supplier status.
- 1.8 Your services agreement should reflect any specifics of the contemplated services arrangement.
- 1.9 Please remember that this checklist does NOT replace the need for independent legal advice.

## PART B: CHECKLIST

### 1. SERVICES AGREEMENT CHECKLIST

#### 1.1 Issues Overview

You should look at:	
Parties & Purpose of the SA	Definitions
Scope of Services	Payment Terms & Invoicing
Performance Assurances	Key Customer Rights
Warranties & Representations	Indemnified Events
Liability of the Parties	Term & Termination
Intellectual Property	Confidentiality
Dispute Resolution	General Boilerplate / Miscellaneous
Contract Administration	Governing Law, Language & Jurisdiction

#### 1.2 Parties & Purpose of the SA

- 1.2.1 The SA should specify:
  - (a) the correct names and contact details of all parties;
  - (b) if the services are being provided by more than one party (e.g. a party and its affiliates);
  - (c) if the services are to be provided to a customer (and its affiliates);
  - (d) the process by which a customer may request/order services and deliverables e.g.
    - (i) purchase orders;
    - (ii) order form; and
    - (iii) etc.



### 1.3 Definitions

1.3.1 Key terms used in the SA should be defined to:

- (a) avoid ambiguity;
- (b) to improve the certainty of the arrangement between the parties; and
- (c) reduce clause and agreement length and create consistency of terms.

1.3.2 Some critical definitions in a SA may include:

- (a) the '*Services*' (to be provided);
- (b) '*Deliverables*';
- (c) '*Acceptance Criteria*';
- (d) '*Service Levels*' or '*SLA*';
- (e) '*Milestones*';
- (f) '*Customer Policies*' (that the service provider must comply with);
- (g) '*Performance Standards*';
- (h) '*Confidential Information*';
- (i) etc.

1.3.3 The SA should also include interpretative provisions relating to common concepts in the SA.

### 1.4 Scope of Services

1.4.1 The SA should include a detailed description of:

- (a) the services to be provided (scope, description etc.);
- (b) the deliverables with reference to tangible and measurable metrics;
- (c) all applicable standards, specifications, and service levels;
- (d) customer policies; and
- (e) applicable laws and regulations;

in each case above that the services and/or service provider must meet/comply with.

1.4.2 Avoid subjective measures around deliverables/standards, and insist on objective measures.

1.4.3 The SA should specify:

- (a) the timing for the commencement, performance and delivery of services;
- (b) whether '*time is of the essence*' in relation to such performance; and
- (c) remedies for late, delayed or non-performance.

1.4.4 The SA should make reference to:

- (a) any specific performance assurances around the services to be performed;
- (b) what equipment and/or materials are to be provided by the service provider;
- (c) who, when, how and in what circumstances the scope of services may be changed;
- (d) whether there is any exclusivity of supply by the service provider; and if so:
  - (i) what is the scope and extent exclusivity;
  - (ii) what is the length of any exclusivity and when does exclusivity end;
  - (iii) is the exclusivity limited by territory or scope of specific services; and
  - (iv) are any specific conditions attaching to such exclusivity (e.g. min. spend etc.)

### 1.5 Payment Terms & Invoicing

1.5.1 The SA should address:

- (a) the cost of services, and the formula/basis of calculation of price;



- (b) procedure for revision of charges (if any);
- (c) adequacy of charges statement;
- (d) scope of services included with charges;
- (e) equipment included/excluded with the charges;
- (f) payment terms, including credit terms, payment due dates, and how payment is made;
- (g) currency for payment;
- (h) currency risk/fluctuations if necessary;
- (i) treatment of expenses/disbursements including rates and prior approval;
- (j) responsibility for and treatment of taxes generally (GST/VAT/Withholding, etc);
- (k) when invoices may be issued, and where must they be sent;
- (l) required form of invoices (stated or min information to be included);
- (m) payment dispute procedures; and
- (n) rights of customer to deduct or set off monies owed.

## 1.6 Performance Assurances

1.6.1 The SA should specify any and all:

- (a) performance standards (or similar);
- (b) service levels (or equivalent);
- (c) quality metrics; and
- (d) any other specific expectations/requirements around the services to be provided.

1.6.2 Consider if a service-level agreement (SLA) is necessary/required. If so, the SLA should:

- (a) be properly incorporated by reference into the SA;
- (b) have clearly articulated service levels and metrics/measures;
- (c) specify when and how the services are to be measured and by whom;
- (d) define escalation pathways/remedies for service level failures;
- (e) provide remedies for breach.

