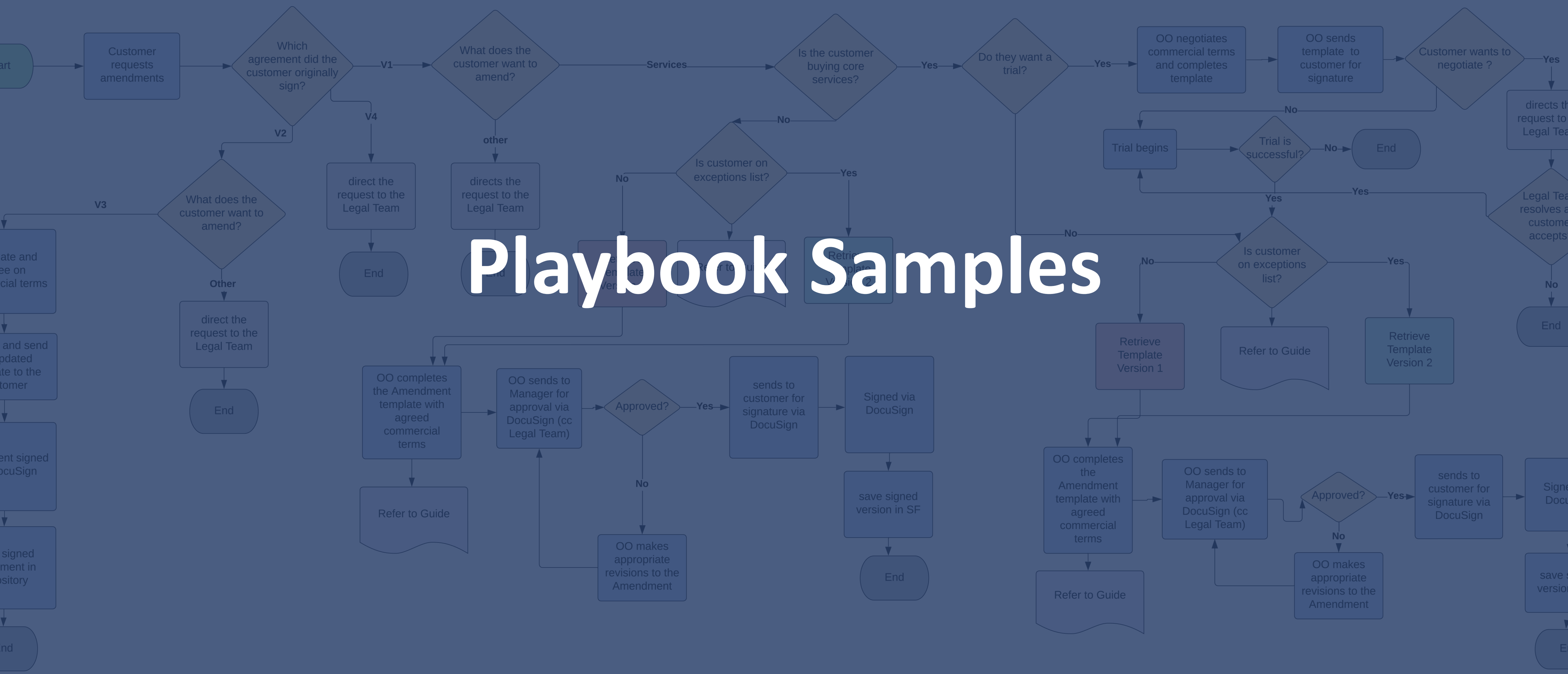
Playbook Samples



Joint Playbook Sample

Negotiation and Empowerment Guidelines

- These negotiation guidelines will explain the meaning of the terms and conditions to the Agreement and provide examples of common vendor concerns and Company's preferred responses. Additionally, these guidelines delineate which terms are "Business Decisions" and which terms require "Legal Review".

- Legal Review Policy is {insert link or attach}.

- When an Agreement with anticipated annual purchase volume of $X and greater is submitted to Legal for review, unless the client specifically brings something to our attention, Legal will assume that any and all changes to the business terms have been reviewed and understood by the Client, that the relevant business partners were consulted, and that a business decision was made to agree to the revision.

