

Legal Issues for Service Providers

Getting Your Contract Right

An epidemic of disputes between contracting parties has crossed my desk in the last few months. They all demonstrate the need to get your contract right at the outset and particularly to focus on the dispute resolution clauses in it.

Common dispute resolution mechanisms are mediation, appointment of an expert and arbitration. All have the advantage of not being bogged down in court hearing dates and prolonged procedures involved in court hearings.

If you choose mediation make sure you have the ability not only to force the other side to accept a mediator but that they will have a decision maker at the mediation.

If you choose an expert, be careful to consider his or her expertise in the dispute subject matter. An accountant would not be suitable for example in a matter that requires an evidence gathering process.

More generally in any contract bargaining, it can be hugely beneficial to two contracting parties (say supplier and customer) to take time to discuss and plan their future relationship together. Documenting that agreement clearly and explicitly is crucial and a good agreement can serve as a roadmap for those parties working well together in the years to come.

It can be very tempting to either accept a party's standard form terms and conditions or where they are not available to download a template from the internet and make that work to the particular circumstances. However, these supposed solutions may not ultimately be a solution.

A service agreement, and indeed the discussions that lead to it, should not be considered a negative or barrier in your relationship. The key benefits of a service agreement are those that protect the parties mutually.

Considering some of the usual clauses in a service agreement:

1 Term

Do you want the agreement to be for a set term? Perhaps renewable? Or do you want it to be ongoing subject to certain milestones occurring or events of default not occurring? Many factors will need to be considered such as the nature of investment in infrastructure to deliver the services and the market within which the services will be delivered.

2 Services Description

This is clearly a crucial aspect of the contract and generally the clearer the description, the easier it will be for the parties to get along with the business they have agreed. Failure to develop a good description by discussion and negotiation can lead to uncertainty and a "loss in translation" where key personnel change during the life of the contract.

3 Price

Parties are always going to focus on price. However, it is important to be clear about price and to provide for that in the agreement. Consideration needs to be given to how prices will be calculated and how they will change over the term of the contract.

4 What is not covered by the agreement?

It seems a case of stating the obvious but you should make sure that, if there are any services to be excluded, the contract is made explicit in this respect.

5 Entire Agreement

It is easy to gloss over boilerplate clauses such as the entire agreement clause. But those clauses are there for a reason, and this clause particularly so. The "Entire Agreement" clause means that previous contracts, notes, emails, handshakes, or whatever other means have been used to record terms or negotiations, will be excluded: all terms of the arrangement must be taken from the agreement. This clause adds great certainty to the bargain struck.

Don't hesitate to contact me for further information.