1.6.3 The SA should include any specific rights or remedies for:

- (a) delays;
- (b) failure to perform/deliver;
- (c) services not meeting the required standards etc.; and
- (d) where SLA is not met / breached.

1.6.4 Consider whether specific security for performance is required e.g.

- (a) performance bond;
- (b) liquidated damages; and/or
- (c) other.

1.6.5 See also part 1.8 below for checklist on warranties and representations.

## 1.7 Key Customer Rights

1.7.1 The SA should include any specific rights the customer may require, examples may include:

- (a) service provider co-operation with other suppliers to the customer;
- (b) audit rights to audit the performance/compliance by the service provider with the SA;
- (c) suspension right in the event of failed/non-performance;
- (d) step-in rights to take over the services;
- (e) right to substitute the service provider; and/or



- (f) liquidated damages for delay/breach.

## 1.8 Warranties & Representations

- 1.8.1 The SA should clearly define what warranties (promises) each party gives to the other.
- 1.8.2 Some common examples of mutual warranties that might be included in an SA:
  - (a) the parties are properly incorporated and constituted;
  - (b) the parties are authorised to enter into the agreement;
  - (c) the parties will perform their obligations and comply with applicable law; and
  - (d) entering into the SA will not cause a party to be in breach of another agreement.
- 1.8.3 Ordinarily, a service provider would offer more comprehensive warranties than the customer.
- 1.8.4 Some examples of specific supplier warranties that may be included in an SA are:
  - (a) warranties relating to the quality, standards and performance of the services;
  - (b) that services will be rendered by appropriately qualified individuals;
  - (c) that the services will accord to any defined performance standards;
  - (d) that the services will meet the specified service levels (including in any SLA); and
  - (e) any other specific warranties appropriate to the service construct being offered.
- 1.8.5 Consider which warranties are linked to indemnity events (see also part 1.9 below).
- 1.8.6 Check what representations (if any) are included in the SA, and who is giving them.
- 1.8.7 The SA may contain representations around:
  - (a) service levels, standards, etc.
  - (b) outcomes.
  - (c) deliverables.Carefully consider what, if any, representations each party is making to the other.
- 1.8.8 Check what indemnities are included for breach of warranty/representation – see part 1.9.

## 1.9 Indemnified Events

- 1.9.1 The SA should set out clear and specific indemnified events.
- 1.9.2 It is critical that the parties should carefully consider what indemnities are being given/offered.
- 1.9.3 Common indemnities include:
  - (a) breach/misuse by a party of the other party's intellectual property;
  - (b) causing the other party to breach third-party intellectual property;
  - (c) negligent acts or omissions, or acts of wilful misconduct of a party;
  - (d) fraudulent or criminal acts of a party; and
  - (e) personal injury, death, or loss of or damage to property caused by the acts or omissions of a party.
- 1.9.4 The SA may also include indemnities for specific breach scenarios under the SA including:
  - (a) breach of confidentiality by a party;
  - (b) failure to provide the services/losses resulting from improper provision of the services;
  - (c) losses resulting from late/delayed performance of a party;
  - (d) breach of warranty and/or representation by a party (see part 1.8 above);
  - (e) etc
- 1.9.5 The SA should include special conditions attaching to the indemnities – e.g.:
  - (a) right for the indemnifying party to have conduct of claims/proceedings;
  - (b) requirement for the indemnified party not to settle any claims/proceedings;



- (c) exclusion of indemnity where the indemnified party contributes or causes the indemnified event.

1.9.6 Consider whether the liability for any indemnified events falls within or outside any liability exclusions, caps and limits (see part 1.10 below).

## 1.10 Liability of the Parties

1.10.1 The SA should clearly specify any exclusions, caps and limits on the liability of the parties.

1.10.2 When setting caps/limits on liability, the parties should be considering:

- (a) their desired/permitted maximum exposure under the SA;
- (b) the maximum losses likely to be suffered as a consequence of a breach; and
- (c) the income / revenue generated pursuant to the SA (in the case of the Supplier).

1.10.3 The SA should specify what liability cannot be excluded. Some common examples of this include:

- (a) death or personal injury caused by the (negligent) acts or omissions of a party;
- (b) misrepresentation by a party;
- (c) fraud or criminal acts of a party; and
- (d) failure by a party to comply with applicable laws.

