

Updating Corporate and Services Contract Documents as Your Company Grows

Entrepreneurs are wired to start and build businesses that challenge them. Many small businesses start with a single person who serves as the Chief Everything Officer, focusing on business development, operations, finances, and all the other areas that will build a company. However, this usually means the underlying legal structure and liability protections of the company get pushed to the back burner until something happens that forces a re-evaluation of corporate liability protections.

Although business owners are aware of the importance of generating the legal documents that lay the foundation of the company, once the company is formed and survival depends on a steady income stream, these key documents are an afterthought. However, as a company grows in complexity, these documents also need to grow to keep the company ahead of potential liabilities or unexpected circumstances --which will happen.

Any documents that establish the principals and operating terms of the company should be evaluated at least annually, and certainly before or immediately following any major change to company operations, policies, or personnel. Regular evaluations also provide opportunities to develop new documents that may have been lacking at start up. Among these documents are:

- **Company operating agreements:** Your operating agreement should spell out specifically what roles individuals are expected to play; i.e.; operations, finances, marketing, human resources, ownership structure, and what checks and balances are in place. If no such document exists within your company, creating one should be a priority.
- **Corporate structure:** Is your LLC, LLP, S-Corp, etc. still the best entity for your current situation and future growth? What liability protections does each type of corporate structure provide both professionally and personally?
- **Employee policies:** In the era of #MeToo, hostile workplaces, an increasingly younger workforce with sometimes non-traditional expectations, and social media, your company needs written, unambiguous, fair, and well-thought out employment policies that can alleviate the problems many small companies face.
- **Intellectual property protection:** Yes, even small businesses have intellectual property that needs protection, such as trademarks, copyrights, and patents. A common question asked within many companies is who owns internally developed IP – the company or the individual?
- **Reviewing vendor/supplier contracts:** Are the terms of these agreements still in your best interest as your company evolves and needs tighter controls on purchases and the quality of supplies? In light of recent events, are you covered by a strong force majeure provision?
- **Employees vs. subcontractors:** Are you using subcontractors who could really be classified as employees? Do you know the difference and the consequences of misclassification?
- **Nondisclosure, non-solicitation, and noncompete agreements:** Do these comply with state regulations and legal case law? How are they different? A fluid workforce where individuals are likely to change jobs every two to three years may necessitate these types of agreements so they need to be drafted properly.
- **Insurance:** Are coverages sufficient for your company's current situation, or are you operating with insurance that still covers your company as if it was a new enterprise? Do you need business interruption insurance?

- Succession plans, adding/removing partners, principals, etc.; death of an officer or other key personnel: Are you able to handle a major change to your company?

Not every document will need annual updating, but even the thought of renewing one of these documents begins the process of making sure your company is operating as efficiently and safely as possible. If your company documents are in need of review, or some documents need to be created, please contact The Law Firm of Robert D. Schmitter, LLC for assistance at <https://schmitterlaw.com>