MSP Service Contracts

Why They’re So Vital—and How to Make Sure You Get them Right
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About This Document: Developed by the CA Service Provider Center of Excellence
Executive Summary

Your MSP business can do a lot right, but if it fails to implement good service contracts, it can ultimately fail to meet its potential or its objectives. This paper offers a detailed look at this vital aspect of an MSP's business, outlining some key strategies and requirements for developing service contracts that help put an MSP business on solid legal footing.

Introduction: The Importance of an MSP's Contracts

Given the frenetic pace of a typical MSP executive’s day, devoting time, effort and budget to developing services contracts can often be relegated to the lower rungs of the priority list. Too often, contracts can be given short shrift, put off until the inevitable last-minute scramble—namely copying and pasting a generic services contract after a prospect says they are ready to move forward.

However, contracts are a vital piece of an MSP’s business, and should be treated as such. Particularly as organizations make the move from a traditional VAR or break/fix model to delivering ongoing managed services, this topic is especially important.

Aside from the services that an MSP will provide, the contract between the MSP and its customer is the most critical component of the MSP-customer relationship. The contract sets the legal boundaries of the relationship between the customer and the MSP, determining how the relationship will begin, operate and end.

Why are contracts so important? Here are just a couple considerations:

- **Your business’ future.** With inadequate contracts, your business can be exposed to a host of unpleasant and potentially disastrous scenarios—including lawsuits and premature customer cancellations—that can fundamentally limit your business’ prospects, if not its very survival.

- **Your business’ value.** For many MSP businesses, acquisitions are the ultimate exit strategy. The strength of your customer contracts will be a critical determining factor in whether a deal goes through and the ultimate valuation of your business.

Ultimately, contracts are instrumental in putting your MSP business on a solid legal foundation, which is vital to the long term viability and success of your business. In the following sections, we will outline some fundamental ground rules for contracts, and then we will provide some details on the core requirements of an effective contract.

**Please note:** This paper does not provide legal advice and is by no means comprehensive. You should consult an attorney with experience in business and contract law and in the managed services industry and discuss your particular contract needs and other legal issues that apply to your business.
The Contract Process

When it comes to services contracts, there are several considerations you should absolutely factor in as part of the process:

- **Solicit input and advice.** In addition to obtaining solid legal advice, you need to make sure that your contract is reviewed and vetted by other key team members. Your financial advisor should weigh in on the finance and payment sections of the contract, and in particular should help make sure you understand the ins and outs of revenue recognition rules so that your financial statements are maintained properly. In addition, your chief technology or operations officer should review the service levels and descriptions in the contract for accuracy and to ensure that any customer requirements are spelled out clearly.

- **Keep your contracts simple.** As we will outline below, there are a range of key facets that a services contract must include. As a general rule, however, it is important to keep contracts as simple as possible—overly complicated contracts can ultimately be an unnecessary barrier to closing deals with new customers.

- **Set up automatic renewals.** Be sure to set up contracts so that they will automatically renew at the end of the initial contract term. In most cases, both the MSP and the customer will want to avoid the hassle of signing a new agreement or amendment to renew services at the end of the term.

- **Implement effective contract procedures.** No matter what contracts your organization establishes, they mean nothing without effective processes surrounding them. First, you should implement effective recordkeeping. It is important to decide if your main filing system will be paper-based or electronic, and establish a consistent process based on that. It is also critical to make sure that more than one person on your team fully understands the system in place. You should also create a contracts spreadsheet or database that maintains a handy inventory of your contracts and their key terms. Finally, it is important to regularly review your contracts and ensure they are updated to reflect changes in your services and fees, as well as in the external legal or competitive environment.

Effective Use of Schedules in MSP Contracts

There are a number of key contractual commercial terms that often reflect the specific technology requirements and needs of customers. Usually, the following items are documented in separate schedules or exhibits, so that the MSP and customer can review and discuss them separately from general contract terms and conditions:

- **Service pricing.** MSPs can offer pricing models based on many different metrics, such as number of servers or end user devices supported. In addition, it is common for MSPs to break various service offerings into different tiers, such as silver, gold and platinum. Ultimately, MSPs must clearly define pricing terms and metrics, so they can avoid misunderstandings and potential disputes.

- **Service level agreements.** Just about every customer will expect MSPs to make some commitment to the service levels to be delivered. This can include delivering on specific availability commitments for a business service or infrastructure component. In other cases, SLAs can govern such activities as the time required to respond to a request, close a ticket and so on. Fundamentally, SLAs have to strike a balance: providing assurances to customers without forcing the MSP to take on too much risk. Toward that end, it is important that SLAs are specific, objective, measurable and within the control of the MSP.
• **Service descriptions.** There should be absolute clarity on the part of the MSP and the customer in terms of what services are being delivered, which are not and which services would be delivered for an extra fee. Ideally, your service descriptions should be handled as a schedule, and should be drawn directly from a well-defined service catalog. For more information on this topic, see the white paper, “Leveraging the Service Catalog to Scale Your MSP Business”.

Structuring contracts in this manner can be efficient in a couple ways. First, the terms and conditions document can be more standardized, while documents that are specific to customers are revised more frequently, which can be more efficient from an ongoing administration standpoint. Second, breaking out contracts in this way can make it easier for customers, helping them focus on the elements that are specific to their business.

