

# *FUNDAMENTALS OF DRAFTING OF SERVICE LEVEL AGREEMENTS (SLAS)*

E-Book

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## Preface

Law Senate is glad to introduce e-Book on Fundamentals of Drafting of Service Level Agreements (SLAs). We are thankful to the Partner of Law Senate, Mr. S. Ravi Shankar, who has worked hard in completing this e-Book. The intention of bringing out this e-Book is to give only the essential and basic information about Service level Agreements. We hope this e-Book will be useful not only to prospective entrepreneurs, foreign and Indian, but also to various institutions engaged in promotion of industrial development in India.

The information contained in this e -Book is drawn from various government sources. Readers are advised that this e-Book is not intended to be comprehensive and in particular circumstances professional advice should be sought. Readers interested in further details about any of the topics covered in this e -Book are welcome to contact us.



## About the Author

The Author is an experienced Supreme Court lawyer with more than 20 years of practice to his credit. He is holding a Master's Degree in Business administration and a bachelor Degree in Law. He is a known speaker and has travelled across the Globe. As a member of International Bar Association (IBA), international Law Association (ILA), International Trade Mark Association (INTA), Chartered Institute of Arbitration, Asian Corporate Law Association, Supreme Court Advocates Association, Law Senate Partner Mr. S. Ravi Shankar has extensive experience in Service Level Agreement matters and defending the enforceability of the judgements in courts throughout India and other countries. He is also having expertise in corporate legal matters and Supreme Court of India cases.



## About Law Senate

Law Senate is a Full service Indian Law Firm, providing Legal Services and cross-border Consultation in various practice areas including Corporate Litigation, Domestic and International Arbitration, corporate advisory, FDI into India, Contracts, Intellectual Property, tax matters concerning domestic & overseas jurisdictions, Incorporation Services etc. The major work of the Firm is corporate legal work but the Firm has created a mark in servicing the individuals as well.

Law Senate focuses on high degree of legal expertise, commitment to excellence, efficiency and client satisfaction, based in India and serving globally. Firm, with its Indian offices and international presence, works closely with each client to understand practical aspects of client's business. In this way, firm is able to analyze client problems commercially, and provide practical advice and services. Law Senate having Associate offices across the Country and outside the Country is able to serve its clients more effectively because of its strong network of lawyers.



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## Introduction

A few years back, Service Level Agreements used to be a part of Service agreements to specify the technical specifications of the services covered by the Service agreement between the parties. Now in the last 15 years due to the steep rise and growth of the service Industry and the increased outsourcing of services the importance of the SLAs has increased Multifoods. In their continuous efforts to cut down the costs of the services and products, all industries are opting to outsourcing of even their critical business activities to other service providing Companies. Moreover over a period of time, the service providing companies also have started helping the Companies to show increase in productivity and increase in the volume of business by providing effective and better services to the end user by mastering the outsourced service and by training their professionals to achieve the business goals, much better than the staff of the main business owners. The long experience in a particular type of service business and the new IT tools and support services have helped the outsourcing service providers to achieve a very high level of expertise in their area of activity.

The outsourcing Companies are investing a lot of money in the infrastructure and maintain updated and modern facilities. This kind of expertise and modern infrastructure of the service providers has helped the main companies to perform better than their competitors who are using their own staff and outdated infrastructure to handle the same services. For example these days the entire revenue of the Airline operators come through either the Web-portals of online travel Companies like Yatra, Make My Trip etc. and the call centres. But surprisingly both these revenue generation activities are outsourced to service providers by most of the Airline Companies. Even the major portions of critical business activities like marketing and finance are also getting outsourced to different web based operators.

In such a situation when all the critical business activities are outsourced to service providers, the performance of the service providers will have either positive or negative impact on all these business houses also. Hence it is necessary for them to measure and monitor the performance of the service providers regularly. But if the desired levels of service is not finalised and agreed by the parties earlier that agreement will not end up in a fruitful and mutually beneficial business relationship. Hence they need to pre-estimate all the necessary levels of technical and management requirements in advance and incorporate into the service level agreements.

Moreover in order to encourage and achieve the desired service levels, there should be some relationship between the achievement of service levels and corresponding payments. Furthermore these agreements must also be binding both the parties and legally enforceable to avoid any breach of the Contract. Hence the importance of the service level agreements has increased due to the increasing complexity of technical service atmosphere.



