

## **Contract Negotiations: Master Service Agreements and Statements of Work:**

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### **What is a Master Service Agreement:**

According to Wikipedia a **Master Service Agreement (MSA)** is a contract reached between parties, in which the parties agree to most of the terms that will govern future transactions or future agreements. A master agreement permits the parties to quickly negotiate future transactions or agreements, because they can rely on the terms of the master agreement, so that the same terms need not be repetitively negotiated, and to negotiate only the deal-specific terms.

Contracts in the information technology, contract research, and similar "open ended" fields in support of an organization's functional support areas such as HR, Finance, Marketing and Supply Chain are often negotiated as a "Master Service Agreement" and a "Statement of Work." Typically, the Master Service Agreement specifies generic terms such as payment terms, product warranties, intellectual property ownership, dispute resolution, geographic location and venue of law and other items such as corporate social responsibility, business ethics, network access, facility access and others that an organization deems critical to its mission for all agreements.

### **What is a Statement of Work:**

According to Wikipedia, a **statement of work (SOW)** is a formal document that captures and defines the work activities, deliverables, and timeline a vendor must execute in performance of specified work for a client. The SOW usually includes detailed requirements and pricing, with standard regulatory and governance terms and conditions. It thus overlaps in concept with a contract, and indeed SOWs are often legally equivalent to contracts.

A statement of work typically addresses these subjects.

- **Purpose:** Why are we doing this project? A purpose statement attempts to answer this.
- **Scope of Work:** This describes the work to be done and specifies the hardware and software involved.
- **Location of Work:** This describes where the work is to be performed, including the location of hardware and software and where people will meet to do the work.

- **Period of Performance:** This specifies the allowable time for projects, such as start and finish time, number of hours that can be billed per week or month, where work is to be performed and anything else that relates to scheduling.
- **Deliverables Schedule:** This part lists and describes what is due and when.
- **Applicable Standards:** This describes any industry specific standards that need to be adhered to in fulfilling the contract.
- **Acceptance Criteria:** This specifies how the buyer or receiver of goods will determine if the product or service is acceptable, usually with objective criteria.
- **Special Requirements:** This specifies any special hardware or software, specialized workforce requirements, such as degrees or certifications for personnel, travel requirements, and anything else not covered in the contract specifics.
- **Type of Contract/Payment Schedule:** The project acceptance will depend on if the budget available will be enough to cover the work required. Therefore a breakdown of payments by whether they are up-front or phased will usually be negotiated in an early stage.
- **Miscellaneous:** Many items that are not part of the main negotiations may be listed because they are important to the project, and overlooking or forgetting them could pose problems for the project.

#### **Negotiation:**

The first step in contract negotiations by the buying organization is to definitively outline your goals and ensure all stakeholders are in agreement. This will involve reviewing each contract item in the MSA and identifying the legally acceptable fall back position and the point at which you need to walk away. For each of the goals that are supported by the SOW, you will need to perform the same exercise. Performing this exercise is critical to your success in the contract negotiation process. You can rely on the fact that your counterpart from the selling organization is doing the same.

Your next step is to share your position, i.e.; your organization's template form with your counterpart. Note that they will also ask you to review their form as well. It has been my experience that the organization with the most leverage, real or imagined usually wins the battle of the forms described above. For purposes of this discussion assume your organization's forms are the forms of choice. Your counterpart should review and present

edits (redlines) to you for review. After you discuss with your stakeholders and legal, you can respond in kind or if applicable schedule a meeting with your counterpart to review and see if you begin to agree on the open issues. It is entirely up to you, as determined by the type of service being negotiated, the materiality of the project to your organization, etc, as to how you will approach the issues in terms of complexity and need to compromise or hold fast to your position. The guidelines established internally in the first step will greatly assist in facilitating resolution of the differences.

Once you have reached agreement with your counterpart, you should inform them that you will now share the current version of the forms with your stakeholders and legal for final review. This will enable your stakeholders to 1) be engaged in the process, 2) ensure that their needs are being met and 3) be willing to support the new contract enthusiastically. This will also provide for a final legal & financial review to ensure no concerns were overlooked and the project financials are accurate. Remember, unless you are an attorney or a CPA, you are not a legal expert or a financial expert, so their review will ensure you meet your fiduciary responsibility to protect your organization's assets.

**Execution:**

Prior to contract execution, you should have developed a check list of the reviewers. Before submitting for signature by the appropriate signing authority outlined in your organization's policy manual, you should obtain initials or e-mails from each of the involved stakeholders and the function that will own the day to day operation of the service(s) outlined in the document. This will tell the signing authority that all of the appropriate team members have vetted the proposed services and are familiar with the process steps they need to complete either during implementation or after go live as appropriate. This will facilitate the signing authority's ability to execute the document in a timely manner. Once the document is signed, you will either hand off to an implementation team or proceed to manage the implementation and hand off at go live depending on how your role is defined by your organization.