Executive Risk Summary

Sample: Brightline MSA vs Harbor & Pine redline

Master Services Agreement · Prepared for Progress Test Org (Vendor / Consultant) · Counterparty: Harbor & Pine Retail, Inc.

65
Risk score / 100

Summary
The counterparty's revisions introduce several high-risk changes including an extended invoice payment term of 90 days, removal of late payment interest and suspension rights, and a significant limitation of liability cap of $10,000 favoring the Client. The IP assignment clause now assigns Pre-Existing Materials incorporated into Deliverables to the Client, removing Provider's retained rights and license, which is overbroad. The indemnification is one-sided, favoring the Client without reciprocal obligations. The contract includes a harsh auto-renewal with 180 days' notice and a shortened termination for convenience notice period of 5 days only for the Client. Additionally, a broad non-competition clause lasting 24 months post-termination is added. Governing law is Delaware with exclusive venue in Wilmington, Delaware. These changes shift risk heavily onto the Provider and warrant careful negotiation.

8 critical · 5 moderate · 25 low/market

Missing protections
- Missing carve-outs for public domain, prior knowledge, independent development, and residuals in Intellectual Property provisions
- No mutual indemnification; indemnification is one-sided in favor of Client
- No reciprocal limitation of liability; Client's liability is capped at a low fixed amount with no cap on Provider's liability
- No carve-out or limitation on non-competition clause duration or scope

§§3.2 Invoices and Payment Terms

Critical

Payment & Scope · Modified

Why it matters: Extending payment terms from 30 to 90 days plus requiring Client approval before payment delays cash flow and increases Provider's financial risk.

Talking points: Request standard 30-day payment terms to maintain healthy cash flow and reduce financial exposure.

Approved redline
3.2 Invoices are due within thirty (30) days of the invoice date.

§§4 Late Payment

Critical

Payment & Scope · Deleted

Why it matters: Deleting late payment interest and suspension rights removes Provider's leverage to enforce timely payment and increases risk of non-payment.

Talking points: Restore late payment interest and suspension rights to incentivize timely payment and protect Provider's interests.

Approved redline
4.1 Undisputed amounts not paid when due accrue interest at 1.5% per month, or the maximum rate permitted by law if lower.
4.2 Provider may suspend the Services on ten (10) days' written notice if undisputed amounts remain unpaid more than thirty (30) days after the due date.

Decision support, not legal advice. Have qualified counsel review material terms.

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§§5.1 Intellectual Property Assignment

Critical

Intellectual Property · Modified

Why it matters: Assigning Pre-Existing Materials incorporated into Deliverables to Client removes Provider's ownership and license rights, which is overbroad and commercially unusual.

Talking points: Limit assignment to Deliverables excluding Pre-Existing Materials; grant Client a license to incorporated Pre-Existing Materials instead.

Approved redline

5.1 Upon full payment, Provider assigns to Client all right, title and interest in the Deliverables, excluding Pre-Existing Materials. Provider grants Client a non-exclusive, perpetual, royalty-free license to use Pre-Existing Materials incorporated into the Deliverables.

§§7.2 License to Pre-Existing Materials

Critical

Intellectual Property · Deleted

Why it matters: Deleting the license to Pre-Existing Materials removes Client's right to use incorporated background IP, conflicting with the assignment clause and creating ambiguity.

Talking points: Restore a license to Pre-Existing Materials to ensure Client can use Deliverables without infringing Provider's retained rights.

Approved redline

7.2 Provider retains all rights in Pre-Existing Materials and grants Client a non-exclusive, perpetual, royalty-free license to use Pre-Existing Materials incorporated into the Deliverables.

§§8.1 Indemnification

Critical

Liability & Indemnification · Added

Why it matters: One-sided indemnification requiring Provider to indemnify Client for any claims arising out of Services or Agreement is overly broad and exposes Provider to unlimited risk without reciprocal protection.

Talking points: Seek mutual indemnification limited to Provider's negligence, willful misconduct, or IP infringement to balance risk.

Approved redline

8.1 Each party will defend, indemnify and hold harmless the other party and its affiliates against any and all claims, losses and expenses arising out of or relating to its gross negligence, willful misconduct, or infringement of a third party's intellectual property rights.

§§9.1 Limitation of Liability

Critical

Liability & Indemnification · Added

Why it matters: Capping Client's liability at $10,000 is very low and asymmetric, with no reciprocal cap on Provider's liability, exposing Provider to disproportionate risk.