## Service Level Management

Service level management is a science of using minimum resources effectively to achieve the desired services level. The fundamental concept which governs the science of service level management is 'If you can measure, you can manage' and 'if you can manage, you can improve'. Hence the objective of SLM is continuous improvement in the quality of services. This becomes possible and necessary because of the continuous development in the fields technology and the continuously changing requirements and needs of the end user. What was considered to be a great technology five years back has become outdated is not at all in use today.

In the same way if a new technically advanced product is launched today in one corner of the World, it gets produced in different parts of the World and reaches the whole world in a few weeks of time. Due to the consistently increasing speed in the change of technology and due to the available very effective delivery models, the speed in adopting the use of new technological developments is also fast increasing. A decade back if a new product or a new service is invented in USA today it used to take at least 5 years to reach India. Now if the American manufactures is not able to launch in India in a few weeks from the date of launch in USA another competitor will launch an almost similar product in India before the original inventor launches the original product or service in India. Hence continuous measurement, management and improvement have become a necessity today.



## Service Level Agreement

Service level agreement is nothing but a legally binding contract between the owner and the service provider, to deliver a service with a particularly service quality in an agreed price. It specifies what a customer wants and what the supplier is committing to provide. Hence service level agreement is not only a legally binding agreement but also incorporates the aspirations, requirements and the dreams of the owner along with the corresponding strategies and technical solutions guaranteed by the service provider. But there are two major types of service level agreements in Practice today

- 1) B 2 C
- 2) B 2 B

**B 2 C** Service level agreements are the announcements made by various Telecom, IT, ISPs and non – technology service providers announcing the service levels guaranteed by their companies to the public, including their customers. These companies make SLAs to tell their prospective and present customers, what is the level of service they are able to guarantee and if they fail to maintain their guaranteed service level what kind of compensation they give to the customer, who ended up in a lesser level of service than the guaranteed one. For example some Pizza Companies announce following type of SLA's,

'Pizza delivery anywhere in Delhi in 45 minutes. If we deliver later than 30 minutes you need not pay the bill'.

SOME TELEPHONE SERVICE PROVIDERS ANNOUNCE THE FOLLOWING TYPES OF SLA'S.

'Connection in 24 hours, complaint resolution in 12 hours, shifting in 12 hours and in case of any failure, 1 month rent is free'.

These service level agreements are not negotiated and signed between the customers and service providers. These service level agreements are unilaterally announced by the service providers to impress more customers to their company. Even though these service level agreements are unilateral, the penalties in case of a failure by the service providers they



voluntarily adhere to the penalties/credits to the affected customers. That means the service providers try to achieve the promised service levels one side and also in-case of failure, they submit themselves to hard penalties. This is because the reliability of a service provider increases in the minds of the customers in a big way, when they actually and impressively compensate the customers who got only a lesser level of service. Hence even though B2C SLAs are unilateral in nature, they are also very effective since the service providers strictly follow the penalty clause. Since normally people do not go to Courts to enforce these kinds of B2C SLAs the legal aspect of these kinds of service level agreements are not that important.

But **B2B** SLAs are agreements between two businesses houses i.e. the service provider and the commercial customer and the service are obtained to use in the course of the business of the customer. These SLAs normally have substantial financial impact on the business of the customer in case of any breach by the service provider. In such a situation these SLAs are required to be legally binding and enforceable contracts. Hence these agreements have necessarily to be negotiated between the parties carefully, signed and if necessary registered also. Hence B2B service level agreements normally are legally and technologically complex documents. These SLAs define the relationship between the parties to the contract in clear terms without much scope for a second interpretation. Hence the Companies are advised to follow the following recommended process of building an SLA to culminate in a flawless and effective service level agreement.



