



LEGAL RESOURCES FOR TECH SMBs







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INTRODUCTION

As a Tech SMB, guidance from qualified legal experts is an essential investment for your business. However, selecting the right counsel and spending your money wisely can be daunting.



CompTIA's *Legal Resources for Tech SMBs* can help make your decisions easier with tools like:

- Essential Legal Formation and Operating Considerations for Tech SMBs
- A request form for a free MSA template
- A checklist on How to Find and Hire Legal Counsel
- Common IT Business Legal FAQs
- A list of CompTIA-reviewed Legal Service Providers

As a CompTIA member, you get exclusive access to these resources, which have been reviewed by CompTIA's in-house legal team, to jumpstart your business's legal foundation.

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ESSENTIAL LEGAL FORMATION AND OPERATING CONSIDERATIONS FOR TECH SMBS

Managed services providers, solution providers, and other technology businesses play an increasingly important role in today's growing market for outsourced IT services and technology solutions. Each solution provider faces a variety of critical decisions when forming and operating their business. This article outlines four core areas that solution providers should focus on to strengthen and streamline operations.



Organizational Documents and Corporate Governance

Whether a technology business is just starting out or has been in business for several years, proper corporate formation and good corporate governance are risk management tools that cannot be ignored. For a solution provider getting started from the ground up, the first consideration is its choice of corporate entity. While there are several options—and individuals should consult their tax and legal advisors before making a decision—limited liability companies (LLCs) and S corporations (S corps) typically fit the bill for most solution providers. With limited exceptions, LLCs and S corps have the advantage of providing for “pass-through” taxation, which allows the company to “pass through” its tax liability directly to its owners or partners and pay taxes once, rather than paying twice at both the corporate and individual levels.

Organizational Documents: Solution providers must prepare the following organizational documents:

- Articles of Incorporation or Articles of Organization
- Bylaws or Operating Agreement
- Select a Registered Agent
- Federal Employer Identification Number (required for company bank account)
- Open Bank Account
- Elect Tax Status (e.g., if electing S corp status, fill out IRS Form 2553)
- Obtain appropriate licensing or certification depending on the jurisdiction

Corporate Governance: Solution providers must maintain, and in some cases file, the following documents:

- File annual report with the Secretary of State where the entity was formed
- Conduct annual meetings (if a corporation)
- Keep meeting minutes
- Prepare an annual budget
- Maintain accurate financial records, including shareholder or partner capital accounts, corporate balance sheets, company borrowing or lending

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Key Contracts

Master Service Agreements: In the world of solution providers, one of the most important documents is the Master Service Agreement (“MSA”). An MSA is an agreement which governs the relationship between the solution provider and its clients. The MSA sets forth the terms and conditions under which the solution provider will provide services to the customer, and the rights and obligations of both the solution provider and the customer. The terms of the MSA are often extensively negotiated between the parties. Depending on the size and market influence of the customer, the customer will often have some leverage to dictate certain terms under the MSA. Some essential terms in the MSA include:

- Term of the agreement
- Intellectual property protections (for the solution provider and sometimes the customer)
- Indemnification (often mutual)
- Limitation of liability (often mutual)
- Warranty provisions
- Statement of work (schedule of services to be provided by the solution provider)
- Fee schedule (for services provided by the solution provider)
- Termination provisions

Employment Agreements: In addition to MSAs, some solution providers find it useful to enter into employment agreements with their employees or independent contractors. Some common terms in these types of agreements are:

- Term of the agreement
- Works for Hire provisions: Commonly provides that all work completed by the employee in the scope of employment is the property of the MSP.
- Non-compete restrictions: Commonly provides that employees (typically high-level employees) do not compete with the solution provider (or work for a competitor) during the course of their employment.
- Confidentiality restrictions: Commonly provides that employees maintain as confidential all proprietary solution provider information, documents, software, intellectual property, and client information during, and for a period after, their employment.
- Non-solicitation restrictions: Commonly provides that employees refrain from soliciting any solution provider employees to work with a competitor of the solution provider or for another company.



Business Considerations

In addition to the foregoing, solution providers should prioritize the below business considerations in order to maximize value to their customers and develop robust organizational strength.

- **Insurance:** Maintain appropriate insurance minimums and obtain additional lines of insurance where necessary (e.g., cyber, E&O, “key person”).
- **Corporate organizational chart:** Clearly set forth the structure and responsibilities of the organization and update at least once every 12 months.
- **Client testimonials:** Develop positive and persuasive testimonials from clients that can be promoted on the solution provider’s website, social media, and other platforms.
- **Technical certifications:** Maintain and develop a list of certifications held by the solution provider and its personnel. Promote continued growth and advancement.
- **Backup protections:** Ensure that the solution provider is protected with adequate security and disaster recovery protocols which allow it to continue serving its client base during an emergency.
- **Proactive maintenance** of solution provider servers and systems



Compliance

- **Privacy and Data Compliance:** Develop and adhere to strict privacy and data compliance policies. Train and educate staff on the importance of adhering to these policies.
- **Security Testing** of solution provider compliance with data privacy requirements.
- **Third Party Compliance:** Monitor third-party handling of client data.
- **CompTIA Certification:** Maintain appropriate CompTIA certifications for the solution provider or its individual staff members.

