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10 Essential Contract Provisions for Service Provider Agreements

Service provider agreements vary in their structure, content, and language and should be tailored to the type of service provided. However, solid agreements often share common provisions. Review these 10 contract sections to ensure your service provider agreements cover all the compliance bases.

CONTRACT PROVISION	WHAT IT MEANS	HELPFUL HINTS
Recitals & Definitions	After the introductory statement defining each party, this section simply states who each party is, what they do, and why they have chosen to come together for this contract. Definitions "define" terms that may otherwise be vague or specific only to this agreement.	Why are these provisions essential? Because a third party who reads well-drafted recitals better understands the relationship between the contracting parties and their intent. Likewise, a separate definitions section (on the first page or two) will be easier to reference than searching for definitions throughout the agreement.
Acknowledgement of Fiduciary Authority	Specific to an ERISA-regulated service agreement, this section highlights that the fiduciary knows their status and understands their duties with respect to the plan(s) and the agreement(s) supporting it.	Language to consider: the ERISA plan sponsor represents and acknowledges they are: (i) the "named fiduciary" with respect to the plan; (ii) may act as a fiduciary; (iii) not related to the service provider; and (iv) have the authority (under the plan) to enter into and sign the agreement.
Standard of Care Provisions	A section to call out facts about the business arrangement as well as require the plan sponsor to state facts about the service provider and itself.	It's essential that the plan sponsor acknowledge facts about the service provider as well as make certain representations about itself. Consult with an experienced ERISA attorney to learn language required for this provision.

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Parties' Acknowledgements & Representations	This section is essential because here, each party shows a clear understanding of their duties and "promises" to perform services as expected. This section is found in most contracts, even those without ERISA-compelled duties and obligations.	This language should be clear, concise, and precisely state who is responsible for what based upon regulatory requirements and the parties' agreement. Remember— don't take the "boilerplate" language at face value—ensure this section is balanced between the parties. Negotiating this language is expected.
Scope of Services to be Provided	The format of this section is flexible and is likely shaped by the business arrangement. Keys to drafting this section are clarity and precision: be specific about each service to be provided, who is to provide it, and any applicable time constraints: (i.e. delivery dates for ID cards).	This section is the "heart" of the agreement because it outlines services to be provided based upon needs of the plan(s). Keep language simple yet thorough. If you don't understand the services to be provided, re-work the language until you do. Alternatively, if a service is NOT to be provided by a party, consider explicitly stating it to avoid operational blunders.
Compensation & Service Fees	This section may or may not be included within the Services Provided section. Fees may instead be outlined in an appended schedule(s). Remember to clearly state the amount, to whom, and even how fees and compensation are to be paid.	Consider creating a separate section to address how fees and compensation are to be paid—in other words—to explain procedures underlying the payment and receipt of fees. Know, however, that under ERISA, any compensation paid by the plan to the provider must be "reasonable."
Mutual Limitations on Liability & Indemnification	Often negotiated, this section outlines each party's exclusions from liability. It is sometimes paired with indemnification provisions (which is a fancier way of stating that one party will "make the other party whole" under certain conditions). Carefully draft and edit this language so that your business team is knowledgeable of assumed risks.	This provision can get a bit…sticky… and requires both knowledge of laws and tact to negotiate. Competent counsel familiar with the service and applicable law should be consulted before finalizing this language. The language should be balanced between the parties—some responsibilities cannot be contracted away (for instance, a plan cannot indemnify a service provider for fraud or willful misconduct).

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Arbitration Agreement Provisions	If the parties agree they don't want to sue one another for a breach of the agreement, then this is a necessary section. Terms in this provision will outline the "rules" by which the parties resolve a conflict if there is a disagreement.	This section is optional but may be essential depending on circumstances of the parties' agreement. Arbitration clauses, if drafted well (clear, simple and specific), have the potential to make disagreements less painful (and shorter lived) for both parties.
Termination Provisions	A section to clearly outline how the agreement may be terminated or upon what conditions it may be ended. Many times, termination provisions require "notice" from one party to the other. This section may or may not reference termination for a material breach.	Just as it's essential to draft recitals and outline services to be provided, it's essential to specify both the procedures to be taken and duties of both parties if one party wants to terminate the agreement. Don't forget to include language on how a party should provide "notice" of termination, as well as language to address a transition of services from one provider to another, or even what happens if the plan terminates.
MISCELLANEOUS PROVISIONS Yes, it's a catch-all—but an essential one. Choosing the structure of an agreement's miscellaneous provisions will require discussion between the business needs and the drafter.		
Amendment Procedures	This section simply states how and under what conditions a party may (or may not) amend the terms of the agreement.	Parties' often modify agreement terms via addendums. It's rare to amend substantive (material) terms without a party requesting a full request for proposal ("RFP") near the end of the contract's stated term.
Governing Law	If a party chooses to sue, there may be benefits to a specific state's laws. Therefore, consider the business agrrangement when negotiating under which state's laws a party may sue.	Remember that the governing law chosen means that the terms of the agreement will be reviewed with an eye to that state's precedent (historical judicial decisions)

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Notices & Disclosures	A section to outline how parties are to communicate with one another. This often includes listing contact information for one or more "points of contact" for each party. Disclosures are sometimes sated here as well.	Be sure to draft notice language to cover not only traditional forms of notice (via paper mail) but modern ones (for instance, would you accept an e-mail termination)? Be sure to include timing language. (i.e. when a "notice" is considered "received" or "given"
Assignability	If the parties want to be able to assign or "transition" the services outlined in the agreement to a third party (usually by way of a merger or acquisition) then this is the section to outline those specifics.	Be on the lookout with this section. Some providers will request the freedom to assign their services to a third party who purchases their company but then require they receive notice (or even request permission from you) to assign your services to a third party.
Integration	Sometimes titled, "Entire Agreement", this section simply states that this agreement contains the entire agreement (re: terms) between the parties.	In laymen's terms, an integration clause means that all the agreements between the parties are contained in this document (and perhaps any amendments) and that no other (previous, concurrent or future) "handshake" deal or verbal agreement between the parties or any of the parties' representatives is valid.
Electronic Systems	A catch-all title to indicate how the parties will treat electronic data: how they will transmit data, what conditions must be present before a file is sent, how problems are to be resolved, and perhaps how a website is to be accessed.	This section is likely to have many subparts and may even be several pages. Consider including an IT professional on the review of this language, especially if protected health information ("PHI") is managed. Consider including an IT professional in the review of this language from a technical aspect. Thereafter, counsel is in a more optimal position to draft language to reflect assumed business and legal risks.

This document does not constitute legal advice. Please consult your counsel regarding specific contract provisions for your service provider agreements.