## **(1) FINALISATION OF THE REQUIREMENTS BY THE CUSTOMER**

The customer or the owner has to finalise the requirements before starting the process of calling for proposals from the service providers. If the customers are not fully sure of the technical requirements they may prepare a document in the nature of a wish list which describes specifically the 'Expected user experience' or 'Expected output' or 'Final result' to be achieved by the contract. This normally happens because the services and technology is changing every day, the service providers update themselves faster than the end user or the customer and hence it is advisable for the customer to plan a wish list with maximum possible details of their expectations. The companies which are able to provide details with specifications explaining their expected business result will end up in getting better proposals from the service providers. The proposals suggested by the service providers in response to the requirements of the customers are like solutions to problems and hence if problems are not clear then solutions also cannot be effective. Moreover if the wish list is not explaining the requirements and the expected 'end user experience' of the customer both the parties will be wasting their time in finalising the requirements instead of negotiating the project which might increase the cost of the project and delay the implementation of the project.

## **(2) PREPARATION OF THE PROPOSALS BY THE SERVICE PROVIDER**

The service provider is the party responsible for finding effective solutions to the expectations and problems of the service provider. But at the same time the customer may also restrict the options on the basis of various limitations like budget, implementation period after service back up cost, requirement of infrastructure, scope of expansion, requirement of human resources etc., Hence once the service provider gets the wish list from the customer, the service provider should find out the limitation factors from the customer. This process of finding the limitations of the customer can be effectively done by the service provider either by sending a detailed questionnaire or by setting up an initial meeting with the people who prepared the requirement list of the customer company. Once the wish list, limitation and scope of the project is understood by the parties, the service provider should start working on the options. The options of the service provider should cover the following aspects:

1. Solutions to the issues
2. Cost effectiveness
3. Requirement of Manpower
4. Implementation period
5. Review meetings
6. Meaningful Metrics
7. Reporting system
8. Training to the customer
9. After service model and cost



Normally once the customer is satisfied with the technical aspects of the proposal, they would be keen in having an effect Management system in-built, in the contract. If the service providers are able to convince the customers by incorporating the desired technical and management aspects of the contract, then the negotiation of final SLA will become easier.

### **(3) APPOINTMENT OF A NEGOTIATION TEAM:**

The negotiation of a commercial contract in the last generation used to be mostly on the financials arising out of the contract. But now, that too in service contracts the technology, service aspects, delivery model, up-dating, review and legal aspects are very important before the cost part of it. In such a situation where there are complex technological and legal aspects to the contract, the owner of the Company or a high level official of a company alone cannot effectively negotiate and finalise a service level agreement. It is advisable to form a team of people including

- (i) Authorised signatory
- (ii) Project leader
- (iii) Legal adviser

for an effective negotiation team. The inclusion of the Proposed Project leader in the negotiation team is very because the project Leader is aware of the first-hand information about the project including the underlying technology, aspirations of the client, expected end user experience, scope and future development etc., In addition to that every sentence incorporated in the SLA should be legally binding and enforceable, hence taking a legal professional or the law officer of the Company into the negotiation team is also important. When the negotiation teams are strong, empowered and knowledgeable to take its decisions without the necessity to go back to the top management every-time for all the small changes arose during the discussions, the negotiations will result in an effective SLA without much wastage of time.

### **(4) NEGOTIATIONS:**

Negotiations by the parties are normally confined to the points covered in the proposal given by the service provider. Hence the service provider should have furnished in the service proposal, all the service components and the Corresponding cost to ensure the level of service specified by the customer, before sitting for negotiation. One of the negotiation team members should have been involved in the making of the proposal from the service provider. In other words the negotiating team from the service provider side should be aware of the basis and components on the basis of which the final cost of the project was arrived at. This is necessary because in case to cut down the cost or for any other reason if the customer wants to modify the requirements, if the negotiating team can immediately respond about the cost impact corresponding to the said modification, then the customer will be able to take a decision on the spot. In the same way the Negotiation team from the customer side also should be aware of the areas where they can modify their requirements and the areas where they cannot make any alterations to their requirements. The team from the customer side should also be aware of the scope of work and the future plans of their company. Hence the home work of the negotiating teams of both the



sides before going to the Negotiation table is very important. If both the parties agree, it is good to minute the meeting so that the points on which decisions were arrived at the earlier meetings need not be looked into again, even if the team members change due to unavoidable reasons. Moreover both the parties should have options with regard to subject negotiated by them, because working on only one option without any alternatives might end up in a deadlock.

