

Advice Guides

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WHAT IS "A SERVICE AGREEMENT"?

If you are looking to engage a person to do some work for you, but not as an employee, or if you want to provide your services to someone, it is better for all concerned to spend some time BEFORE the services are provided, setting out in writing out the understanding of each person involved.

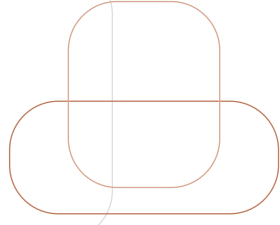
Service agreements cover:

- > What services will be provided?
- > When the services will be provided?
- > What payment will be made for those services?
- > How the agreement can be terminated;
- > If the services are not being provided in a satisfactory manner, what are the consequences?
- > If circumstances change, can the services be changed?

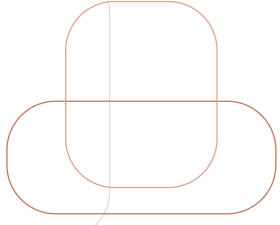
IT IS CRUCIAL TO BE SURE YOU KNOW HOW THE ARRANGEMENT WILL BE VIEWED BY THE TAX OFFICE. JUST BECAUSE THE TWO OF YOU SAY THAT THERE IS NO EMPLOYMENT ARRANGEMENT DOES NOT MEAN THAT THE TAX OFFICE WILL AGREE OR THAT THEY WILL ALLOW THE PAYER TO NOT DEDUCT TAX AT SOURCE.

Each party needs to think about these issues.

THE SERVICE PROVIDER (the person doing the work)	THE SERVICE RECEIVER (the person ordering the work)
Details of the Services	
<p>Make sure you fully understand the services you will be providing – do they include ongoing services or are they on a “one off” basis</p> <ul style="list-style-type: none">> is there a time for completing the services?> is there ongoing support required?> are the services to be provided at the receiver’s premises?> does the receiver have to provide any equipment for you to provide the services? <p>Determine whether you are capable of and have the resources to provide those services before you agree to provide them.</p> <p>If possible work out a timetable for providing the services which can also set out when you will be paid ie at certain stages of providing the services or when all the services have been provided.</p> <p>A receiver will probably ask for warranties about your ability to provide the services and that the services will be provided in a certain manner</p>	<p>It is essential that you fully describe the services you require so there can be no confusion with the provider.</p> <p>It’s always a good idea to really research service providers before engaging one, find out what other people thought of their services and how they provided them</p> <p>If possible work out a timetable for when the services will be provided. This can be a timeline arrangement with a completion of the services or on an ongoing basis. It can also detail when you will pay the provider for the services</p> <p>You should always ask for warranties from the provider including that the provider is capable of providing the services and that the services will be provided in a certain manner.</p>



THE SERVICE PROVIDER	THE SERVICE RECEIVER
Issues Regarding the Service Provider	
<p>The receiver will want to know about your ability and experience in providing the services. You will be responsible for providing the services to the receiver.</p> <p>If you are a company your directors may have to provide personal guarantees in respect to providing the services.</p>	<p>Make sure you know exactly who is the service provider. Research their experience and the reputation. If possible, speak to former clients or current clients who have used the provider.</p> <p>If it is a company, you may ask for the directors to guarantee the performance of the services by the company.</p> <p>In any case it may be necessary to say in the agreement precisely who is carrying out the work.</p>
Issues Regarding the Service Receiver	
<p>From a providers point of view, the most important criteria of a service receiver is that it can pay you for those services</p> <p>If the receiver is a company that you don't know much about, you may need to obtain personal guarantees from the director that the company will pay for the services</p> <p>If the receiver is an individual you can claim against them personally for payment of the services (see our debt recovery page)</p>	<p>The receiver must pay for the services. It is essential before the provider begins to provide the services that you make sure you have sufficient funds to pay or have arranged the finance.</p> <p>If you are a company then the provider may ask that your directors provide personal guarantees guaranteeing payment for the services.</p>
The Price	
<p>When determining the price to be paid for the services it is essential that you have discussed with the receiver exactly what those services involve:</p> <ul style="list-style-type: none"> > How often will you be paid – if they are ongoing services ie monthly > If the services are provided on a timetable will payment be made on reaching a certain time > Will payment be made in one lump sum when the services have been provided. <p>If the receiver terminates the agreement before you can provide all the services, you must make sure you will still be paid for those services you have already provided.</p> <p>Receivers of services will usually want some penalty to apply if you provide the services late. You should make sure that those penalties are not too severe and that they don't apply if the delay has been caused by the receiver.</p> <p>If the receiver wants to change the services for any reason, then you must make sure you can either renegotiate the price or that there is provision for the receiver to pay for any additional cost caused by the requested change.</p>	<p>Make sure that you know what you want. Otherwise you may find yourself paying for something you don't want.</p> <p>Make sure the structure of payment is suitable. If the services are on an ongoing basis make sure that you only have to pay if the services are provided properly and completely.</p> <p>If you are unsatisfied with the way the services are being provided make sure you can terminate the agreement without any penalty to you ie you have to pay for the services anyway.</p> <p>If there is a delay or something wrong with the services but you still want them to be provided, certain penalties should apply ie a reduction in the price.</p> <p>If you want to change the services, for any reason ie perhaps your business has changed, then you must either:</p> <ul style="list-style-type: none"> > Pay separately for the changes to the services, or > Negotiate a new price for the new services.



<p style="text-align: center;">THE SERVICE PROVIDER</p>	<p style="text-align: center;">THE SERVICE RECEIVER</p>
<p>As the service provider you will be required to warrant, at least:</p> <ul style="list-style-type: none"> > that you can provide the services > that the services will be provided as requested and in a fit and proper manner <p>Often receivers will require an indemnity from the provider in respect to any claims that may flow from the actual provision of the services.</p>	<p>You should obtain the usual basic warranties that the services are provided in a fit and proper manner.</p> <p>You may also require an indemnity from the provider if third parties are going to be the recipients of the services also, so that if those third parties suffer any loss because of the services or service providers, the service provider is liable.</p> <p>It is essential that you check these warranties to make sure that your interests are protected and that any liability in respect of the services lies with the provider.</p>
<p>Termination of the Services</p>	
<p>If the receiver does not pay you for the services you should be entitled to stop providing them. In this case you must make sure that you will be paid for the services you have provided.</p> <p>If however you have provided all the services and the receiver fails to pay you must make a claim against the receiver (see our debt recovery page).</p> <p>If the receiver decides it does not want the services any more, for whatever reason, it may be entitled to terminate the services if:</p> <ul style="list-style-type: none"> > it pays you for the services you have provided, or > it pays you the full amount of the price for the services, even if you have been unable to provide all the services <p>You must make sure that your right to be paid for the services you provide is protected.</p>	<p>If the services being provided are unsatisfactory then you should make sure you have the following options:</p> <ul style="list-style-type: none"> > require the provider must fix up what it has provided free of charge, or > you can terminate the services, or > a combination of both the above <p>The provider will be entitled to payment for the services provided, unless you have a claim for loss because the services were provided unsatisfactorily,</p> <p>If, for whatever reason, you no longer require the services, you will have to pay for the services already provided. You must make sure you can terminate the agreement without penalty.</p> <p>A provider may require you to pay the full price of the services if you terminate the agreement, such termination not being the fault of the provider.</p>