1.10.4 Carefully review any unlimited liability scenarios in the SA. These may include:

- (a) one or more indemnified events;
- (b) breach of one or more of the agreed warranties/representations;
- (c) other specific risks which may materialise and which are specific to the contemplated arrangement or of particular importance.

1.10.5 We always recommend that parties seek legal advice when reviewing liability clauses.

## 1.11 Term & Termination

1.11.1 The SA should clearly state:

- (a) when the agreement commences;
- (b) when the services commence (if different to agreement date);
- (c) for how long the services are to be provided;
- (d) whether the SA is for a fixed or variable term;
- (e) if the SA is renewable, when, who, how and for how long the SA may be renewed;
- (f) when and how the agreement expires; and
- (g) when and whom may terminate the SA, and how (including notice periods).

1.11.2 The SA should deal with the consequences of termination. Things to consider include:

- (a) return of property and confidential information;
- (b) payment for services rendered;
- (c) liquidated damages for non-performance;
- (d) interim arrangements;
- (e) step in rights;
- (f) non-compete;
- (g) duty to mitigate losses;
- (h) etc.

## 1.12 Intellectual Property (IPR)

1.12.1 The SA should specify:

- (a) who owns any IPR used and/or created during the term of the SA; and



- (b) whether any IPR is intended to transfer from a party to the other.
  - 1.12.2 Where use of a party's IPR is required and/or included in the services the SA should:
    - (a) detail any IPR licensing and/or usage rights;
    - (b) any conditions attaching to such IPR use; and.
    - (c) whether third party use is permitted (and if so what conditions apply).
  - 1.12.3 Check what indemnities are included for breach of IPR – see part 1.9.
- 1.13 **Confidentiality**
  - 1.13.1 The SHA should clearly define:
    - (a) what constitutes confidential information of the parties;
    - (b) when confidential information may be used and by whom;
    - (c) restrictions on use of confidential information and for how long; and
    - (d) exceptions to the confidentiality obligations e.g. where disclosure required by law etc.
- 1.14 **Dispute Resolution**
  - 1.14.1 The SA should contain a mechanism (or mechanisms) for dispute resolution.
  - 1.14.2 Check whether the SA provides for:
    - (a) escalation to senior personnel (this can be useful to avoid formal dispute proceedings);
    - (b) “alternative dispute resolution” e.g. mediation etc; and
    - (c) court-based or arbitral proceedings (see also part 1.17 below).
- 1.15 **Contract Administration**
  - 1.15.1 **Authorised Representatives**
    - (a) The SA should specify the authorised representatives of the parties permitted to:
      - (i) place/accept/vary orders for services;
      - (ii) contract management generally;
      - (iii) performance management;
      - (iv) dispute resolution;
      - (v) etc.
  - 1.15.2 **Notices**
    - (a) The SA should specify how and in what form all notices are to be sent/delivered.
    - (b) The notices provision should include:
      - (i) the address and name of person(s) authorised to receive notices;
      - (ii) how notices are to be delivered (e.g. by pre-paid courier, email etc); and
      - (iii) the deemed time for delivery of notices (e.g. the same day if sent by email etc.).
  - 1.15.3 **Variation / Amendment**
    - (a) The SA should include a specific mechanism for agreeing variations/changes, including:
      - (i) prices/charges;
      - (ii) scope(s) of services;
      - (iii) deliverables;
      - (iv) extension/renewals;
      - (v) Etc.
    - (b) The SA should require all variations to be agreed in writing by authorised persons.



## 1.16 General Boilerplate / Miscellaneous

### 1.16.1 Data Protection

- (a) The SA should:
  - (i) include clauses relating to the data protection obligations of the parties; and
  - (ii) obligate the parties to comply with applicable laws on data protection.
- (b) The Parties should consider:
  - (i) what personal information is being shared between them;
  - (ii) what data protection/privacy laws may impact them; and
  - (iii) specific provisions relating to the handling, storage and use of personal information, including by reference to any specific policy/policies of the parties.
- (c) Consider if an indemnity is required for any breach of the data protection provisions.

### 1.16.2 Anti-Bribery & Corruption (ABC)

- (a) The SA should specify what ABC requirements are to be observed by the parties.
- (b) Consider if there are specific ABC policies to be complied with (and if so specify them).
- (c) Consider if an indemnity is required for any breach of the ABC provisions.

