## OUTSOURCING AGREEMENTS

**CHECKLIST**

This checklist will assist you to ensure that you have included all of the relevant clauses in an outsourcing agreement. Please ask your lawyer to review any agreement or contract before signing it.

**Definition of the relationship, goals and objectives of both parties**

* + Exclusive of other vendors

# Protect market position of customer

**Scope of services to be provided**

* + Define services and deliverables to be provided to customer by vendor
  + Define services excluded
  + Define service levels (*i.e.*, performance standards) and remedies
  + Provide for modification of service levels from initial levels upon execution after conversion to vendor operations
  + Provide for milestones and project schedules (time-phased, person loaded)
  + Scope of vendor's authority

**Term of agreement**

* + Renewal periods
  + Automatic renewal

**Personnel**

* Staffing requirements
* On customer site / off customer site
* Vendor right to change personnel
* Customer right to approve personnel
* Specific obligations of vendor regarding vendor personnel
* Confidentiality
* Non-compete
* Guaranteed service period for certain personnel
* Succession planning
* Mix of staff levels
* Vendor to offer employment to customer's workforce
* Define employees to be transitioned
* Parameters for offers of employment
* Employee transition plan

**Use of customer facilities**

* Vendor to provide services from customer premises until specified date for conversion to other facilities
* List of equipment and services at facilities available for vendor use
* List of facilities square footage and rate to be paid, if any for use by vendor
* Vendor access to customer facilities
* 24 hour / normal vendor working hours
* Security issues
* Relocation of vendor

**Customer-owned equipment**

* Purchase of equipment owned by customer used to perform the services
* List of equipment / depreciated value
* Disposition of equipment subject to capital leases
* Obligation of customer to provide or acquire certain equipment

**Customer leased equipment**

* Vendor permitted to use equipment leased by customer to perform the services
* Customer to terminate or assign leases for the leased equipment
* Customer to exercise option to purchase equipment under terminated lease and sell to vendor at cost

**Data Processing services**

* For customer-owned intellectual property
* Customer grants vendor licence to use customer-owned intellectual property for term of the agreement or until conversion of services using other intellectual property, if contemplated by parties
* Assignment to vendor of licences for non-customer owned intellectual property to be used to provide services
* Termination of licences for intellectual property not required by vendor to perform services
* Obligation for integration, new products
* Cost of correction of processing errors

**Vendor intellectual property**

* License to use / included as part of services
* License with respect to termination
* Bankruptcy issues
* Substantive licence issues (scope of use, updates, warranties, etc.)

**Third-party services**

* Customer to assign agreements for third-party services to vendor
* Vendor responsible for cost of third-party services
* Vendor to have the right to replace third-party services with its own services or services of a third party of its choice

**Management of projects and other services**

* Appointment of project managers by vendor and customer to be principal liaisons between parties
* Respective roles of parties (e.g., establishing priorities)
* Management planning
* Acceptance testing of vendor deliverables

**Customer responsibilities**

* Establish priorities
* Delivery of data
* Training
* Forms / documents / supplies / consumables

**Confidentiality obligations**

* Customer business information / data
* Vendor business information
* Intellectual property of either party or its licensor

**Customer data**

* Security
* Right of customer to obtain data at any time
* Backup procedures

**Procedures to change scope of services**

* Customer right to change priority or scope of vendor's services / effect on rights and obligations of both parties
* Procedures for requesting changes to vendor's services
* Different performance standards for changes

**Conversion services**

* Development of a plan to convert from customer's procedures to vendor's procedures to provide services
* Rights and obligations related to performance standards
* Software or processing modifications
* Scope
* Approval by customer
* Vendor obligations for updates, legal and regulatory changes

**Training**

* Training for customer personnel
* Full training / "train the trainer."
* Daily / hourly

**Fee structure**

* Fixed time / time-based fee /volume based fee
* Basis of calculation
* Credits / reimbursements to customer
* Expenses
* Cost of living adjustment
* Fee schedule based on milestones
* Late fees / payment and billing / disputed amounts

**Liability issues**

* Limitation of liability
* Warranties regarding services / products / personnel
* Disclaimer of warranties
* Indemnities

**Termination**

* Specific rights
* Right to extend for limited time upon termination
* Termination assistance
* Transitional rights and obligations
* Offers to personnel
* Acquisition of equipment/software

**Sharing of computer resources**

* Use of resources other than customer purposes
* Use by customer (if less than a full outsourcing)

**Dispute resolution**

**Assignment**

**Insurance requirements**

**Independent contractor status**

**Restriction on hiring of other party's personnel**

**Taxes**

**Disaster Recovery / Force Majeure**

**Audit issues**

**Most favoured Customer**