

*Executive*  
**VENDOR**SUMMIT

**Legal Corner:** Successful Contracting in  
the Lodging Industry

Greg Duff



# Successful Contracting

## Agenda

1. Contract Structure
2. Service Level Agreements (SLAs)
3. Indemnification
4. Privacy and Data Security
5. Cloud-Based Services
6. Statements of Work (SOWs)



# Successful Contracting – Contract Structure

No Liability. Vendor acknowledges and agrees that (i) all Participation Agreements shall be between Vendor and the relevant Participating Hotel and that such Participating Hotel shall be solely responsible for its obligations under such agreement; and (ii) Corporate Entity shall not be considered a party to, or guarantor of, any Participation Agreement.



# Successful Contracting – Contract Structure

- Master Agreement
  - “License to hunt”
  - IP license
  - Disclaimer
- Property Agreement
  - Key contract terms
  - Indemnification



# Successful Contracting – Service Level Agreements

Customer Support. Customers can expect support for the contracted services to be available during standard business hours (M-F 8:30 a.m. – 5:30 p.m.).



# Successful Contracting – Service Level Agreements

- Never, Never, Never Provide
- Meaningless Metrics
- Reporting Mechanisms
- Meaningless Remedies



# Successful Contracting - Indemnification

Indemnity. Vendor agrees at its expense to defend or settle any third-party claim or demand against Participating Hotel and to pay and hold Participating Hotel harmless from all damages, fees and costs that a court may award against Participating Hotel to the extent the claim alleges that Equipment, Software or a Service provided to Participating Hotel under this Agreement infringes any patent, trademark, copyright or trade secret.



# Successful Contracting – Indemnification

- Infringement Alone Insufficient
  - Patent (Technology vs. Use)
- Data Breach
- Breach of Applicable Laws
- Bodily Injury, Death and Property Damage
- Corporate Party, Manager and Property





# Successful Contracting – Privacy and Data Security

Confidentiality. Participating Hotel understands that Vendor has developed or acquired valuable proprietary and technical information with respect to the Software and terms of the software license and this agreement (“Confidential Information”), and that the legitimate interest of Vendor in this information must be guarded and protected in order to remain confidential. Participating hotel agrees that Participating Hotel will forever maintain the confidentiality of the Confidential Information and shall not disclose the Confidential Information or any terms of this agreement to any third party without Vendor’s prior written consent.



# Successful Contracting – Privacy and Data Security

- Confidentiality Alone Insufficient
- Terms of Use / Privacy Policy (California)
- Privacy Laws / Regulation
  - European Union (EU)
  - Canada
- Data Security Laws / Regulations
- Commercial Standards – PCI-DSS / Merchant Processing



## Successful Contracting – Cloud Services

Effect of Termination. Upon termination of this Agreement, this Agreement and all rights granted to Participating Hotel hereunder will terminate and revert to Vendor. Promptly upon termination of this Agreement, Participating Hotel shall immediately cease any further use of the Software. Further, Participating Hotel shall permit Vendor with access to the Guest Rooms for a reasonable period of time for Vendor to remove the Software from all Devices.



# Successful Contracting – Cloud Services

- Unaware of Cloud-Based Service
- Not Signing Anything
- Access to / Return of Data
- Transition Services



# Successful Contracting - Statements of Work

1. Conversation Management
2. Campaign Management
3. Content Management
4. Audience Management
5. Message Level Reporting
6. Channel Level Reporting
7. Campaign Level Reporting
8. Channel/Response Analytics & Optimization
9. Social Governance Features



# Successful Contracting - Statements of Work

- Controlling Terms and Conditions / Priority
- Lack of Key Business Terms
  - Fees and Payment
  - Vendor Obligations & Deliverables (Integration)
  - License Requirements
  - Timeline and Milestones
  - IP Rights





# Thank You

**Greg Duff**

206.816.1470 Tel | 206.321.8386 Mobile | 206.464.0125 Fax | [gduff@gsblaw.com](mailto:gduff@gsblaw.com)

Blog: [Duff on Hospitality Law](#)