### 1.16.3 Force Majeure

- (a) The SA should specify:
  - (i) what constitutes a *force majeure event* "FM" (this should be defined clearly);
  - (ii) when and in what circumstances each party may rely on FM;
  - (iii) what happens in the event a party experiences FM (e.g. duty to notify and when);
  - (iv) what are the consequences of force majeure (e.g. suspension etc.); and
  - (v) what are the obligations of the parties to rectify the force majeure.
- (b) The SA should also specify the remedies of the parties if FM is continuing, e.g.:
  - (i) right of step in;
  - (ii) right to appoint third parties to perform services; and
  - (iii) termination after a specified time period.

### 1.16.4 No Announcements / No Dispragement

- (a) The SA should include any restrictions on the parties in relation to:
  - (i) making any press-releases/announcements etc concerning the SA;
  - (ii) making disparaging statements concerning the other parties.

### 1.16.5 Entire Agreement & Counterparts

- (a) The SA should exclude by reference all other terms and conditions relating to the services.
- (b) For convenience, the parties may wish to specify that the SA can be executed in counterparts.

### 1.16.6 Assignment & Novation

- (a) The SA should specify whether one or both parties is permitted to:
  - (i) assign their benefits under the SA to third parties; and/or
  - (ii) novate the SA to third parties

### 1.16.7 Sub-contracting

- (a) The SA should clarify whether a service provider can engage subcontractors.
- (b) Where sub-contracting is permitted, the SA should include provisions that:





- (i) the service provider remains primarily liable for performance of sub-contractors
- (ii) appointing sub-contractors does not relieve the service provider of performance
- (iii) specify any customer approval rights re sub-contractor appointment/selection
- (iv) detail any specific qualifications, experience or requirements for sub-contractors

#### 1.16.8 **Waivers**

- (a) The SA should specify that:
  - (i) all waivers by a party must be in writing
  - (ii) where a party provides a waiver, then such waiver shall not be construed to be a waiver of any subsequent breach(es)

#### 1.16.9 **Severability / Illegality**

- (a) The SA should specify that in the event of an illegal or invalid provision in the SA:
  - (i) such provision is deemed removed or amended to the extent required without affecting the other clauses; and
  - (ii) the interpretation of the remaining clauses is not affected.

#### 1.16.10 **Relationship of the Parties**

- (a) The SA should exclude:
  - (i) any implied or ostensible authority for one party to act on behalf of another; and
  - (ii) any authority of a party to bind the other party.
  - (iii) Confirmation that the parties are and shall remain independent to each other i.e. no joint venture, agency etc shall be construed

#### 1.16.11 **Third Party Rights**

- (a) The SA should exclude the right for non-parties to enforce or claim rights under the SA.

### 1.17 **Governing Law, Language and Jurisdiction**

#### 1.17.1 The SA must specify:

- (a) the governing language of the SA;
- (b) require that all notices and proceedings relating to the SA are in the specified language; and
- (c) the governing law of the SA and the courts which have jurisdiction over any disputes.

#### 1.17.2 When designating the governing law and jurisdiction the parties should consider:

- (a) where each of them is domiciled and the law which governs them generally;
- (b) where the services are to be performed;
- (c) the reliability/speed/cost of dispute proceedings in a jurisdiction; and
- (d) the convenience of the parties.

#### 1.17.3 Consider if the parties require arbitral proceedings in which case the SA should specify:

- (a) the arbitral rules which shall apply;
- (b) the number of arbitrators and how the arbitrators are selected (and by whom); and
- (c) where the arbitration will take place.

#### 1.17.4 Be aware that incorrect arbitration clauses may mean prevent a party's right to arbitration.

#### 1.17.5 Where court-based dispute resolution is preferred, the SA must specify:

- (a) which courts have jurisdiction to hear any disputes; and
- (b) whether such jurisdiction is exclusive or non-exclusive.



### PRACTICAL TIPS

- When used correctly, SAs operate to protect parties interests, and define the rights and obligations of parties in relation to agreements for the provision of services.
- SA's are necessary to set out clear rights, roles and responsibilities of the parties.
- Necessarily, each SA is different, but the broad context of an SA is to cover the points raised in this checklist.
- Given the important of SAs, we always recommend that the parties always seek legal advice.
- If you are a non-lawyer do not assume that because an SA is a commonly used document it is not without risk. Getting an SA wrong will almost certainly expose you to significant risk, loss & liability.
- Never assume you can sign an SA without carefully reviewing it and understanding the interpretation and application of the defined terms.
- Your business and the services it requires/provides are important and it is appropriate you protect your interests and understand your obligations as a party to any commercial arrangement.
- If you would like any further assistance simply book a [Free Consultation](#) with a GLS legal expert.

Sample