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**Fundamental MSP Contract Requirements**

When developing services contracts, there are several areas that fall into the “must-have” category. Following are some of the most important areas a well-designed services contract should cover:

**Term of service and termination rights**

When MSPs kick off an engagement with a new customer, they may have to dedicate staff time and resources to ramping up, and allocate additional resources to the ongoing support of the new account. An MSP may even need to bring on new staff or equipment to accommodate the new customer. These up-front investments need to be recouped over a specific time frame, which is why service duration has to be factored into contracts. The MSP should include specific contract language that commits the customer to a one-year or multi-year term without early rights to termination. There can be an agreed-upon trial period if the customer requires it, but once that time expires, the MSP should be able to plan on that customer paying their monthly fee for the duration of the contract.

The only way a customer should be able to cancel the contract is if the MSP fails to meet its obligations. The contract should define what constitutes a breach of contract on the part of the MSP. To protect your business, it is important to structure the language to ensure that your team has the opportunity to respond to and fix any breach before the contract can actually be terminated.

**Intellectual property rights**

Just about any successful MSP will have its own “secret sauce”, the unique capabilities that enable the MSP to deliver services better or more inexpensively than the competition. This can include the development of custom infrastructures, applications or tools. Alternatively, it can be attributed to specialized workflows. During the course of delivering services to customers, MSPs may by necessity be disclosing this proprietary information. It is important that contracts protect this intellectual property.

**Liquidated damages for hiring MSP employees**

For MSPs, the business is truly about its people. When you have good people that are interacting directly with customers on a regular basis, there is a clear and common threat: customers will want to hire those people. Given the likelihood of this occurrence, and the damage that can be inflicted on the MSP as a result,
it is important to include language that prohibits customers from soliciting or hiring the MSP’s staff. Further, there can also be specific language as to the monetary damages that should be paid if such a breach occurs. Often this amount is expressed as a percentage of the employee’s annual salary.

Privacy and confidentiality
By managing the business services and infrastructure of their customers, MSPs are usually entrusted with sensitive client information. As a result, contracts need to set clear boundaries that specify the respective roles and responsibilities of each party in protecting sensitive data. This is particularly vital for MSPs serving customers in such regulated industries as financial services, health care and retail.

Limitations of liability
It is essential that service contracts limit the MSP’s liability. If a contract breach causes the customer some damage, the contract needs to clearly limit the amount and duration of the amount recoverable. For example, an SLA breach may require an MSP to refund the client a month’s worth of fees. In addition, it is good practice to exclude your MSP business from liability for more speculative, or open ended damages, for example, for being on the hook to reimburse a customer for lost profits due to an outage.

Assignment
An MSP’s services contract should explicitly allow the assignment of the contract to another company, specifically in the event that the MSP is acquired. As mentioned earlier, the exit strategy of many MSPs is through an acquisition, which makes this a critical component. If an MSP has contracts that do not provide this assignment, it can significantly diminish the MSP’s value, if not derail the deal completely.

If you look at it from the acquiring company’s perspective, this makes perfect sense. In many ways, when an organization purchases an MSP, they are buying the customer relationships. Without contracts specifying assignment, there is no way for the acquirer to ensure the relationships are definitive. If assignment clauses do not exist, it would mean that the acquiring company would need to go back to each customer to get them to sign a new contract. This is inherently a labor intensive effort and one fraught with significant risk: customers may decline or want to renegotiate. This uncertainty can be a deal breaker.

Authorization to maintain and access customer devices
As part of their ongoing work with customers, an MSP’s team may regularly or occasionally need to interact with customer devices, such as servers, workstations or networking equipment. It is important that the contract specify the nature and process of this access, and that the customer is expressly permitting this access under the conditions outlined. For example, if an MSP does occasional troubleshooting and remediation of client workstations, the MSP and customer may establish a process in which the MSP staff must specifically request permission to access the workstation, and only login to the system after permission has been expressly granted. This sort of arrangement should be formalized in the contract.
Conclusion

An MSP’s prospects, valuation and long-term viability may all hinge on its services contracts—so taking the time to do these contracts right is a critical endeavor. By leveraging the principles outlined above, working with experienced counsel, and taking the time to consider business needs and goals, MSPs can develop the services contracts that provide a solid legal footing, both up front and in the long term.

About CA Technologies for Service Providers

In the application economy, successful service providers will have one thing in common: speed. Delivering services that help customers innovate their applications faster—and getting those services to market quickly—now represent critical competitive mandates. Today, service providers around the world are turning to CA Technologies because we help them get faster. CA equips service providers with a scalable service delivery platform that fuels operational optimization, complete solutions that power services at every stage of the application lifecycle and extensive enablement services that can accelerate all phases of your business’ execution.

About This Document: Developed by the CA Service Provider Center of Excellence

This document has been written by the CA Service Provider Center of Excellence team and is intended to provide our service provider partners with the guidance they need to address some of their most pressing challenges. Our team has rich expertise in service provider businesses, strategic consulting, technical deployments, sales and marketing. Our documents are informed by the Center of Excellence team’s extensive experience over the past ten years in helping build successful service provider businesses and by interviews with some of our most successful service provider partners. This document is provided for informational purposes only and on an as-is basis. The guidance and results described herein are based on the unique experiences of our staff and partners, and may not be applicable to all organizations.

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