- The only sections Legal will review will be those identified as "Legal Review". Legal will work with Client and Vendor to resolve issues in these sections.

Joint Playbook Sample

Provision	Legal Review v. Business Decision and Purpose of Section	Negotiation & Fallback Guidelines
1. <u>DEFINITIONS</u>. *[[Insert actual contract provisions]]*	**(LEGAL REVIEW)** [Insert explanations of the provision] **This section provides definitions for all of the capitalized terms used throughout the Agreement.**	*[1. Company guidelines and positions on what can and cannot be negotiated and why or why not.* *2. Indicate where others in the Company may need to be consulted (i.e., Finance, Risk Management, etc.,)]*
1. <u>TERMINATION.</u>	(BUSINESS DECISION) [Insert explanations of the provision] **This section describes all the ways in which either party may terminate the agreement.**	*[Insert specific fallback language or concepts for business owners to handle independently]*

Inline Negotiation Guide Sample

Excerpt from Annotated Template

11. TERM AND TERMINATION.

11.1. **Term.** The term of this MSA will commence on the Effective Date and will continue for a period of three (3) years from the Go Live Date (the "**Initial Term**"). The MSA will automatically renew for additional successive, one (1) year periods (each a "**Renewal Term**"), unless either party provides written notice to the other party at least one hundred twenty (120) days prior to the end of the then-current term of its intent not to renew the MSA. The Initial Term and any Renewal Term(s) are referred to as the "**Term**" in this MSA.

What is it: This provision establishes the length of our agreement with the customer and, importantly, when the agreement starts. It also provides an automatic means to extend the agreement unless either party indicates they do not with to extend.

Why it's important: The parties need to know when the agreement starts and ends. Importantly for Company, the start date (and the invoice date) is <u>not</u> when the end users can actually use our platform – it's when they sign the agreement. This results in a 3-4 month "stub" period at the end of the term for which we will bill. It is important to maintain this period if at all possible – otherwise we are working for free between the effective date and the go-live date!

Can we do more? The Chief Growth Officer can agree to change the start of the engagement. If a customer really does not want an auto-renew, we can entertain that request, but we'd prefer not to remove that provision.

11.2. **Termination.** If either party materially defaults in the performance of any of its duties or obligations under the MSA, the non-breaching party may provide written notice of breach to the breaching party specifying the alleged breach and the Services to which the breach applies. If the breaching party does not substantially cure the default within ninety (90) days after receiving said notice, the non-defaulting party may provide its written notice terminating either the applicable Services or the MSA as of a date specified in the notice of termination. Company may suspend Customer's (and End User's) access to the Company Platform immediately if Customer: (a) fails to make a payment when due and such nonpayment continues for fifteen (15) days following Company notice of late payment; or (b) breaches (or Company reasonably believes that Customer has breached) Section 3.3 or is misappropriating or infringing Company Intellectual Property or other proprietary rights.

What is it: This provision outlines the circumstance in which either party may terminate the agreement for the other's breach, including the timelines for trying to cure the breach and access to the platform.

Why it's important: Each party needs to understand what can trigger the termination of the contract and that there is a period of time where they can make it right. We also preserve our right to remove access to our platform if the customer does not pay for that access or if we believe that the customer is not respecting our intellectual property.

Can we do more? It is not uncommon for customers to ask for a termination for convenience right. It is important that we try to avoid granting this right as it removes our ability to recoup our costs and to forecast accurately. While there are times that we may consider granting the right, we need to educate the customer that our pricing is based on a firm commitment for the entire term and that, given our model, terminating for convenience is the functional equivalent of consuming but not paying for the bulk of the service. Termination for convenience is not the common approach in a SaaS model – the costs are on the front end for the vendor. We should never set the expectation with any customer that a termination for convenience is available. If necessary, the Chief Growth Officer can approve a termination for convenience upon certain conditions (after a period of time or with a penalty) – but these are truly the exceptions from the rule and would have to have significant justification.

