

Managing Vendor Contracts

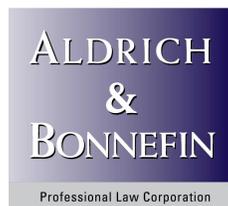
Federal banking regulators have increasingly emphasized the need for financial institutions to manage risks associated with vendor relationships. A financial institution's risk assessment, due diligence and ongoing oversight will vary depending on the nature of the vendor relationship, the scope and magnitude of the activity and the risks identified.

Crucial to managing risks associated with vendors is the negotiation of the vendor agreement itself and following federal guidance which actually requires financial institutions to address certain issues in these agreements. Moreover, institutions should also be aware of contractual provisions which may appear to be less important, but that nonetheless have a substantial impact if disputes ever arise.

A vendor contract should address a number of important areas, including the following:

- ***Nature and Scope:*** The contract should clearly set forth the rights and responsibilities of the institution and the vendor, including the specific services to be provided, confidentiality expectations and security obligations.
- ***Performance Standards:*** Clearly defined performance standards should be included in every contract to serve as a basis for measuring the performance of the vendor and also to be used as a factor in compensation arrangements.
- ***Termination Rights:*** The contract should include provisions that enable the institution to terminate the contract, upon reasonable notice and without penalty, in the event of a material default by the vendor.
- ***Additional Regulatory & Risk Items:*** Regulatory guidance underscores the need for certain contracts to address items such as privacy and security, including data ownership and control; remedies and limitations on liability; business continuity and testing; vendor insurance; subcontractor liability; audit; and ongoing reporting.

Financial institutions interested in more information on reviewing and negotiating their vendor contracts should contact Anne McEvilly or Keith Forrester at 949.474.1944 or AMcEvilly@ABLAWYERS.COM or KForrester@ABLAWYERS.COM.



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