## **(5) FINALISE THE DESIRED SERVICE LEVEL:**

Finalising the service level by the parties should happen on the basis of the real requirements of the customer taking into consideration the cost factor also. For example if the airline engaging the services of a call centre for ticket management, finds from the reports that in the peak hours about 25 persons in the call centre are able to keep the call waiting time of the customer below 90 seconds and 40 persons will keep the waiting time of a customer below 10 seconds, then the airline need not go for 40 persons and at the same time keeping the 25 persons will harm their business because the end customer when is made to wait for 90 seconds he might get frustrated and choose to go to another airline or another web portal. At the same time keeping all the 40 persons and giving the “top service of no waiting” will end up in increased unnecessary cost. In both the cases the airline will loose some revenue or end up in higher cost. Hence finalising the number between 25 and 40 keeping the reasonable level of customer satisfaction and optimum cost in mind, is a very important business decision. Even “the best and more than the required level of service” is also equally harmful, like the poor service to the company because it increases the cost and in a way an un-productive expenditure. Hence it is not always the available best service which should be chosen by the customer, in most of the cases, level has to be brought down to make the resources put into optimum use and to make the cost attractive to the customer.

Moreover while deciding service levels, the parties should also keep key performance indicators in mind. This is because certain activities are directly connected to the revenue, brand value and customer satisfaction and certain other activities are administrative activities which does not affect the revenue of the company. Hence the service levels should be chosen on the basis of the importance of the role of the service and key performance indicators of the performance of the company.

## **(6) FINALISE THE TOLERANCE LIMITS OF SERVICES:**

Even though the expected service levels of services are finalised by the parties, it is important to finalise the tolerance limits of each part of service level agreement. Tolerance limits exhibits the minimum and maximum level of the expected service level in every level in every component of the services. The minimum levels show the lowest expectation of the customer, below which the customer will start losing the revenue or customer trust or both. The maximum service level is an indicator of the upper limit preferable cost. In case if the service level is more than the upper limit, then the resources put into that service can be brought down and correspondingly cut down the cost also.

- (a) **Example:** If there is no waiting time for a caller when he calls a call centre the customer may be very happy but that means the service provider has put excessive tables and callers to serve, which is not necessary. This is an example of excessive service.
- (b) **Example:** If there is a waiting time of more than 4 minutes a caller, when he calls a call centre then he may not choose to continue the call and the Company may lose that business. Hence the service provider must bring the waiting time down to the tolerable limits to satisfy the customers, may be less than 60 seconds of waiting. Hence the tolerance limit in this case is the mean maximum waiting time of 60 seconds. If the record shows that the service provider made 60% of the callers to wait for more than 60 seconds then he has crossed the tolerance limit. Hence tolerance limit can be specified as follows:

Description	Maximum	Minimum
Call waiting time	60 Seconds	20 Seconds
Disconnected call percentage	5%	0%
Mean call duration time	60 Seconds	10 Seconds

## **(7) MEANINGFUL METRICS:**

Metrics is nothing but a scale of measurement. Metrics can be time duration, weight, distance, speed, percentage or any other according to the item which requires to be measured. The following are some of the metrics which are in Practice.

Unfortunately many companies collect a lot of data in the name of metrics, but they go waste when those reports do not disclose the relevant business information. The data collected can be stated to be meaningful only when they disclose the relevant information to derive the Critical Performance indicators of the performance of the business and the service levels. Hence while finalising the Metrics during the negotiation, the parties should decide the Metrics, which will show the real performance of the service provider. It should also be kept in mind that every part of the service covered in the service level agreement must be measured. If some parts of the service are not measured then they cannot be improved as well. Hence the Meaningful Metrics means the metrics of the service components to be measured and their sufficiency in covering all the components of the service, in the light of critical Performance indicators of the business.

### **(a) Types of Metrics:**

#### **(i) Technical Metrics And Business Process Or Operational Metrics:**

Measurement of Performance of the service provider and ascertaining the service level is the key part of a service level agreement. Most of the service levels can be effectively measured only if Technical metrics and business process Metrics are measured. Technical Metrics are used to quantify and to measure the key technical attributes, of the delivered services. Business Process Metrics includes

the measurements of the business processes, such as the mean repair resolution time or mean complaint response time etc.

