

HOW TO MASTER

Vendor Contract Management



How to Master Vendor Contract Management

| What Is a Vendor Contract?

A contract is an agreement between two parties creating a legal obligation for your organization and vendor to perform specific activities. Each of the parties in the contract are legally bound to perform the specified duties outlined within the contract.

| What Is Vendor Contract Management?

Vendor contract management is the administration of written agreements with third parties that provide your organization with products or services. It includes activities such as negotiating contract terms, change management, ensuring compliance and ongoing maintenance of the relationship. It's the process of coordinating contract creation, execution and analysis for the purpose of financial benefit, service delivery and risk management for your organization.

Managing your vendor contracts is about more than simply negotiating the best financial and legal terms. It's also a key component of managing risk and vendor relationships within your organization. The activities may involve multiple areas in order to develop a comprehensive agreement and the holistic management of the vendor.

The departments involved in vendor contract management will depend on the complexity of your organization and governance structure. **The following are just some examples of areas that may be involved:**

- ✓ Legal
- ✓ Vendor Management
- ✓ Line of Business
- ✓ Information Technology
- ✓ Information Security
- ✓ Business Continuity Management
- ✓ Compliance
- ✓ Operations
- ✓ Risk
- ✓ Finance
- ✓ Procurement

Vendor Contract Management

The vendor contract management process is made up of several phases that lead to a final agreement between your organization and the vendor.

These phases include:

PHASE 1

Internal Planning

- Who should be involved in the selection of the vendor?
- What areas need to be involved in the review of the contract?
- Who is authorized to change the agreement?

PHASE 2

Negotiating / Creating / Drafting

- Will the organization be working with standard contracts? Which internal or vendor templates will be used? Be sure to make changes, as necessary, as the negotiation progresses.
- Who will approve the changes throughout the negotiation process?
- Will the contract creation duties fall solely on the Legal department, or will it be a shared responsibility with the line of business?

PHASE 3

Approving / Executing

- Who within the organization is authorized to execute the agreement?
- Do they understand the terms of the agreement?
- Do they understand the associated risks?

The following are questions that should be helpful in reviewing a vendor contract prior to execution. Some will be more applicable than others in any given situation, but they should apply, to some extent, to all contracts. Furthermore, keep in mind there will always be more questions and these certainly don't cover everything, but they are the basics to supply an adequate foundation.

1. Who are the parties to this contract?
2. What do I know about the vendor?
3. What is the product or service?
4. When do I get the product or service?
5. If it's a physical product, where will it be delivered?
6. What happens if I don't like the product or service?
7. How much am I paying for the product or service?
8. When am I paying for the product or service?
9. How long is this contract for (the term)?
10. How can I get out of the contract and how much will it cost me?
11. Is the draft accurate? Does it include everything that has been agreed to?
12. Do I understand, and can I defend this contract?
13. Are both parties' responsibilities clearly spelled out?
14. Are rights to audit included?
15. Are there clear provisions for periodic reporting, not only of certain levels of service but also in event of breaches, key management changes or key operational changes?
16. Are they required to notify us of any new parties to the agreement?
17. Are post termination rights for marketing and access to confidential information spelled out?
18. Is it clear who "owns" the contract in your organization?

If someone cannot answer one of these, there is probably a gap in the contract. In working with these, consider whether you could show someone not familiar with the situation the written contract draft and point to where all of these items are specified in that document.

PHASE 4

Storing

- Where are your contracts housed? This needs to be clearly understood and defined early on. It should be a central location that can be easily accessed as often as needed, from multiple areas within the organization.
- What dates and timeframes are key to remember?

These include:

- Effective date of the contract
- Termination date of the contract
- Renewal date of the contract
- A set renewal notice timeframe
- Nondisclosure agreement date
- Dates of documents that are incorporated into the contract by reference or that are signed after the agreement (e.g. exhibits, statements of work, work orders, purchase agreements, amendments, etc.)
- Timeframes associated with non-renewal, breach or remedies and notification periods are established

PHASE 5

Managing

Be sure to manage the following:

- Review service delivery to ensure that the products or services within the contract are delivered as outlined
- The ongoing vendor relationship – assess the relationship on a continual basis to ensure that the contracts are adhered to and processes are being followed
 - Are service level agreements (SLA) and key performance indicators (KPI) set to manage the day-to-day performance of the vendor?
 - How often is reporting provided to substantiate the performance?
- The changes in activities and the relationship over times – changes in a relationship need to be noted and handled effectively to include a reassessment of the contract, if required.
- Regular ad hoc tests as to service, product quality and communication should be undertaken, and action should be taken on the results.
- Continual improvements of the vendor relationships should be undertaken.
- All potential risks should be considered and managed.
- All issues, exceptions and problems should be managed and escalated to the appropriate management level.
- The performance levels– in the event of poor performance, the appropriate remedies should be put into place in a timely manner. These might include financial penalties, training or termination of the relationship.
- Site visits – ensure you have indicated whether you plan to visit their operation on an occasional basis or have the rights to do so if needed.

| 15 Major Elements of a Vendor Contract

1 Scope

- Support, maintenance, customer service
- Timeframes (for kickoff, implementation, etc.)
- Compliance with applicable laws, regulations and regulatory guidance
- Training
- Distribution of required statements or disclosures to customers
- Terms governing the use of the organization's property, equipment and staff

2 Duration of contract and renewals

3 Cost and compensation

4 Performance measures and standards

5 Reporting

6 Right to audit

7 Compliance

8 Ownership and license

9 Confidentiality and information security

10 Indemnification, insurance and liability

11 Dispute resolution

12 Default and termination

13 Customer complaints

14 Subcontracting

15 Business resumption and contingency plans

16 Intellectual property rights



| What Is a Service Level Agreement (SLA)?

A service level agreement (SLA) refers to the measurement of performance and service quality that was agreed upon by your organization and the vendor. It can be used as a measurement tool within the contract or as a stand-alone document.

| Elements of a Service Level Agreement

6 Service Elements

- 1 Specifics of services provided
- 2 Conditions of service availability
- 3 Calculations of availability or uptime
- 4 Standards such as time windows for each level of service
- 5 Responsibilities of each party
- 6 Escalation procedures

7 Management Elements

- 1 Definitions of key terms
- 2 Reporting process
- 3 Remedies/penalties
- 4 Report contents and frequency
- 5 Dispute resolution
- 6 Indemnification provision
- 7 Change management

| 4 Key Provisions of Critical Vendor Contracts

These provisions are important to consider when reviewing any new or existing vendor contract. Take extra precaution when considering these provisions with your critical vendors.

Service Levels

1

Ensure the contract contains adequate and measurable service levels. Be sure the SLA includes clauses outlining the standards by which the service will be measured, criteria for responsiveness, the reporting methods, frequency, and any other criteria by which the vendor's services will be evaluated. Also, any penalties for failures to meet the standard requirements should be noted.

Security and Confidentiality

2

The contract and privacy agreements should clearly identify the vendor's responsibility to maintain policy and procedures to meet data security and privacy objectives by addressing administrative, technical and physical safeguards (e.g., security against accidental exposure of NPPI, protection against threats and unauthorized access, confidentiality of proprietary information).

3

Subcontractors/Fourth Parties

Even though you don't have a direct contractual agreement with your fourth parties, you'll still need to acknowledge them in your contracts. Your fourth parties are the subcontractors of your third-party vendors, and therefore need to be included, especially if they're related to a critical vendor. Make sure to consider the following in your contract:

- **Identical standards:** The subcontractor will be held to the same standards as those between you and your vendor.
- **Identification of critical vendors:** Your vendor will be required to disclose their critical vendors. The contract should also specify whether your vendor requires your organization's approval before making any changes to its critical vendors.
- **Ongoing monitoring:** A clear expectation that the vendor will monitor and provide oversight of their subcontractor's operations in accordance with industry expectations and guidance.
- **Right to audit:** Ensure that you have the right to audit not only your third-party vendor, but also any data that your fourth party uses to support products or services for your organization.
- **Testing requirements:** Release of the recovery objectives and testing requirements for any subcontractors as well as the testing results.
- **Insurance requirements:** If the fourth party accesses your organization's data, they should have the same insurance coverage as the direct vendor.
- **Disposal or return of sensitive data:** The fourth-party vendor should have clear guidelines on how to destroy or return any sensitive data, in the event of a contract termination.