While each of the four core areas discussed above play a critical role in the operation and maintenance of solution providers, they are a starting point and are intended to provide a general overview rather than an exhaustive list. Each solution provider must evaluate its business and tailor appropriate organizational, governance, and business terms that fit its needs. Advisors such as accountants, attorneys, IT and financial professionals should be consulted to provide individualized advice when needed.

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CompTIA Members: Receive a MSA Template

CompTIA corporate members can request a free master services agreement (MSA) template from SmithAmundsen LLC. If you would like to receive a MSA template, [please fill out the form](#).



HOW TO FIND AND HIRE LEGAL COUNSEL

There are many reasons why SMB tech firms today rely on legal expertise to help their business—from setting up the company and protecting intellectual property to negotiating commercial leases and understanding how changes in laws and regulations might impact the business. Not to mention how to handle a potential lawsuit.

Unfortunately, finding quality legal representation can feel quite daunting. Attorneys rarely advertise their services the same way that marketing and other consultants do, and legal services often seem intangible given their perceived high price tags. However, it's likely in the best interest of your business to identify and hire legal counsel, even on a retainer basis, to ensure you're adequately prepared and covered for any situation.

Don't wait until you have a significant legal problem to contact an attorney. By establishing a relationship with legal counsel even with a small matter, you can evaluate their services and they can get to know you and your company better as well. This experience for both sides can be valuable when a “bet the company” issue affects your business.

CompTIA has compiled a checklist of tips and advice below to help you navigate the process of finding legal counsel to meet your business's needs.



To Begin

- Do your research.
Get recommendations from respected sources including peers, colleagues, and business partners to find lawyers in your area who specialize in IT business law. In addition, consider resources such as CompTIA's curated list of legal providers, the [National Association of Women and Minority Owned Law Firms](#), or your local bar association.
- Set up a meeting with prospective attorney(s).
Many attorneys will not charge for an introductory meeting, but some may—so inquire when scheduling. Do not decline a meeting with a prospect because they charge a fee for their time. In advance of the meeting, specify any immediate legal needs and identify future areas where you may require legal services.



During the Meeting

- ❑ Provide a thorough overview of your organization.
 - Ensure that the attorney(s) understand your business and your needs. Provide details about your customers, products and services, company history, structure, business model, and other key relationships. A complete picture will allow the prospective counsel to tailor their responses accordingly.
 - Expect the prospective counsel to introduce themselves and their firm, to highlight their areas of expertise, and to provide examples of other work they have performed for similar clients and matters.
- ❑ Feel empowered to ask hard questions. These may include:
 1. How many years of experience do you have in the IT business field? Does it make up all or part of your portfolio?
 2. Which individual(s) will represent my company on legal matters?
 3. How do you approach negotiations?
 4. What is your fee structure for services rendered and what options are available?
 5. Have you ever been fired by a client? If so, why?
- ❑ Expect to answer questions from prospective counsel as well.
 - Answer all questions honestly and completely. The attorney is evaluating you and your needs, just as you are evaluating them. It is crucial that you are forthcoming with information when asked so the attorney can accurately assess if they are capable of representing you. Even if you do not hire this lawyer, you will still appreciate confidentiality for anything you tell them.
- ❑ Do not sign anything you do not understand.
 - You should not feel rushed into a commitment or agreement for legal services. In addition, you should not sign any documents you do not fully understand. Ask questions or request more information until you feel comfortable with the arrangement.



After the Meeting

- ❑ Think, don't act.
 - Give yourself some time to reflect about the meeting and the attorney(s) you talked with before taking any action. You may need to ask follow-up questions or meet with other potential attorneys before you find the right fit.

- ❑ Hire the attorney who best meets your needs.
 - After you have received sufficient information and answers to all your questions, met with as many attorneys as you need and reviewed all your options, let the attorney or law firm you chose know that you are ready to sign a letter of engagement (a document used to hire an attorney and establish the fee structure). Review this letter to confirm it meets your expectations on services and billing.

- ❑ Set up follow-up meetings and communications.
 - Once you're on board, set up regular meetings or other communications as stated in your letter of engagement. Congratulations, you've got a lawyer!



COMMON IT BUSINESS LEGAL FAQs

Need advice on how to handle a certain IT business legal issue? The following are a few of the most frequently asked questions solution providers have when it comes to IT business legal topics.

1. Are free legal templates downloaded from the internet okay to use or do I need a lawyer?

It's fine for businesses to leverage the free or inexpensive legal templates available to them. However, it's also likely in your best interest to hire a legal professional in addition to using free templates. Templates may not include protections specific to your services and local jurisdictions may have laws that apply to you that are not included in these templates.

2. How do I hire a lawyer?

Refer to CompTIA's Legal Checklist to help you navigate the process of identifying and hiring the right attorney to meet your specific business needs.