(ii) **High Level and Low Level Technical Metrics:**

Technical metrics can be divided into High Level and Low Level Technical Metrics. High level technical Metrics, which deal with attributes that are highly relevant to the end user and are easily understood by the user. Hence High level metrics are the measurements used to measures the service level in terms of the end user experience. Low level Metrics deal with attributes, of the underlying technologies used to achieve the same customer satisfaction. Hence the SLA negotiation will start from specifying the High level metrics (by the customer) to measure the service levels covered in the contract. After finalising the said High level Metrics the service provider should work with their technical staff and derive the low level metrics from the High level Technical Metrics specified by the customer. The following are some examples of the said Metrics,

**High Level technical Metrics specified by an Internet Service Customer**

• Work Load	Applied work load in terms understandable by the end user
• Availability	Percentage of scheduled up time that the system in his office is available and functioning
• Transaction Failure Rate	Percentage of initiated end user transaction that failed to get completed.
• Transaction response time	Measurement of response time as per the end user experience.
• Stream Quality	Measurement of the quality of a multimedia stream as perceived by the end user.

**Low-Level Technical Metrics specified by the Technocrat Service Provider**

• Work Load	Applied work load in terms of underlying technologies.
• Availability	Percentage of the scheduled up time that the subsystem is available and functioning
• Packet Loss	Measurement of one way Packet Loss characteristics between specified points
• Latency	Measure of transit time characteristics between specified points
• Jitter	Measure of transit time variability characteristics between specified points

### (iii) Business Process Metrics Or Operational Service Management Metrics

Business Process metrics, measure the quality of interactions between the customers and service providers. These metrics are like after service, repair, resolution of a complaint etc., these Metrics are to be negotiated by the parties and incorporated into the SLAs. There are again two kinds of Business process Metrics namely Problem Management Metrics and Real time service Management Metrics. Business process Metrics is the measurement of services in the course of business. Problem management Metrics specify the measurement service regarding solving the problem or complaints of the user.

#### Problem Management Metrics: (Examples)

• Trouble Response time	Time taken between notification of the trouble by the customer and the first response by the service provider.
• Trouble Relief Time	Time taken between the Complaint by the customers and the fixing of the problems that permits normal operation to resume.

#### Real Service Management Metrics: (Examples)

• Provisioning time	The time taken to provide a new internet Connection.
• Activation Time	The time taken between the application or request for internet Connection and activation or deactivation of the connection.

#### Examples of Metrics for Different Services

To give a full understanding to the readers about the different metrics used in different types of service sectors the following examples are listed below:

##### (1) IP Network Services

- (a) In the context of a computer network, reliability is measured in the uptime of the network and responsiveness is measured as bounds on round-trip delays between two customer sites.
- (b) Normal availability Metrics for IP network are system uptime, network connectivity, outage count, outage resolution time, error rate, packet loss rate etc.,
- (c) Normal availability Metrics includes mean response time, one way delays, round trip delays and the delay jitter.

##### (2) Help Desk Services

- (a) Number of calls per agent
- (b) Percentage of calls served by the agent First time

- (c) Number of calls escalated to 2<sup>nd</sup> level support
  - (d) Percentage of calls dropped by users
  - (e) Mean waiting time for call to be answered
  - (f) Customer satisfaction
- (3) Metrics For Web Based Services
- (a) Real time management metrics include provisioning time, activation time, deactivation time, time taken for change etc.
  - (b) Problem management metrics include notification time, escalation time, trouble resolution time etc.

## **(8) FINALISATION OF OBLIGATIONS:**

Every contract will contain obligations to be performed by both the parties, SLAs are not in any way exempted from that general rule. Obligations are to be performed by both the parties in the sequence stated in the SLA and within the specified time frame. Hence it is important to identify the obligations of both the parties and sequence them in the sequence in which they must be executed. The obligations can be classified as

1. Independent obligations
2. Interdependent obligations
3. Conditional obligations
4. Circumstantial obligations

### **1. Independent obligations**

- A) One type of such independent obligations arise generally in a SLA which is drafted for a simple service offered by one side against a consideration to be paid by the other side. In such cases there will be no other obligation on the part of the customer except making a payment along with the work order. The service provider will just complete the work and claim for payment. If the service provider does not match with the agreed service level then the customer can invoke the penalty clause. The only failure which can happen from the side of the customer is default in making the payment.
- B) Independent obligations in large contracts with complex business transactions have to be drafted in detail with specific time frame and sequenced according to the agreed execution process. If there is a failure in mentioning the time frame or in sequencing the obligations as per the order of the proposed execution of the project, in case of any abandonment or stoppage of work or partial execution the responsibility for the said breach cannot be effectively fixed by the Arbitrator.



