

Transitional Service Agreement – The Path to Transition Success



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Transitional Service Agreements (TSA) have been a large part of my life in the last couple of years. As I navigated a series of complex, challenging, manufacturing site acquisitions, the TSAs have been the gospel that allowed all parties to understand their respective obligations and responsibilities during the transition phase. A well-defined TSA points the way to a successful transition but, during the cut and thrust of M&A deal negotiations, there are critical points to consider and pit falls to avoid.

Firstly, let's understand what a Transition Service Agreement (TSA) is. To quote “divestopedia”;

“A transitional service agreement (TSA) is made between a buyer and seller and contemplates having the seller provide infrastructure support such as accounting, IT, and HR after the transaction closes. The TSA is common in situations where the buyer does not have the management or systems in place to absorb the acquisition, and the seller can offer them for a fee”.

OK, simple, right? But, as with any legal agreement, its quality is dependent on the effort that you put into it. And, as the TSA becomes a key transition project document, it pays dividends to devote sufficient time to plan out the TSA, considering the following:

Scope of Services

- The TSA needs to define the basis of the individual services that the seller is providing to the buyer, be it a process, a task or access to a system.
- There needs to be enough definition so that the parties are clear on what is in and what is out of scope.
- The TSA works best when both parties are pragmatic in their negotiations with the same goal in mind; the continued successful operation of the business.
- The TSA should be based on what is considered reasonable in terms of the seller's level of performance or the buyer's support needs.

Duration

- As the seller's services will come with a fee the buyer will want to avoid paying for any service longer than necessary, but the buyer needs to be realistic as to the time it will take to put in their replacement services or systems.
- Although the TSA should state the proposed duration of each service it should allow the flexibility for services to be terminated earlier or extended for a reasonable period if required.
- There is an obvious risk that the buyer will underestimate the complexity and time required for the implementation of IT systems, so it is crucial that the buyer defines the future IT strategy and implementation approach in parallel to shaping the TSA.

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Who is Accountable

- It is probable that some of the sellers existing services are undertaken by a third party i.e. employee catering. This needs to be evident as there are contract novation considerations that must be factored into finalising the TSA services.
- The third party may seek reassurances from the buyer in respect of commercial terms or longer-term business relationship expectations.
- The buyer needs to have their supplier strategy outlined so that any expected replacement contract selection and negotiations are allowed for in the TSA service duration. This is also a critical consideration for any operational cost savings expected during transition.

Rules of Engagement

- The parties need to define what access they will have to each other's data and information. Also access to the seller's resources that are required to support TSA services such as IT helpdesk.
- It is important to establish the basis and mechanism that the seller will use to provide to the buyer data extractions required for the implementation of the buyer's systems. This is a critical path issue for any successful system deployment that also has a bearing on the implementation timeline.
- Post deal completion a joint TSA governance framework needs to be in place to oversee interactions, escalate issues and manage timings in respect of system implementations, service termination or requests for service extension.

The TSA is the foundation that a successful acquisition transition is built upon but only if you give it the attention it deserves up front.

About the Author: Mark has +20 years' experience in delivering complex, global business transformation programmes within the Pharmaceutical industry including manufacturing capacity optimisation, major system deployments and manufacturing facility acquisition and integration.

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