

COVER SHEET: SiPA Service Agreement Template

Background

The ‘SiPA Service Agreement’ is one of two SiPA templates created by Activate, in collaboration with our partners at DLA Piper LLP (US), to help facilitate quicker concrete engagement between early stage startups, and established entities. These early engagements are instrumental in understanding, and later resolving, the risks of new technologies, thereby speeding their way to market.

SiPA Service Agreement Overview

This SiPA Service Agreement facilitates exploratory work, as a precursor to longer-term collaboration, between a startup and a large company. This document establishes a service relationship under which one party (often the startup) conducts work for and provides specified deliverables to a partner (usually the larger entity) along a specified payment schedule. It provides a format to structure a short-term simple project where the scope of work is unlikely to create intellectual property (IP) ownership issues.

Context and Considerations for the Agreement Terms & Conditions

Exclusivity: The baseline template leaves out an exclusivity clause so as to not restrict the startup from engaging in parallel collaborations. If one is required, streamlined language is provided in brackets. This is written as a standstill/non-compete agreement, which is advised to be reciprocal and short term in nature. This clause aims to provide an additional upside to the corporate for resources provided while not tying down either partner indefinitely:

[**EXCLUSIVITY.** During the period beginning on the date this Agreement is fully executed and ending on the earlier of the termination of this Agreement and [exclusivity end date], Company shall not provide any services similar to the Services to any competitor of Customer within the field of [insert] (“Field of Use”), and Customer shall not receive any services similar to the Services from any competitor of Company within the same Field of Use.]

Confidentiality: This document assumes that the parties previously signed an NDA, and it incorporates that NDA by reference. A startup should carefully review the NDA to make sure that it covers all eventualities.

Intellectual Property (IP): The baseline template leaves out an IP clause as under applicable US law, typically the creator of intellectual property is the initial owner of that intellectual property.

If one is required, streamlined language is provided in brackets. Under applicable US law, typically the creator of intellectual property is the initial owner of that intellectual property. The proposed IP provision restates this default rule:

[INVENTIONS. Company and Customer hereby acknowledge and agree that each party retains its intellectual property rights and no intellectual property rights are transferred under this Agreement. All rights not expressly granted hereunder are reserved by the party owning such rights and there are no implied rights created under this Agreement.]

In early project engagements conducted under a SiPA between a startup and corporate partner, it is highly encouraged that both parties design the statement of work and the deliverables to avoid any need to assign or license intellectual property. Such provisions are complicated and take more time to negotiate and may not be necessary to demonstrate value. Any IP assignment or license should be narrowly tailored to the specific work being done. Such assignment or license will typically be drafted to protect each parties existing IP (typically called background IP) and determine how any IP developed in the collaboration (typically called foreground IP) is owned. This language should be drafted in consultation with an appropriate specialized attorney.

Warranties: The document includes a warranties section that disclaims implied warranties under the Uniform Commercial Code. Without this paragraph, a party providing deliverables under this document may be deemed to be making such implied warranties to the recipient as part of the transaction. The business intent in these early stage collaborations is usually the opposite – that all deliverables are provided “as-is”. For the disclaimer to be valid, it should be “conspicuous”, a requirement met by using all capital letters.

Liability: The document includes a liability paragraph to limit the remedies available for breach of contract and consequential damages. This is desirable for the party with performance obligations. A party providing deliverables that turn out to be deficient or defective might be willing to refund payments that it received, but such breaching party generally does not want excess liability that causes it to pay “out of pocket”. A frequent exception is any breach of confidentiality obligations, a type of breach so egregious and so potentially damaging to the disclosing party, that the disclosing party typically insists on carving it out from any consequential damages disclaimer or liability cap.

DISCLAIMER:

This is a simplified document and it assumes there is an NDA in place to govern confidentiality. It contains basic terms, but it does not purport to comprehensively address the many possible issues that can arise in a collaboration. When in doubt, parties should consult their own attorneys.

SIPA SERVICE AGREEMENT

All services (“**Services**”) provided by [Legal Name of Startup] (“**Company**”) to [Legal Name of Customer] (“**Customer**”) are provided under the following terms and conditions (the “**Agreement**”):

1. **SERVICES.** Company shall provide the following Services to Customer detailed further in the appendix: [Insert]. Customer shall provide the following items to Company to enable Company to provide the Services, detailed in the appendix: [Insert].

2. **PAYMENT.** Customer agrees to pay Company [insert amount] for the Services. Company may invoice Customer for such amount on [insert date(s) or applicable milestone] laid out in the table in the appendix. Customer shall pay each invoice it receives from Company within 15 days of receipt.

3. **CONFIDENTIALITY.** The signed non-disclosure agreement currently in effect between the parties (“**NDA**”) sets forth the parties’ respective confidentiality obligations hereunder. The NDA will govern all non-public information furnished under this Agreement, and the period of disclosure covered under the NDA will continue in force throughout the duration of this Agreement notwithstanding any earlier termination of the NDA. A party is permitted to use information disclosed under this Agreement solely in furtherance of this Agreement and the purposes for which the information was disclosed. In the event of a conflict or inconsistency between the NDA and this Agreement, this Agreement will control.

4. **WARRANTY DISCLAIMER.** EACH PARTY HEREBY DISCLAIMS AND EXCLUDES ALL WARRANTIES, WHETHER STATUTORY, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

5. **LIMITED LIABILITY.** EXCEPT FOR PAYMENT OBLIGATIONS AND BREACHES OF THE NDA, IN NO EVENT WILL A PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS, LOST REVENUE, LOST DATA, COST OF COVER, OR SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF THOSE DAMAGES. EXCEPT FOR PAYMENT OBLIGATIONS AND BREACHES OF THE NDA, A PARTY’S MAXIMUM LIABILITY TO THE OTHER PARTY ARISING OUT OF OR RELATING TO THIS AGREEMENT IS LIMITED TO THE AGGREGATE OF FEES PAID AND PAYABLE HEREUNDER.

6. **TERM AND TERMINATION.** This Agreement expires on the date the work described herein is completed, unless earlier terminated pursuant to this paragraph. A party may terminate this Agreement upon 30 days’ written notice to the other party, if the other party materially breaches this Agreement and the breach remains uncured at the end of the 30-day period. The rights, duties and obligations of the parties that by their nature continue and survive will survive any expiration or termination.

7. **GENERAL.** The laws of [California] will govern all matters arising out of this Agreement. Neither party shall be responsible or liable for performance delays or an inability to perform any of its obligations under this Agreement (with the exception of any obligation to pay money) to the extent that such delays or inability result from any cause or causes beyond the reasonable control of the party whose performance is affected. This Agreement and the NDA constitute the entire agreement of the parties with respect to the subject matter hereof and supersede all prior and contemporaneous agreements, understandings and other communications, whether oral or in writing, with respect to such subject matter.

Accepted By:

[LEGAL NAME OF CUSTOMER]

Accepted By:

[LEGAL NAME OF STARTUP]

Signature

Date

Signature

Date

Name/Title

Name/Title

APPENDIX

Statement of Work

Summary: []

Task #: []

Task #: []

Milestone and Payment Schedule

Date of Expected Completion	Milestone	Deliverable Description	Funds to be provided on completion of deliverable (\$)
[MM/DD/YYYY]	[Agreement signing]	[Some initial amount to be provided upon signing and execution of this agreement]	[\$ Funds provided upfront]
[MM/DD/YYYY]	[Milestone]	[Deliverable Description]	[\$ Amount]