Talking points: Negotiate a mutual limitation of liability with a commercially reasonable cap tied to fees paid under the Agreement.

Approved redline

9.1 Except for breach of confidentiality or indemnification obligations, each party's total liability under this Agreement is limited to the fees paid or payable in the twelve (12) months before the claim.

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§§10.2 Termination for Convenience

Critical

Term, Termination & Auto-Renewal · Modified

Why it matters: Allowing only Client to terminate for convenience on 5 days' notice is one-sided and commercially unfair to Provider.

Talking points: Make termination for convenience mutual with at least 30 days' notice for both parties.

Approved redline

10.2 Either party may terminate this Agreement or any SOW for convenience on thirty (30) days' written notice.

§§11.1 Non-Competition

Critical

Confidentiality & Non-Circumvention · Added

Why it matters: A 24-month non-compete restricting Provider from servicing any competing retailer in North America is overly broad, restricts Provider's business, and is commercially harsh.

Talking points: Limit non-compete duration to 6-12 months, narrow geographic scope, and restrict to specific competing clients or services.

Approved redline

11.1 During the term and for twelve (12) months afterwards, Provider will not provide services to any retailer that competes directly with Client in the same geographic market where Provider performed Services under this Agreement.

§§1 Definitions

Moderate

Intellectual Property · Modified

Why it matters: The definition of Deliverables now includes work in any stage of completion and creation or delivery, which broadens the scope of what is assigned to Client, potentially including incomplete or background work.

Talking points: Narrow the definition of Deliverables to exclude incomplete work or background materials not intended for Client to avoid unintended IP assignment.

Suggested fallback language

1.1 "Deliverables" means the work product that Provider delivers to Client under a Statement of Work, excluding Pre-Existing Materials and work in progress not intended for delivery.

§§9.2 Exclusion of Consequential Damages

Moderate

Liability & Indemnification · Modified

Why it matters: Limiting only Client's liability for consequential damages creates asymmetry; mutual waiver is standard to fairly allocate risk.

Talking points: Request mutual exclusion of indirect, consequential, special, punitive damages and lost profits for both parties.

Suggested fallback language

9.2 Neither party is liable for indirect, consequential, special or punitive damages or lost profits.

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§§10.1 Term and Auto-Renewal

Moderate

Term, Termination & Auto-Renewal · Modified

Why it matters: Automatic renewal with 180 days' notice is a long notice period that can trap Provider into unwanted extensions.

Talking points: Reduce auto-renewal notice period to 30 days to allow reasonable exit opportunity.

Suggested fallback language

10.1 This Agreement begins on the Effective Date and continues for one (1) year, and automatically renews for successive one (1) year terms unless either party gives notice of non-renewal at least thirty (30) days before the end of the then-current term.

§§10.3 Payment on Termination

Moderate

Payment & Scope · Modified

Why it matters: Limiting payment on termination to only accepted Deliverables may undercompensate Provider for work performed but not yet accepted, increasing financial risk.

Talking points: Request payment for all Services performed and expenses incurred through termination date, regardless of acceptance status.

Suggested fallback language

10.3 On termination, Client will pay for all Services performed and expenses incurred through the termination date.

§§14.2 Entire Agreement and Purchase Order Terms

Moderate

Entity & Drafting Hygiene · Modified

Why it matters: Allowing Client's purchase order terms to prevail over the Agreement creates risk of inconsistent or unfavorable terms overriding negotiated contract provisions.

Talking points: Insist that the Agreement and SOWs prevail over any conflicting purchase order terms to maintain negotiated protections.

Suggested fallback language

14.2 This Agreement, together with all SOWs, is the entire agreement between the parties and supersedes all prior agreements on its subject matter. In the event of conflict, the terms of this Agreement and the applicable SOW shall prevail over any purchase order terms.

§§2.1 Services

Low / Market Standard

Other · Modified

Why it matters: Adding Client's policies as a standard to meet may increase Provider's compliance burden but is not unusual in commercial agreements.

§§3.3 Expense Reimbursement

Low / Market Standard

Payment & Scope · Modified

Why it matters: Capping reimbursable expenses at 5% of fees limits Provider's ability to recover legitimate costs but is commercially reasonable.

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§4.1 Undisputed amounts not paid when due accrue interest at 1 — Low / Market Standard

Other · Deleted

Why it matters: This wording changed between drafts. No material risk was identified, but confirm the change is acceptable before signing.

