

4 Pitfalls of Negotiating Service Provider Agreements

There are contract provisions that may “trap” those unfamiliar to them. Avoid these traps by consulting a qualified ERISA professional, negotiating terms (finding common ground with the service provider), and crafting a clear, concise, and explicit agreement to meet all parties’ needs.

1

Scope of Services to be Provided

THE TRAP

Failure to clearly understand the exact nature of each service the provider has agreed & NOT agreed to provide

HOW TO AVOID

- Use language consistent w/ plan provisions that addresses scope of services
- State services explicitly in writing: detailed & thoroughly understood by both parties

2

Compensation & Fee Disclosures

THE TRAP

Compensation paid to the provider(s) exceeds a “reasonable” amount

HOW TO AVOID

- Examine the fee schedule closely
- Consult an experienced ERISA professional
- Comparison shop to ensure fees are reasonable

3

Limitation of Liability & Indemnification Applicable to Both Parties

THE TRAP

Lopsided language more favorable to the service provider than the plan.

HOW TO AVOID

- Consult an ERISA attorney
- Know the basics of Limits of Liability & Indemnification
- Negotiate the contract provisions with the provider

4

Termination Provisions

THE TRAP

Failure to plan for a split (termination of agreement or plan itself)

HOW TO AVOID

- Specify procedures to be taken by both parties (may include a transition plan)
- All termination provisions under ERISA must reflect specific termination language
- If plan is terminated, identify who assumes termination-related duties