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MSA vs SOW Diagnostic Checklist

Does your contract structure actually protect you?

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Most founders who have signed a Statement of Work believe their paperwork is in order. Often it is not. This diagnostic covers the seven structural areas where SOW-only arrangements leave founders exposed. Work through each section before your next engagement or use it to audit relationships already in place.

How to use this checklist
A checked box means the protection is in place. Any unchecked box is an open risk. Three or more unchecked boxes in a single section indicates a structural gap that should be addressed before the engagement proceeds.

1. Governing Framework

Is there an MSA in place?

A Statement of Work alone is not a governing contract. The MSA sets the rules that apply to every engagement.

- ☐ An executed Master Services Agreement governs this relationship.
- ☐ The SOW references and incorporates the MSA.
- ☐ The MSA has been reviewed within the past 24 months.

If no MSA exists, does the SOW cover the essential terms?

For small, one-off engagements only. Not a substitute for recurring work.

- ☐ IP assignment clause is present in the SOW.
- ☐ Confidentiality obligations are included.
- ☐ Liability cap and indemnification terms are specified.
- ☐ Termination rights and consequences are defined.

2. Intellectual Property

IP assignment

Under default rules in most jurisdictions, contractors retain copyright in work they create unless a written assignment is in place.

- ☐ The agreement includes a written assignment of all deliverables to the client.
- ☐ The assignment covers software, documentation, and derivative works.
- ☐ Background IP (pre-existing tools and frameworks) is identified.
- ☐ A license to use background IP in connection with deliverables is granted.

Chain of title

IP ownership gaps are one of the most common issues surfaced in due diligence.

- ☐ No prior SOW was executed without an IP assignment clause.
- ☐ Subcontractors or third-party contributors have signed IP assignments.

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3. Acceptance Criteria

Are deliverables defined with sufficient precision?

Vague scope is the primary driver of scope disputes.

- ☐ Each deliverable is described with objective, verifiable criteria.
- ☐ The SOW specifies what constitutes acceptance.
- ☐ An acceptance period and process are defined.
- ☐ Consequences of non-acceptance (remediation, rejection) are addressed.

4. Payment Mechanics

Is payment linked to delivery, not just time?

Time-based billing without milestone acceptance gives limited recourse when the deliverable does not meet expectations.

- ☐ Payment is tied to milestones and accepted deliverables.
- ☐ Consequences of late payment are specified.
- ☐ The process for raising fee disputes is defined.

5. Data Protection

GDPR compliance where personal data is involved

If the vendor accesses or processes personal data of your customers, employees, or users, a Data Processing Agreement is a legal requirement, not optional.

- ☐ A signed Data Processing Agreement (DPA) is in place.
- ☐ The DPA specifies the categories of data, purposes, and processing instructions.
- ☐ Subprocessor obligations and notification requirements are addressed.
- ☐ Data return or deletion obligations on termination are specified.

6. Change Orders and Scope

Is there a formal mechanism for handling scope changes?

Informal scope expansion is a primary source of fee disputes and delivery failures.

- ☐ A written change order process is specified in the agreement.
- ☐ Out-of-scope work requires a signed change order before commencing.
- ☐ Change orders specify the impact on fees and timeline.
- ☐ Work does not begin on verbal instructions to expand scope.

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7. Governing Law and Dispute Resolution

Is the legal framework clear?

In cross-border engagements, governing law has real operational consequences. Ambiguity here means the parties fight over the rules before they fight over the dispute.

- ☐ Governing law is specified and appropriate for both parties.
- ☐ The dispute resolution forum is specified (courts, arbitration).
- ☐ For cross-border engagements, service of process and enforcement are considered.

Risk Level	Unchecked Boxes	Recommended Action
Low	0–2 unchecked, no critical gaps	Address remaining gaps at next renewal or negotiation.
Medium	3–5 unchecked, or operational gaps	Review the MSA and priority SOWs before the next engagement.
High	6+ unchecked, or any critical gap (see below)	Do not proceed without a structural review.

Critical gaps — automatic High Risk regardless of total score
- No written IP assignment for deliverables created under the engagement.
- No DPA where the vendor processes personal data.
- No governing law or dispute forum in a cross-border engagement.
- No MSA in place for recurring or high-value work.

An unchecked box is not an administrative oversight. It is an open risk.
By the time it matters, it is no longer a drafting question.

If this diagnostic surfaced multiple gaps, the issue is usually not a missing clause. It is the structure of the relationship itself.

J.A. Consulting reviews existing MSAs and SOWs to identify structural exposure, risk allocation issues, and operational gaps before they become expensive.

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