MSA General Playbook Sample

1. Introduction

- **PURPOSE –** {Summarize purpose of the playbook}
- **AUDIENCE –** {Who should not use this playbook: eg., Legal Department}
- **QUESTIONS –** {Who/where should team members direct questions about playbook to (typically the playbook owners)}
- **CHANGE LOG -** to appear at the end of Playbook

Date	Section Number	Summary of Change
MM/DD/YY	1.1.1	[insert notes]

MSA General Playbook Sample

2. Process Overview

- *{Insert high level procedures and operating principles.}*

3. Negotiation Guidelines

[Name of Template]		
		{NOTE: Policies and Issues are helpful for law departments, and maybe unnecessary for a business-focused empowerment guide.}
2	SERVICES	
	Affiliates. Affiliates of either Party may execute a Statement of Work governed by this Agreement. …	Policy: We allow the affiliates of our counter party to execute SOW's under this master agreement. Issues: Fallback: Drafting Notes:

Continued		
2	**Delivery and Acceptance**. You will provide the Services as specified in the Statement of Work. ACME will evaluate the Services provided and will notify You of rejection within thirty (30) business days of discovering any nonconformities in relation to the applicable Statement of Work. If rejected, You will make reasonable efforts to correct the Services promptly and at no cost to ACME. ACME reserves the right to delay or decline payment, as applicable, under this Agreement for rejected Services.	<u>Policy:</u> <u>Issues:</u> <u>Fallback:</u> <u>Drafting Notes:</u>
3	INVOICING & PAYMENT	
	Maximum Amount. ACME will pay You up to the Maximum Amount and per the fee type (*e.g.*, Flat Fee or Not-to-Exceed Pricing) specified in each Statement of Work.	<u>Policy:</u> This clause stipulates that the maximum payment amount is specified in the SOW, there is no further redline/negotiation path save for determining the dollar values in the SOW (business terms) <u>Issues:</u> Common issues can arise from misunderstanding of the language by vendor's reviewer, explain purpose of this clause to resolve <u>Fallback:</u> <u>Drafting Notes:</u>

Continued

8	TERM & TERMINATION	
	Term. This Agreement commences on the Effective Date and, unless terminated by a Party as provided in this Agreement, will continue until the later of (a) the Expiration Date, or (b) the expiration of all Statements of Work governed by this Agreement. Each Statement of Work will commence on the Start Date listed therein and, unless terminated by a Party as provided in this Agreement, will continue until the End Date listed therein. Any Services performed after the End Date of a Statement of Work or the Expiration Date of this Agreement will be governed by the terms of this Agreement.	Policy: Issues: Fallback: Drafting Notes:
	Termination. Either Party may terminate this Agreement without cause immediately by providing written notice to the other Party if there are no active Statements of Work. ACME may terminate a Statement of Work without cause upon 30 days' prior written notice to You. Either Party may terminate a Statement of Work with cause immediately by providing written notice to the other Party if the other Party: (a) materially breaches this Agreement or such Statement of Work; or (b) becomes the subject of any petition or proceeding relating to bankruptcy, insolvency, receivership, liquidation, or assignment for the benefit of creditors.	Policy: Issues: Fallback: Drafting Notes:

Continued		
9	INDEMNIFICATION, INSURANCE & LIMITATION OF LIABILITY	
	Indemnification. You will indemnify, defend, and hold harmless ACME, its Affiliates, and their respective successors, trustees, directors, officers, employees, and agents (“*Indemnified Parties*”) from and against any third-party claims, suits, actions, demands, proceedings, damages (including property damage, bodily injury, and wrongful death), costs (including reasonable attorneys’ fees and expenses), fines, and liabilities of any kind (collectively, “*Claims*”) arising out of: (a) any breach by You of any express representation, covenant, or warranty provided in this Agreement or a Statement of Work; (b) Your fraud, negligence, or willful misconduct; or (c) employment-related Claims brought by or on behalf of Your Personnel. Your indemnification obligations under this section do not apply to…	Policy: Issues: Fallback: Drafting Notes:
	Insurance. You shall maintain insurance against such losses and risks and in such amounts as are customary of vendors of established reputation engaged in the same or similar business and similarly situated.	Policy: Issues: Fallback: Drafting Notes:
	Limitation of Damages & Liability. The aggregate liability of a Party to the other under any Statement of Work governed by this Agreement, regardless of the form of the action and whether in contract or in tort, will not exceed …	Policy: Issues: Fallback: Drafting Notes: