A NAMFS Guide to Understanding Onboarding Documents (Trade Agreements)

Vendor Trade Agreements are the single most important document in a relationship between parties within the mortgage field services industry. This document defines the terms and conditions between two parties (one issuing work and the other completing that work). At the 2019 NAMFS Leadership Summit, these agreements were the subject of a Working Group discussion which was intended to provide NAMFS Members with a guide on what to expect within an agreement. These agreements are what commonly will be referenced when issues between the parties arise and may also grow/change over time through addendums and exhibits. **This guide is solely for the purpose of providing information to our members and is not intended, nor should it be used or relied upon as legal advice.**

Glossary & Definition Terms

Agreement Terms

- **Agreement** - An arrangement that is accepted by all parties to a transaction; a written **contract** or other document delineating such an arrangement with terms and conditions.
- **Addendum –** A document to the existing **contract** which modifies existing terms or includes additional terms and conditions**.**
- **Annexes, Appendix, Exhibits, Schedules:** A document, referred to in a **contract (and which becomes part of the contract)**, which is attached and establishes requirements for deliverables. The **term** shall not be used to refer to any other kind of attachments to a **contract.**

Parties To Agreement

- **Client, Servicer, Client Name** – Defines the entity receiving services.
- **Vendor, Provider, Contractor, Vendor Name** – Defines the entity providing services.

Terms Contained Within An Agreement

- **Client Obligations** – Defines the client's obligation to the vendor throughout the contractual relationship and even after termination.
- **Confidentiality** - Defines client's confidentiality policy with regards to social media, disclosure of and protection of client information, and interactions while at property as well as penalties for breaking confidentiality policy.
- **Dispute Resolution** - Defines the process and the timeframe to properly address disputes as well as the requirements that must be met before legal action can be taken.
- **Fees/Payment Terms** - Defined pay for services, discounts taken, when and how payments will be invoices and received. Typically, this will also include the invoicing expectations.
- **Governing State Law** - The law of the state in which the contract is based and also defines what legal procedures will be required to be filed and handled; may include either party's state law if an agreement cannot be reached on the governing state law.
- **Indemnification** - A duty to make good any loss, damage, or liability incurred by another. Indemnity has a general meaning of holding one harmless; that one party holds the other

harmless for some loss or damage. This means the vendor will cover all responsibility and costs in the event of a claim that results from the vendor, or its subcontractor's acts or omissions.

- **Insurance -** Defines minimal requirement for required insurance coverages in order to do business with the client, as well as additional insured and certificate holder requirements.
- **Invoicing** - Defines requirements for proper invoicing in order to be paid as requested. Typically, includes the payment terms, method of payment, and time limits for submitting invoices and receiving payment.
- **Lien Waiver** - A lien waiver is a legal document that relinquishes an entity or individual's right to place a lien on another entity or individual's property. In real terms, a lien waiver is like a receipt. It is given to owners by contractors, or to contractors by subcontractors, especially in the construction industry. This is a special type of receipt. In addition to serving as a receipt, it also waives all rights associated with the contractor's ability to place a lien on the owner's property in case of failure to pay. There are different types of waivers of lien, including conditional and unconditional waivers, which depend on the payment status.
- **Performance Standards/SLAs -** Defines time frames for performance expectation and measuring tools used to determine performance and also can include penalties associated with under performance as well as bonuses for above standard results. Creates time frames for work orders and inspections and vendor availability to client.
- **Regulatory Compliance** - Defines that vendor is expected to know all governing laws, ordinances, and regulations for each city, county, municipality and state in which they accept and perform services. Any violations, depending on your contract terms with the client, will generally fall on the vendor to resolve and hold harmless the client.
- **Reports/Audits** - Defines reports provided to vendor by client as well as the possibility of audits of the vendor by the client, either on-site or virtual.
- **Representation & Warranties** - Defines contractor representation and warranty requirements listed such as services, documentation, organization, authority, compliance, avoidance of conflicts, copyright infringements, etc.
- **Services** - Defines the services expected to be provided and received.
- **Term -** Defines the term of the agreement, generally one year and often written to auto renew without notice, so mark your calendars to track auto renewal notice dates.
- **Termination** - Defines the reasons, terms, notice period, and method for parties to terminate their contractual agreement.
- **Vendor Obligation** - Defines the vendor's obligations to the client throughout contractual relationship.
- **Waiver of Jury Trial -** The vendor agrees to waive all rights to a jury trial to solve disputes in a court of law.

Reviewing Agreements From A Client

When reviewing an agreement as a vendor there are many things to consider.

It is important to conduct a formal review of the very document that will define your relationship with your client. Even though you are receiving a formal document from a client, a best practice would be to discuss with your client any changes/modifications/redlines/questions/clarifications PRIOR to signing the agreement and receiving work. A best practice is to have your legal counsel review any agreement as well to protect your interests.

When reviewing an agreement from a client make sure certain attention is giving to include:
Discounts, Payment Terms, Receipt of Work, Type of Work, Performance/SLA's. These are commonly included as exhibits or addendums or statements of work (SOW). These items can more easily be changed or altered throughout the relationship once a mutual agreement is made on a change. This can be completed by adding additional exhibits or addendums that have new or changed terms or by changing existing documents with both parties signing off on the changes.

> *Examples of sections: payment terms, turnaround times/SLA's, performance standards, resolution*
> *processes, policy and procedures or vendor guidelines.*

Creating Agreements For A Vendor

Review all current client agreements and assure that the most stringent agreements are accounted for and covered as part of the requirements that are passed down to the vendors who will receive work from those clients. It is common to include clauses you are responsible for upholding and ensure you are holding your vendors responsible for mutually agreeing to meet the requirements you have for your existing clients. Outline your payment terms, vendor vs employee, insurance, software, turnaround times/SLA/performance standards, resolutions, policy and procedures or vendor guidelines. It is common to reference a vendor manual or company document that a vendor can use as a reference for any common questions or needs they may have throughout their time a vendor.

Key Items To Review In All Agreements

1. **Calendar Days vs. Business Days**
2. **Insurance Requirements**
3. **Workman's Compensation Requirements**
4. **Pricing For All Services To Be Provided**
5. **Payment Terms**
6. **Additional Fees (ACH, Apps)**
7. **Defined Services**
8. **Undefined Services/Bidding Procedures**
9. **Outside Documents Referenced**
10. **Technology/System Requirements**