§4.2 Provider may suspend the Services on ten (10) days' written notice if undisputed — Low / Market Standard

Other · Deleted

Why it matters: This wording changed between drafts. No material risk was identified, but confirm the change is acceptable before signing.

§4 Acceptance — Low / Market Standard

Other · Modified

Why it matters: This wording changed between drafts. No material risk was identified, but confirm the change is acceptable before signing.

§6.1 Client will review each Deliverable within ten (10) business days of delivery an — Low / Market Standard

Other · Deleted

Why it matters: This wording changed between drafts. No material risk was identified, but confirm the change is acceptable before signing.

§6.2 A Deliverable is deemed accepted if Client does not reject it in writing within — Low / Market Standard

Other · Deleted

Why it matters: This wording changed between drafts. No material risk was identified, but confirm the change is acceptable before signing.

§§4.1 Acceptance — Low / Market Standard

Other · Added

Why it matters: Allowing Client sole discretion to accept or reject Deliverables is standard but may delay acceptance; no automatic acceptance clause remains.

§4.2 Provider will correct rejected Deliverables at no additional charge until they are accepted — Low / Market Standard

Other · Added

Why it matters: This wording changed between drafts. No material risk was identified, but confirm the change is acceptable before signing.

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§5 Intellectual Property

Low / Market Standard

Other · Modified

Why it matters: This wording changed between drafts. No material risk was identified, but confirm the change is acceptable before signing.

§5.2 Provider waives all moral rights in the Deliverables and will execute any docume

Low / Market Standard

Other · Added

Why it matters: This wording changed between drafts. No material risk was identified, but confirm the change is acceptable before signing.

§6 Confidentiality

Low / Market Standard

Other · Moved

Why it matters: This wording changed between drafts. No material risk was identified, but confirm the change is acceptable before signing.

§6.1 Each party will protect the other party's Confidential Information using at leas

Low / Market Standard

Other · Moved

Why it matters: This wording changed between drafts. No material risk was identified, but confirm the change is acceptable before signing.

§6.2 These obligations survive for five (5) years after termination of this Agreement

Low / Market Standard

Other · Moved

Why it matters: This wording changed between drafts. No material risk was identified, but confirm the change is acceptable before signing.

§7 Warranties

Low / Market Standard

Other · Modified

Why it matters: This wording changed between drafts. No material risk was identified, but confirm the change is acceptable before signing.

§7.1 Provider warrants that the Services will be performed in accordance with the app

Low / Market Standard

Other · Modified

Why it matters: This wording changed between drafts. No material risk was identified, but confirm the change is acceptable before signing.

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§7.2 EXCEPT AS EXPRESSLY SET OUT IN THIS AGREEMENT, NEITHER PARTY MAKES ANY OTHER WAR

Low / Market Standard

Other · Modified

Why it matters: This wording changed between drafts. No material risk was identified, but confirm the change is acceptable before signing.

§8 Indemnification

Low / Market Standard

Other · Modified

Why it matters: This wording changed between drafts. No material risk was identified, but confirm the change is acceptable before signing.

§9.1 Each party will defend and indemnify the other party against third-party claims

Low / Market Standard

Other · Deleted

Why it matters: This wording changed between drafts. No material risk was identified, but confirm the change is acceptable before signing.

§9 Limitation of Liability

Low / Market Standard

Other · Modified

Why it matters: This wording changed between drafts. No material risk was identified, but confirm the change is acceptable before signing.

§10.1 EXCEPT FOR BREACH OF CONFIDENTIALITY OR INDEMNIFICATION OBLIGATIONS, EACH PARTY'

Low / Market Standard

Other · Deleted

Why it matters: This wording changed between drafts. No material risk was identified, but confirm the change is acceptable before signing.

§10 Term and Termination

Low / Market Standard

Other · Modified

Why it matters: This wording changed between drafts. No material risk was identified, but confirm the change is acceptable before signing.

§11 Non-Competition

Low / Market Standard

Other · Added

Why it matters: This wording changed between drafts. No material risk was identified, but confirm the change is acceptable before signing.

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§§13.1 Governing Law and Venue

Low / Market Standard

Governing Law & Dispute Resolution · Modified

Why it matters: Changing governing law and venue to Delaware is commercially standard and acceptable if Provider is comfortable with Delaware law and courts.

§§14.1 Notices

Low / Market Standard

Entity & Drafting Hygiene · Modified

Why it matters: Adding a copy to Client's Legal Department is a minor procedural change and generally acceptable.

Decision support, not legal advice. Have qualified counsel review material terms.