## 2. Interdependent obligations

But in normal circumstances both the parties will have certain obligations to perform for the success of the SLA. Interdependent obligations can be executed only if both the parties do their part along with the other. That means one party alone cannot start and complete the execution of that part of the contract. In these types of obligations one part of that service or work has to be performed by one party and then only the other can start and complete it. None of the party can perform these obligations independently. For example, as per an SLA the Website managing company providing services to a e-commerce company, has to update the price of a product or availability, on daily basis but the customer has to feed the information regarding the update. If the customer does not provide the price of a particular product within the specified time, the service provider may not be able to incorporate the update in the time specified in the contract. Hence service provider cannot be held responsible for not updating the price or availability or new product information on that particular day. In these types of SLAs one party cannot blame the other without performing its part of the obligation. But if the obligation is not properly drafted the service provider might be held responsible for the fault of the customer in providing the information.

## 3. Conditional obligations

These types of obligations are exercised by a party on a particular condition. These obligations are not generally performed. For example as per the SLA the service provider of a telecom company will provide a charge free helpline number in case of natural calamity or a big accident etc., this is a conditional obligation which should be performed only on a particular condition. These types of obligations are just conditional and the service provider may not get a chance to perform it throughout the agreement period. The breach of contract will arise only when the service provider fails to fulfil that, even after the arising of that condition.

## 4. Circumstantial obligations

Some of the service providers offer additional facilities to attract customers and these obligations are performed at a particular circumstance only. Generally these types of obligations are general in nature. For example, an airline company is assured by the call centre that at any point of time if the wait time for a passenger who wants to book a ticket over phone is more than 3 minutes, the service provider will allot the required additional tables free of cost to bring down the mean maximum waiting time within 3 minutes. This situation arises occasionally and in case that circumstance arises then this obligation shall be performed by the service provider. Because generally Airline Companies will lose their passengers if the line is too long and customers were made to wait long, they may require additional tables for a short span of time. These obligations are very rare but help the customers to ensure a reasonable satisfaction of the end



users, in a big way. Even though the obligation does not have a payment obligation from the customer side, penalty clause can be invoked in case of the failure of the service provider.

## **(9) FINALISE REPORTING AND MONITORING SYSTEMS:**

Even-though the appropriate Metrics are finalised and incorporated it is important to design the reporting and monitoring systems to get the correct understanding of the collected data. There are professional monitoring or report collecting Companies in ISP services and telecom services etc., Otherwise parties themselves can decide the reporting model, responsibility and frequency of reports. The Monitoring authority is to keep reading the reports and monitoring the progress as well as the service level and reports to the concerned persons periodically the adherence of both the parties.

## **(10) FINALISE REWARDS AND PENALTIES:**

The objective of the Penalties is not only to compensate the loss of one of the parties because of the breach of the other party, it is also to make both the parties to be cautious of their obligations and responsibilities. As stated earlier in B2C situation the penalties are self-imposed and the objective is to impress the public and customers to subscribe to their services. These penalties are like credits to their customers. The following are some examples of B2C penalties:

1. One day rent per hour of delay waiver in case of delay in repairing the system (Hard ware SLA)
2. Rs.10,000 penalty per of delay (Website building SLA)
3. 10% reduction in the monthly bill if the mean waiting time in a call centre is more than 30 seconds and if the repeat call rate increases more than 3% of the calls.
4. 25% discount in the taxi bill if the taxi reaches the pick-up point more than 5 minutes late.

But in a B2B atmosphere the penalties are decided keeping the liquidated damages in mind. Normally in developed countries, penalties are stringent and it creates fear in the minds of defaulting parties. Hence if the SLA is governed by a law of a developed country, then in case of failure of a party the actual penalty as specified in the contract has to be paid. But in India Courts are liberal and they consider the specified liquidated damages as the maximum compensation amount which can be granted for the breach of the said contract.