4

Third-Party Compliance Documents

The contract should include requirements regarding relevant vendor documents. Some of your vendors may not have every document listed below, so make sure to adjust your contract to reflect only the applicable ones. The following documents should be collected at least annually:

- **SOC Report**
- **PCI Attestation of Compliance**
- **Certificate of adequate and appropriate insurance**
- **Financial Reports**
- **Penetration Tests and/or Vulnerability Testing**
- **Intrusion Detection/Incident Response Plan**
- **Business Continuity/Disaster Recovery Plans**
- **Compliance Policies**

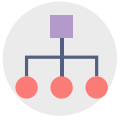
QUICK TIPS to Drive Effective Vendor Contract Management

- ✓ Set firm contract standards
- ✓ Invest in a contracts administrator professional
- ✓ Document clear standards on key provisions that must be included
- ✓ Establish extensive tracking
- ✓ Properly educate the business units
- ✓ Have a central and easy-to-search repository with robust reporting for all contracts
- ✓ Rely on senior management and the board to assist with driving effective contract management



| 8 Common Challenges of Vendor Contract Management

It's important to understand that there certainly are challenges when implementing a vendor contract management process. The challenges will need to be identified and addressed. Some include:



Lack of a centralized process, designated owner and document process. If you solve this one, you have 90% of the battle won.



An inefficient manual process. This can lead to inconsistencies in the process with no clear process and role definitions for areas outside of legal and compliance.



Undefined contract review and approval processes. These are often performed ad-hoc with little to no definition of roles, responsibilities or expectations of review and approval timeframes.



Increased likelihood of error and omissions. Using manual processes within the contract can lead to increased risk exposure and liability for your organization.



Limited view of contracts. Ad-hoc storage of contracts means that organizations do not have a holistic view of all contracts and may not have a complete view of entire relationships with vendors.



Misunderstanding of vendor contract management. Many within an organization think that the only time to look at a contract after signing is when there are issues or problems with the vendor or service or when it's time for renewal.



No contract owner. The function for managing contracts is typically dispersed throughout an organization and left up to multiple people with no real owner of the contract.



Lack of additional resources. Vendor contract management is often viewed as a one-time event that ends at contract signing and organizations are reluctant to provide additional resources to anything beyond that process.

Many of these challenges can be overcome during the development of a comprehensive, inclusive vendor contract management process and the implementation of contract management software that allows for the automation of the underlying business process, review and approval. Any contract management process should fit your organization's structure for financial approval, business approval, risk and vendor management to ensure that all appropriate parties are involved in the negotiation, review and sign-off of the contracts prior to execution.

| 9 Vendor Contract Management Best Practices for Success

A thorough understanding of the vendor contract management process is crucial to the overall success of an organization. Here are nine best practices to consider:

- 1 **Document the process** for vendor contract management within your vendor management program.
- 2 **Plan the negotiation** and strategy prior to vendor engagement.
- 3 **Clearly identify all areas** of the organization that are involved within the contract management process.
- 4 **Negotiate the terms of the agreement** — understand any regulatory requirements that are specific to your organization and discuss and incorporate the following:
 - a. Verify the business terms (price, amount, duration, etc.)
 - b. Term/Notice/Automatic renewals
 - c. Identify and mitigate risks within the agreement
 - d. Confidentiality provisions
 - e. Disposition of data throughout the relationship, including post-termination
 - f. Hold harmless and indemnification provisions
 - g. Understand any incorporated documents
 - h. Events of default
 - i. Remedies
 - j. Causes for termination
 - k. Termination assistance (if required)
 - l. Dates and deadlines
 - m. Warranties and representations
 - n. Insurance
 - o. Rights and responsibilities
 - p. Dispute resolution
- 5 **Actively manage the delivery** of the product or service.
- 6 **Understand that contract management does not end** with contract signing and that your organization must manage the ongoing vendor relationship to include amendments to the agreement.
- 7 **Manage the risks** that have been identified during the contract management process.
- 8 **Understand the terms surrounding the renewal and termination** provisions of the contract.
- 9 **Understand the terms surrounding the notification provisions** and the remedy provisions of the agreement.



Download a free sample of the Contract Compliance Assessment and see how Venminder can help you reduce your third-party risk management workload.

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About Venminder

Venminder is an industry recognized leader of third-party risk management solutions. Dedicated to third-party risk, the company is the go-to partner for software, high-quality assessments on vendor controls, certified subject-matter expertise and education.

Venminder's platform provides a centralized location to execute a third-party risk management program. It enables users to store documentation, onboard a vendor, track contracts, manage SLAs, send and manage questionnaires, manage due diligence and oversight, complete risk assessments, create workflows, run reporting and more.

Assessments performed by Venminder's qualified experts, including CISSPs, CPAs, financial risk analysts, paralegals and more, are readily available in an online exchange library. The assessments enable customers to identify possible risks and understand areas of strength on their vendors' information security and privacy standards, SOC reports, financial viability, business continuity/disaster recovery preparedness, contractual standards, regulatory compliance and more.

