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We provide law firms and in-house legal departments with legal support services such as legal research and writing, summarization of deposition transcripts, drafting of memoranda, pre-litigation support, preparation of trial and appellate-level pleadings and briefs, contract review, document review, discovery and patent services - quickly, efficiently, with confidentiality and at a very affordable price.



THE LEGAL OUTSOURCING AGREEMENT AND ITS KEY TERMS



Providing the **Legal Edge**

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THE LEGAL OUTSOURCING AGREEMENT AND ITS KEY TERMS

A Legal Process Outsourcing initiative can provide law firms and in-house counsel with increased efficiencies and significantly reduced costs for the execution of associate-level work. Outsourcing the more redundant, associate-level tasks like legal research, brief and memorandum writing, pre-litigation support, and contract/document review is a workflow strategy that many law firms and corporate legal departments are exercising. However, before any value can be derived from a successful relationship with an LPO Provider, there first must be a Legal Outsourcing Agreement. The Legal Outsourcing Agreement is a crucial tool because, like any well crafted contract, it should mitigate risk by articulating both parties' obligations and responsibilities.

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THE DIFFERENCE BETWEEN CORPORATE COUNSEL AND LAW FIRMS

In regards to utilizing an LPO Provider, there is a significant difference between Corporate Legal Departments and Law Firms: The Law Firm has an additional layer of third-party responsibilities that it owes its client; responsibilities that Corporate Counsel does not bear.

THE CORPORATE COUNSEL APPROACH

When Corporate Counsel engages the services of an LPO Provider, the two organizations will put one direct Legal Outsourcing Agreement in place that should incorporate standard terms addressing:

- security
- confidentiality
- quality
- audit / inspection rights
- response times
- conflicts
- regulatory / privilege issue
- IP
- payments
- termination assistance

While most Corporate Law Departments have some experience in managing outside counsel, managing an LPO Provider presents its own set of considerations. For example, since the work performed by an LPO Provider is typically more rudimentary than work performed by outside counsel, there is the possibility that the LPO Provider will be managed by a less senior associate.



LAW FIRM APPROACH

When engaging an LPO Provider, a Law Firm also puts an LPO Agreement in place similar to that used by Corporate Counsel, being sure to include provisions protecting their client's interests in regards to data security, confidentiality, confidentiality, audit/inspection rights, and termination assistance.

Then, in addition to the standard LPO Agreement, a Law Firm should also create an Engagement Letter for the client whose case the LPO Provider's work will support.

The Engagement Letter is meant to fully inform the client in regards to:

- compliance with disclosures/fee arrangement required by the ethics rules
- clarifying the Law Firm's responsibility for the actions of the LPO Provider in terms of :
 - security
 - quality
 - response times
 - fees

DISCLAIMER OF LEGAL ADVICE

The most significant difference between a Legal Outsourcing Agreement and other Business Process Outsourcing Agreements is one that is unique to the legal profession – the acknowledgment that the legal work being performed by the LPO Provider does not constitute legal advice, which the ABA distinguishes as a lawyer using “his or her knowledge of the law to tell you how the law applies to your specific circumstances.”

This is an important distinction for all involved, and it is recommended that the Legal Outsourcing Agreement contain language specifically precluding the LPO's jurisdiction from providing legal advice. Sample provisions to articulate these protections include:

(a) The Firm acknowledges that neither Vendor nor its employees are providing any legal advice under this Agreement. Vendor shall perform the Services as directed by the Firm. It is the Firm's obligation, as applicable, to notify the Firm's client(s) of the role of Vendor. Further, the Firm shall be responsible for verifying the accuracy and completeness of all Work Product.

(b) The Firm will be responsible for determining whether the laws or any professional rules governing the Firm with respect to it receiving the Services hereunder require any conditions beyond those stated herein and the applicable Project Schedule, to be satisfied to protect the confidentiality and / or privilege that may attach to any Firm Confidential Information. To the extent such laws or rules require the Firm to do so, or the Firm reasonably determines that it is appropriate to impose additional obligations on Vendor with respect to the performance of the Services hereunder, generally, or with respect to the Services under one or more Project Schedules, the parties will negotiate in good faith such additional conditions to be included in each applicable Project Schedule. Further, to the extent the Firm later determines that such additional obligations were required or were otherwise appropriate to maintain the privileges protecting the Firm's Confidential Information disclosed hereunder, the parties will negotiate in good faith such additional terms and conditions, including without limitation additional fees to reasonably compensate Vendor for the costs incurred in meeting such additional obligations

(c) The Firm shall hold harmless and indemnify Vendor from all damages, losses, claims, and expenses incurred by Vendor (including reasonable attorneys' fees) relating to any claim by any Client relating to the Services provided by Vendor hereunder.

SUMMARY

While the Legal Process Outsourcing sector is relatively young and LPO practices and standards are still evolving, there are standard terms that should be included in all Legal Outsourcing Agreements, including security, confidentiality, quality, audit/inspection rights, response times, conflicts, regulatory/privilege issue, IP, payments, and termination assistance.

A separate Engagement Letter is also appropriate between a Law Firm and the client whose case will be supported by the LPO Provider.

Finally, language clarifying that the LPO Provider is not providing any legal advice is another key component of the agreement.



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