## **(11) DISPUTE RESOLUTION CLAUSE:**

Dispute Resolution clause in a contract should specify the process of resolving the disputes, in case of any dispute arises out of the contract between the parties. The parties need not go to arbitration or litigation to resolve the disputes. Arbitration or litigation must be the last step in the dispute resolution process and there should be agreed system incorporated into the agreement,



by which parties must get an opportunity to sort out the issues amicably. The following steps are recommended in the dispute resolution process.

- (a) Reference to a joint committee: Both the parties to the contract can jointly formulate a committee which will examine all the disputes and try to settle the differences by holding talks. In such committees responsible officers of both the side should be appointed so that they can decide the issues without going to higher management for approval every time. The committee can sit on periodical basis and decide on the matters referred to them by the project team.
- (b) Expert Opinion or Umpire: Today in technology contracts certain issues may arise with regard to the scope of the contract or regarding the underlying technologies. In such cases an expert can be called by the parties and an opinion can be sought regarding, "Whether the said item of the service is included in the contract? Or not". If parties are agreeable to the decision of the Expert then matter ends. The recent trend in international contracts is appointing an Umpire who has a strong exposure to the business and acceptable to both the parties as an Umpire to the contract. He will get involved right from the stage of negotiation of contracts till the completion of the project. In case of difference of opinion the decision of the umpire will be final.
- (c) Arbitration: Arbitration is the widely accepted global dispute resolution method. That too after the adoption of the UNICITRAL Model Arbitration law by many countries, the major part of the world has almost a same Arbitration law. This kind of unanimity in many countries has brought not only an easy understanding in the minds of investors but also has considerably reduced the intervention of Courts in the Arbitration proceedings. More over the international arbitration award is recognised and executable in 149 countries. But at the same time executing a Judgment in another country has a lot of limitations. But at the same time the parties should have an effective arbitration clause incorporated in their arbitration clause to avoid delays and unnecessary Court interventions. There are two types of Arbitrations Institutional and Adhoc.
  - Institutional Arbitrations: If the parties choose to conduct the arbitration as per the rules of an Institutional Arbitration centre then they should specify the same in the Contract. All the Arbitration Centres have their own Arbitration Rules and Panel of Arbitrators. Normally the arbitrators are appointed by the arbitral Institution as per their rules and as per the requirements of the parties. The Fee is also fixed either on the basis of the stakes involved or on the basis of the work load due to the complexity of the contract and dispute. But if both the parties agree for a particular Arbitrator most of the Institutions accept that also.



- **Adhoc Arbitrations:** When the parties do not specify any Arbitration Centre in their contract, the parties can choose their own Arbitrator and Rules of Arbitration can be decided by the parties. In case Rules of Arbitration is not decided by the parties the Arbitrator in consultation with the parties decide the Arbitration procedure. The Fee of the Arbitrator is also finalised in the first meeting. In case if the parties fail to finalise an Arbitrator they can approach the Court seeking to appoint an Arbitrator.

(d)

**Drafting of an Effective Arbitration agreement:** Carefully drafted arbitration agreement helps parties to avoid unnecessary litigation before the Arbitration. The parties should specifically include the numbers of arbitrators, procedure to appoint arbitrators, qualifications of arbitrators if any, language of arbitration, procedure of arbitration, governing law, Seat of arbitration etc., to have a clear arbitration clause.

## **(11) ANNEXURES**

All the important documents which are mentioned in the SLA must be mentioned in the Index and annexed to the SLA. These important documents include Authority letters, Board resolutions, Company Policy of both the parties, Expansions to all the Company Specific and Industry specific abbreviations mentioned in the SLA.

## **(12) AUTHORISED SIGNATORIES AND COMMUNICATION OFFICERS**

The Authorised signatories only have the right to amend or modify the contractual terms. But still it is advisable to specifically mention the amendment process and the persons authorised to change the terms. It is also important to specify the official mode of communication and the authorised communication points.

## **(13) TERMINATION CLAUSE**

It is always advisable to have a properly drafted termination clause with post termination financial consequences to avoid heavy costs etc.



# Thank You

#### DISCLAIMER:

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. The contents should not be construed as legal advice or an invitation for a lawyer-client relationship and should not rely on information provided herein. Although we Endeavour to provide accurate and timely information; there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.