



# Negotiating Staffing Service Agreements

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# Negotiating Staffing Service Agreements

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Bob Goldberg has an extensive background in counseling clients in a wide range of commercial, corporate and regulatory matters. He joined Taylor English in 2005 and is the former chair of the Corporate and Business Practice Group. Mr. Goldberg concentrates his practice in the areas of commercial transactions, mergers and acquisitions, business organizations, and general business operations support. He has significant experience in the technology, telecommunications, hospitality and staffing industries.

Mr. Goldberg advises clients on entity formation, corporate governance, capitalization issues, equity compensation strategies, capital-raising issues, mergers and acquisitions and other commercial transactions. He counsels clients at various stages of their development to address issues, problems and strategy.

Previously, Mr. Goldberg served as vice president and general counsel at Harbor Payments Inc. (now an American Express company), where he was responsible for all aspects of the company's legal affairs and human resources. Prior to Harbor Payments, Mr. Goldberg spent seven years at MCI Communications Corp., where he was managing commercial counsel supporting the company's global marketing, product development and sales organizations. During his tenure at MCI, Mr. Goldberg also held two non-legal, business development positions. Before MCI, he worked as an associate attorney at a nationally recognized law firm in Atlanta, where he represented clients in federal and state telecommunications regulatory matters.



# Preparing for Client Negotiations

## Understand Your Client's Needs

- Short-term and long-term goals
- The better you understand the requirements, the more you can tailor your proposal

## Customize Your Offering

- Tailor your solution to meet the specific needs of the client
- How do your services solve their unique challenges and add value to their business

## Rates/Fees and Payment Terms

- Clearly outline your rates/fees structure
- Be prepared to justify your pricing based on market conditions and quality of your services
- Specify deadlines for submitting and approving time
- Be careful of setoff language

## Service Level Agreements

- More commonly requested by clients
- Establish SLAs that define key performance indicators, response times, deliverables
- Ensure both parties have a clear understanding of what to expect and how success will be measured

# Preparing for Client Negotiations (Cont'd)

## Term and Renewal Options

- Negotiate the length of the contract term and renewal options
- Be flexible but ensure that the terms are beneficial for both parties

## Termination

- Define the conditions under which either party may terminate the agreement
- Either party should be able to terminate for convenience
- Include a transition plan to ensure a smooth handover of responsibilities and personnel

## Risk Management

- Discuss liability issues, insurance requirements, and risk-sharing arrangements
- Define responsibilities in case of disputes, compliance issues or unforeseen events

## Confidentiality and Data Security

- Include confidentiality and data security clauses to protect sensitive information
- Assure your client that their data will be handled with the utmost care and in compliance with applicable regulations
- Be careful not to accept risks associated with being a data processor (unless appropriate)

# Preparing for Client Negotiations (Cont'd)

## Flexibility and Scalability

- Highlight your ability to scale staffing resources up or down based on your client's changing needs
- Flexibility is often a significant selling point

## Compliance and Legal Considerations

- Ensure that your services comply with all relevant labor laws and regulations
- Discuss how you will handle legal and compliance matters, including worker classification and tax issues

## Communication and Reporting

- Specify the frequency and format of communication and reporting

## Dispute Resolution Mechanisms

- Include a dispute resolution clause outlining how conflicts will be resolved, whether through negotiation, mediation, arbitration, or litigation

# Preparing for Client Negotiations (Cont'd)

## Intellectual Property Ownership

- Clarify who owns any Intellectual Property created during the engagement
- Especially important for projects involving software development or creative work

## Benchmarking and Performance Review

- Discuss periodic performance reviews and benchmarking against industry standards to continuously improve the quality of your services

## Legal Review

- Seek legal counsel to review and help draft the agreement to ensure it's legally sound and protects the interests of both parties

## Negotiate Win-Win Terms

- Approach the negotiation with a mindset of creating a win-win situation
- Focus on building a long-term, mutually beneficial relationship



# Preparing for Client Negotiations (Cont'd)

## Document Everything

- Keep thorough records of all negotiations, discussions and agreements
- This documentation can be invaluable in case of disputes or misunderstandings

## Review and Revise

- Periodically review the agreement to ensure it remains relevant and is aligned with both parties' evolving needs and expectations

## Bottom Line

- Remember that successful negotiations are built on open communications, trust and a commitment to achieving common goals
- Be prepared to compromise when necessary and be clear about your value proposition to secure a mutually beneficial agreement

# Indemnification



- **Defined**—a promise to defend and hold harmless a party to an agreement against future claims or losses relating to an agreement
- **“Indemnify”**—we’ll pay for it
- **“Defend”**—we’ll defend you at our cost if you get sued
- **“Hold harmless”**—we won’t blame you
- Indemnification clauses do two things:
  - Place responsibility on the promisor—okay
  - Transfer risk—not okay
- Should be a limit for damages caused by client’s negligence, acts, or omissions

# Limitation of Liability



- Defined—a contract provision that limits the amount of exposure a company faces in the event a lawsuit is filed or another claim is made
- The more robust the clause is, the more protection it offers
- Make it mutual so it applies to both parties
- The limitation may set an upper “cap” on the total amount any party is liable to pay for any type of claim.
- Example—“Neither Party shall be liable for special, punitive, indirect, incidental, or consequential damages arising out of this Agreement or the exercise of its rights hereunder, including loss of profits arising from or relating to any breach of this Agreement, regardless of the theory of liability (including contract, tort, negligence, strict liability, or otherwise) and regardless of any prior notice of such damages, except as a result of a party’s willful misconduct, a breach of the confidentiality obligations. Nothing in this section is intended to limit or restrict the indemnification rights or obligations of either party hereunder with respect to third party claims.”

# Conversion of Employees



- Contractually limit the number of employees a client may hire to become an employee of client
- Require client to pay a conversion fee based on the number of hours the assigned employee works for client up to the date of conversion
- Typically use cumulative hours in rolling one-year look-back period
- Base the fee on a % of first-year salary (or 2080 hours)

# Safety in Workplace Clauses



- Clarify roles and responsibilities of the parties in providing and maintaining a safe workplace environment
- Who is responsible for safety training
- Who is responsible for safety equipment
- Include audit rights to ensure compliance

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# Questions



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