3. We provide services only in the state of X. Does my website need to comply with GDPR?

If your website does not collect any personal data (including IP addresses), does not use cookies or supply contact forms or newsletters, you do not need to comply with GDPR. The regulation requires all personal data to be secured, so data encryption should be considered.

4. What is included in a typical Service Agreement?

- a. Contact information for all parties
- b. Description of service and scope of work
- c. Changes to offered services
 - i. MSP signature
 - ii. Customer signature
 - iii. Blank Change Order attachment
- d. Escalations
- e. Compliance and insurance requirements
- f. Payment terms
 - i. Term
 - ii. Termination for cause
 - iii. Termination without cause
 - iv. Termination by mutual consent
 - v. No liability for termination

- g. Remedies for nonpayment
- h. Confidentiality agreements
 - i. Confidential information defined
 - ii. Use of confidential information
 - iii. Survival of obligations
- i. Indemnification
- j. Warranty, technology limitations
- k. Default terms
- l. Remedies and dispute resolution
- m. Limitation of liability

5. Does a Service Agreement have to be in writing?

While verbal agreements may be enforceable, it is best to have Service Agreements in writing, whether on paper or online, signed by all parties involved. It also shows professionalism and your commitment to carry out your obligations for your customers.

6. What is an SLA?

A service-level agreement (SLA) is a commitment between a service provider and a client to meet mutually-agreed-upon expectations for the service delivered, as well as defined penalties for failing to meet those expectations. Not meeting the SLA terms can be cause for termination of the agreement.

7. What is the difference between an MSA and SOW? Do I need both?

A Master Services Agreement (MSA) is usually accompanied by a Statement of Work (SOW). The MSA is usually the governing document for the entire relationship, while the SOW focuses on the specifics of a single project or scope of work. Most MSP SOW's should include a Service Level Agreement. A contract with a client should include both in order to cover a multitude of scenarios.

8. How long should MSP or solution provider contracts with clients last?

There are a number of variables to consider when deciding upon the length of agreement. For one, short term contracts may work better if you have no immediate plans to sell your business. However, longer-term contracts might be more attractive if you are looking to build the value of the business for a potential acquisition. Also, all parties should consider their long-term goals when considering the contract length. If any side believes the service will be obsolete or not profitable enough after a certain length, don't put your company (or your client) in a position to hurt the business.

9. What should I do if terms of a contract are not met?

If either party cannot fulfill their part of the agreement, it should be discussed amicably first. Your next option may be to simply amend or alter the original contract. If altering the contract is not an option, review the original agreement to look for other options for ending the contract. You may be able to find a resolution without legal consequences if both parties agree on how the contract can be terminated. If both parties cannot agree on how to solve the problem, you may need to consider mediation or other legal options.

10. What is the best way to manage billing for MSP or solution provider customers?

Make it clear in your agreement what services are included and excluded from the fixed fee. Also, make the payment terms and due dates clear, as well as penalties for late payments. If you do not have an internal accounting department, consider utilizing a third-party service to perform this function.

11. How much liability insurance should I get as a solution provider?

The amount of liability insurance coverage you need is based on the type of services you are providing and to what type of customer. Certain contracts will require a minimum general liability coverage, usually around \$1 million (in addition to workers' compensation insurance). To obtain liability insurance, solution providers should speak to their insurance advisor/broker and explain they need professional liability coverage for technology services. Then they need to carefully evaluate the specific coverages that are available under each of the liability insurance policies considered. For example, cyber insurance is not automatically included in general liability insurance. The cost of liability insurance is based on the solution provider's revenue but usually ranges from \$2,500-\$10,000 or more a year. Consider the premium (upfront cost) and the retention (works like a deductible if there is a covered loss).



COMPTIA-REVIEWED LEGAL SERVICES FOR TECH SMBS

This members-only resource provides a list of CompTIA-reviewed legal providers who specialize in the following practice areas:

- Employment
- Privacy
- Corporate
- Transactions
- Litigation
- Intellectual Property
- Real Estate
- Tax

Attorneys and firm representatives who practice in these areas submit their professional information through an online form that is then reviewed by CompTIA's legal team. Once submissions are approved, they are entered into a collective list of CompTIA-reviewed legal providers, accessible by CompTIA members only.

Access the list here:

<https://app.smartsheet.com/b/publish?EQBCT=d9f92970a4b84372930144b800166894>.



ABOUT COMPTIA

The Computing Technology Industry Association (CompTIA) is a leading voice and advocate for the \$5.2 trillion global information technology ecosystem; and the estimated 75 million industry and tech professionals who design, implement, manage, and safeguard the technology that powers the world's economy. Through education, training, certifications, advocacy, philanthropy, and market research, CompTIA is the hub for advancing the tech industry and its workforce. CompTIA is home to thousands of member technology companies and millions of professionals that provide the technology solutions and IT services that are powering the world's economy.

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Questions? Email [membership@CompTIA.org](mailto:membership@comp-tia.org).

