



The art of TSA negotiation for financial buyers

This article will provide a set of recommendations and considerations to help financial buyers navigate the process of negotiating the transition service agreement in an M&A transaction. These recommendations are based on Deloitte's and Kirkland & Ellis's global experience as M&A professional services advisers.

Transition service agreements (TSAs) are critical contracts between a seller and a buyer of a business, detailing the services and support the seller must provide post-transaction to ensure a smooth transition of the acquired business. *The art of TSA negotiation for financial buyers* is a comprehensive guide designed to assist financial buyers in navigating the complexities of TSAs before signing the transaction.

Pros of effective TSA negotiations

- **Positioning as “preferred buyer”:** When considering potential buyers' bids in a sale process in order to select the final buyer, the seller reviews various dimensions of a buyer's proposal, such as the overall price offered, key terms and conditions (T's and C's) in the purchase agreement and TSA, and the buyer's ability to stand up the organization with minimal support from the seller. The key T's and C's of the TSA help clarify the buyer's experience doing carve-outs, the buyer's high-level TSA exit strategy, and the buyer's ability to stand up the organization. A buyer can position itself favorably in a competitive sale process by presenting itself as relying less on the TSA, having a clear TSA exit strategy, and more generally demonstrating sophistication in completing carve-out transactions.
- **Continuity of operations:** TSAs ensure business operations continue seamlessly post-transaction, which affects the new company's (NewCo) interim run rate and cash flow.
- **Financial impacts:** Certainty of TSA pricing, including alignment with historical allocations and associated caps or guardrails, affects the interim run rate of the target and how closely that run rate aligns with the costs baked into the buyer's financial model. One-time TSAs such as data migration needed for TSA exit also have an impact on the overall one-time costs of the transaction financial model.
- **Liability exposure(s):** Negotiating a balanced structure for addressing liabilities that arise under the TSA protects the buyer from taking on unnecessary risks after the transaction closes.

In this document, we will start with the basics of TSAs, share a few preferred functional TSAs, and describe leading practices on key TSA variables such as timing and governance.

What is a transition service agreement?¹

A TSA is a contract between a seller and a buyer of a business that specifies the services and support that the seller will provide to the buyer after the closing of the transaction. A TSA can cover various functions, such as accounting, IT, human resources, and other operations, depending on the needs and capabilities of the buyer and the seller. This agreement comes into play during the carve-out when the target needs support while the buyer stands up the required capabilities. Typically, two components comprise the TSA: the TSA main agreement (also known as the “wrapper” or “body”) containing general legal T’s and C’s, and the attached TSA “schedules,” which detail the particular services to be provided and their respective durations and fees/costs.

Why are TSAs important for financial buyers?

Financial buyers often acquire businesses that are carved out from larger corporations. These carve-out businesses may not have their own stand-alone infrastructure and resources to operate independently from the seller immediately after the closing of the transaction. And, unlike a strategic acquirer that has existing operations and therefore may be able to onboard the acquired business to its own IT systems, payroll systems, etc., a financial buyer does not have the infrastructure in place to provide these services to the acquired business. Therefore, financial buyers typically must rely on TSAs to drive a smooth transition and continuity of business operations after the deal closes.

TSA main agreement

This part of the document contains key legal definitions, along with the provisions governing the allocation of and limitation on liabilities, representations, and warranties; obligations to obtain third-party consents; terms for the initial duration and extension, where applicable; markup terms on extensions; payment terms; a procedure to add omitted services; and the service standards, also known as the “standard of care,” with which the seller must provide the services.

TSA schedule

This part of the document contains functional TSA services, with the respective duration and fees/costs. When a buyer considers the TSA services that the acquired business will need, the buyer must make certain assumptions concerning the duration of the sign-to-close period (because some degree of separation may be undertaken during that period if it’s sufficiently long), the existing (or lack of existing) legal entities and bank accounts specific to the business that will be able to be utilized for services such as payroll and benefits, and whether shared applications will generally be cloned and conveyed before or at closing versus remaining shared at the time of closing.

The sample TSA services schedule that follows has been developed based on the following set of assumptions:

- Sign-to-close period is generally between four to six months.
- Legal entities, with payroll, benefits, and bank accounts, need to be created/operationalized at post-signing of the transaction.
- Seller would not be cloning the corporate/back-office applications nor conveying the shared applications by the time the transaction is closed.
- For manufacturing-intrinsic targets (e.g., targets in life sciences/industrial products), the manufacturing arrangement for shared manufacturing sites is typically covered as part of the transition manufacturing agreement (TMA).
- For a target in a highly regulated industry (e.g., targets in life sciences/industrial products), the buyer would need support in other G&A functional areas such as quality and regulatory.
- Seller is aligned on providing support to enable TSA exit strategy, planning, and execution.



Below are certain key considerations for financial buyers when negotiating and managing TSAs.

Scope and duration:

- Financial buyers should clearly define the scope and duration of the services while balancing the realistic time frame needed to drive a smooth transition and allow stand-up of stand-alone services, on the one hand, with demonstrating an approach consistent with a “preferred buyer,” on the other hand (i.e., in a competitive process, buyer may wish to avoid asking for long service durations, as most sellers prefer to minimize the time period they must provide services and may therefore favor an alternate buyer that proposes shorter TSAs).
- Buyer should negotiate strongly for a process whereby any so-called “omitted services” (i.e., services that were historically provided by seller to the divested business but that were not included in the TSA schedules) will be automatically added to the scope if identified in the first 90 days post-closing (or, ideally, a longer period and with exceptions for any services that are periodic or seasonal in nature).
- Typically, 12 months plus an extension of six months is aggressive for IT and related functional TSAs, but the duration will be deal-dependent as the complexity of the transition depends on the degree of entanglement with the seller’s systems and data.
- Buyer should seek to add language in the TSA main agreement related to TSA exit planning, for example:
 - Buyer shall use good faith efforts to (i) work diligently to establish its own infrastructure and systems to enable a transition to its own internal organization or other third-party sellers of the services and agrees to use its reasonable good faith efforts to reduce or eliminate its and its affiliates’ dependency on seller’s provision of the services as soon as reasonably practicable in accordance with the applicable transition periods, and (ii) work with seller in providing jointly aligned written TSA exit plan regarding the termination of services provided under this agreement that shall include the anticipated timing of termination of each service, not less than three months after the effective date, and thereafter such plan shall be updated and shared with the recipient at regular intervals to be determined by the transition committee.
- Typically, a buyer would prefer that the seller invoice the TSA by the 30th of the month for services provided in the preceding month (i.e., in arrears), rather than invoicing in advance. Although sellers tend to prefer short payment terms, a buyer should push for payment terms of 30 days after the receipt of the invoice, with the exception of any vendor-driven TSA services. For any vendor-driven TSA services, we recommend buyer align with the seller on the same payment term basis that exists between the seller and vendor prior to the closing.

Pricing and payment:

- Buyer should aim for the TSA pricing to be fair and reasonable and to reflect the actual cost and quality of the services. It is not unusual for the seller to have a modest single-digit markup on top of the actual cost of the services. However, the existence of any markup and the percentage amount of that markup should be carefully negotiated by a buyer as a key economic point related to the overall cost of TSA services.
- Similarly, buyer should carefully negotiate any markup that may be applied during extensions to the initial service period. A low double-digit markup is not unusual, at least on the second extension period if not on the first extension period, but there can be a trade-off here. A buyer who is comfortable with the initial service periods a seller is willing to offer may not need to spend as much of its negotiating capital on pushing back on the markup that applies to extension periods. By contrast, if a buyer is accepting initial service periods that are tight and anticipates that an extension likely will be required, then it would be important to push back on unreasonably high markups on the fees for the extension period.
- With the exception of a few countries that mandate local TSA settlements, the TSA should be settled in the United States in USD (i.e., services should be invoiced and paid in USD). This would eliminate the buyer’s exposure to any negative impacts from currency fluctuations.
- Buyer should avoid any language for pass-through of costs above and beyond the fixed fees TSA costs. For instance, the TSA schedules should specifically list any applicable pass-through costs, and the buyer should target the TSA main agreement does not unintentionally create a blank check for unspecified pass-through costs.
- Buyer should request seller bear any costs associated with third-party consents that are required in order for seller to provide the TSA services (for instance, if a software vendor extracts a fee for the seller to be able to pass the software through to the buyer as a TSA service). Typically the seller will push back, in which case, the buyer may propose bearing the first portion of the costs up to a cap beyond which cost is shared 50/50. This approach drives appropriate alignment of incentives with the seller to avoid or negotiate the lowest possible consent costs.
- Buyer should try to take advantage of longer seller-vendor payment terms for any vendor-driven TSA services.

- Buyer should strongly push back on the seller attempting to pass any portion of the TSA setup costs to buyer. It is widely recognized by sellers and buyers that the seller is responsible for the costs of pre-closing TSA setup; whereas, from closing onward, the buyer is responsible for the ongoing steady-state TSA costs.
 - Buyer should also strongly push back on being responsible for any stranded costs of the seller in connection with early termination of services, unless those costs are clearly stated in the TSA schedules. For instance, if there is an annual license fee that must be paid in advance in order for the seller to be able to provide the services, it is reasonable for the buyer to be responsible for the full duration of that license fee if the buyer opts to terminate the service early, so long as the service schedules made this amount and buyer's responsibility clear. By contrast, it is not reasonable for a buyer to be responsible for severance or other personnel costs if the buyer terminates a service early in accordance with the notice requirements of the TSA main agreement (e.g., a 30-day notice period).
 - If seller elects to subcontract performance of services to a third party, buyer should disclaim any responsibility for incremental costs beyond the fees specified in the service schedules.
- Resolving any issues with the performance of the services promptly after they arise.
 - Providing general oversight and review of the nature and amount of the services and cooperation with respect to identifying any additional services that may be required by the buyer and any services that are no longer required by the buyer.
 - Undertaking such other tasks in relation to the services as the parties may from time to time agree.
 - Escalating any proposed changes to the services, any fees in connection therewith, or any applicable term to the steering committee for agreement by the steering committee (SteerCo).
 - Both parties shall first attempt in good faith to resolve all such controversies or disputes on a local level, through their respective transition representatives, and shall attempt to initiate such efforts within 10 business days after receipt of notice of any such controversy or dispute. If the transition representatives are unable to resolve such a controversy or dispute within 30 days following such initiation of such efforts, either party may refer the controversy or dispute for resolution to the SteerCo leads.
 - Within five business days after receipt of a notice referring to a controversy or dispute for resolution by the SteerCo leads, the transition representatives (or other employees of the parties) shall each prepare and provide to the SteerCo leads of each party summaries of the relevant information and background of the controversy or dispute, along with any appropriate supporting documentation. The SteerCo leads will confer as often as they deem reasonably necessary in order to gather and exchange information, discuss the controversy or dispute, and negotiate in good faith, in an effort to resolve the controversy or dispute without the need for any formal proceedings.

Service levels and performance:

- Financial buyers may wish to include service level agreements (SLAs) and key performance indicators (KPIs) to measure and monitor the quality and timeliness of the services provided by the seller. They may also wish to agree on the reporting and escalation mechanisms, and the remedies and penalties, for any service failures or breaches. That said, it is often the case that the general service standard and liability structure govern performance and recovery for performance failures.
- Buyer should align with the seller to provide the services in a manner consistent with how such services were delivered in the 12 to 24 months prior to the signing.
- Buyer should align with the seller that seller will not prioritize services to its own retained businesses or other third parties over the buyer.
- Buyer should put guardrails on the seller's ability to utilize third-party contractors, for instance, by limiting to vendors that have provided services to the business historically or that the seller is using to provide the same services to its own retained businesses.

Escalation management under dispute resolution:

- Buyer and seller should align on the concept of a steering committee. Below are the key elements of the steering committee:
 - Providing general oversight over the provision of the services under this agreement and the standards to which such services are provided.
 - Assuming overall responsibility for the handling of the effective transition of the services to the buyer and its affiliates, as applicable.

- Usage of contractor/third-party vendor for providing services: Typically, the seller would benefit from contractors/third-party vendors providing services that otherwise would be provided by in-house employees. Buyer should align on the usage of a contractor/third-party vendor if and only if the contractor/third-party vendor was being used before the transaction for the service in question.

Change management and communication:

- Financial buyers should communicate effectively with the seller and the employees of the acquired business about the TSA arrangements and manage any changes or issues that may arise during the transition period. They should also coordinate with the seller and the external advisors to facilitate the TSA execution and administration.
- In addition to the "omitted services" construct described above, the buyer should also include language to add services or extend service durations beyond the stipulated terms if reasonably necessary due to regulatory/quality-related delays or timings. This concept is particularly applicable for businesses in regulated spaces such as pharma and medical devices.

Sample TSA services schedule

We have collated selective functional TSAs that would act as a starting point for the buyer-seller alignment. On page 3, we list associated assumptions related to TSA services below.

Finance Treasury



Run rate or one-time? *Run rate*



Minimum transition period: *12 months*



Cost considerations: *Historical allocation, pass-through if provided by the vendor, FTE-based (all IT-related costs are in IT TSAs)*

Seller to provide system administration support of NewCo's banking platforms on behalf of NewCo as required, upon mutual agreement of seller and NewCo, to facilitate the operations

(e.g., banking platform management, payment processing, collections, and cash applications) of the target business, including access to all necessary systems (e.g., ERP/treasury system).

Finance – Controllershship | Record to Report



Run rate or one-time? *Run rate*



Minimum transition period: *12 months*



Cost considerations: *Historical allocation, pass-through if provided by the vendor, FTE-based (all IT-related costs are in IT TSAs)*

Seller will perform and provide monthly and quarterly recording of accounting and sub-ledger transaction posting (e.g., routine GL entries, cost accounting updates, travel and expense accounting, other adjustments and estimates, etc.) accruals, related journal entries, account reconciliations, consolidations, and closing of books and records to NewCo for the target business. Also includes seller support to:

- Apply effective-date process and reporting changes necessary to produce a segregated trial balance, P&L, and balance sheet to NewCo for the target business consistent with existing practices.
- Identify assets and liabilities associated with the target business—and create the corresponding journal entries and reconciliations needed for the opening balance sheet in a timely fashion for NewCo to meet its obligations set forth in the stock and asset purchase agreement.
- Deliver financial statements for the target business period-end in a timely manner and use reasonable efforts to deliver such financial statements on a timeline that would enable NewCo to meet its financial reporting and investor reporting commitments.

Services to include access to all necessary systems (e.g., ERP, billing).

These services will be provided to NewCo in the same manner as such services were provided to the target business prior to the closing date. Creation of purchase accounting is typically up for negotiation.

Finance – Controllership | Procure to Pay



Run rate or one-time? *Run rate*



Minimum transition period: *12 months*



Cost considerations: *Historical allocation, pass-through if provided by the vendor, FTE-based (all IT-related costs are in IT TSAs)*

Seller will perform monthly accounts payable closing activities including reconciliations, recording of related accruals, and other related routine financial close activities of the target business for NewCo. Seller will provide NewCo with payables management and processing services (including issue resolution), and information necessary for financial recordkeeping purposes by NewCo for the target business:

- Payment (including cash disbursement) of NewCo invoices for the target business must be authorized in advance pursuant to seller policies and procedures in place at closing.
- Seller will facilitate accounts payable payments for obligations of the target business in the ordinary course, subject to advance authorization pursuant to seller policies and procedures in place at closing.
- Seller will provide NewCo with procurement support, purchase order support, and invoice resolution support for purchase orders related to the target business in the ordinary course.
- Provide purchasing process from purchase requisition and purchase order (PO) tagging, creation, and dispatch support to the target business.
- PO administration and closeout (or migration) support for any POs related to the target business in the ordinary course.
- Pay accounts payable invoices (including royalty payments) addressed to seller related to the NewCo to drive business continuity after NewCo review and approval.
- NewCo will be expected to approve or reject each proposed payment within one business day of seller's request.

Services to include access to all necessary systems (e.g., ERP, procurement).



Finance – Controllership | Order to Cash



Run rate or one-time? *Run rate*



Minimum transition period: *12 months*



Cost considerations: *Historical allocation, pass-through if provided by the vendor, FTE-based (all IT-related costs are in IT TSAs)*

- Seller will perform monthly accounts receivable closing activities and perform reconciliations of the target business for NewCo. Includes preparation of monthly accounts receivable reconciliation and accounts receivable aging reports.
- Seller will provide ongoing support for:
 - Order management
 - Billing (including renewal billing)
 - Reporting
 - Customer accruals
 - Invoice issuing
 - Review
 - Dispute resolution
 - Fulfillment of ASC 606 revenue recognition requirements and continuation of any ongoing transition in accounting methodology
- Credit, collections, and cash application, as pertains to seller's existing processes and tools. To the extent customer remittances are directed to NewCo's banking relationship(s) and additional resources are required by NewCo to perform manual cash application, NewCo will coordinate with seller for availability of required resources.
- Customer follow-ups for payment, making adjustments (e.g., credit memos), and generating reporting and metrics to support target business decision-making and cash reporting.
- Monthly review of all cash receipts, including e-commerce flows and collections to identify cash received in seller's bank accounts from customers of the target business following the effective date.
- Cash remittance based on a NewCo agreed-to threshold amount after netting against payments made by seller on behalf of NewCo, including all reasonably requested supporting schedules.

Services to include access to all necessary systems (e.g., ERP, billing).



Finance – Controllershship | Royalties and Commissions Management



Run rate or one-time? *Run rate*



Minimum transition period: *12 months*



Cost considerations: *Historical allocation, FTE-based (all IT-related costs are in IT TSAs)*

Seller will:

Services to include access to all necessary systems (e.g., ERP).

- Manage royalty agreements/sales commissions according to existing scopes of work with corresponding vendors as necessary in accordance with the seller's current practices.
- Assist in transferring royalty agreements/sales commission agreements to the NewCo.
- Provide all royalty/sales commission information reasonably requested by the NewCo for financial recordkeeping purposes for the target business.

Finance – Controllershship | Travel and Expense Processing



Run rate or one-time? *Run rate*



Minimum transition period: *12 months*



Cost considerations: *Historical allocation, pass-through if provided by the vendor, FTE-based (all IT-related costs are in IT TSAs)*

Seller will:

Services to include access to all necessary systems (e.g., ERP, T&E).

- Administer travel and expense management in accordance with seller's current practices.
- Provide all information reasonably requested by the NewCo for financial recordkeeping purposes for the target business.

IT Services – Email Management²



Run rate or one-time? *Run rate*



Minimum transition period: *12 months*



Cost considerations: *Historical allocation, FTE-based (all IT-related costs are in IT TSAs)*

Email accounts to be managed by seller until mail migration activities are complete. This may include addition, deletion, and modification of end-user mailboxes.

IT Services – Infrastructure³



Run rate or one-time? *Run rate*



Minimum transition period: *12 months*



Cost considerations: *Historical allocation, pass-through if provided by the vendor, FTE-based (all IT-related costs are in IT TSAs), number of licenses or fixed fee/tiered pricing*

- Seller to provide use and support of infrastructure (network, data centers, and related services required for network access) in accordance with existing usage. Related services include:
 - Site, WAN hardware, and support services;
 - Inter-office connectivity;
 - Internet;
 - In-premise data centers;
 - Dedicated customer connections;
 - B2B VPN connectivity to customer sites for support purposes;
 - Encrypted customer tunnel decoupling;
 - Monitoring, management, and maintenance of devices that provide connectivity in support of employee productivity functions (DHCP, DNS, external and internal IPs, INH);
 - Appropriate network security provisions such as firewalls;
 - Physical desk phone;
 - Direct inward dialing (DID), call routing (including IVR);
 - Voicemail; and
 - Digital faxing, as applicable.
- Seller to provide remote connectivity via VPN to seller's corporate network and services to existing target business employees with such capabilities currently as reasonably required by NewCo. Connectivity security measures such as logging and multi-factor authentication will be maintained until such time that VPN services are terminated.
- Seller to provide L1 and L2 IT support services for target business systems and employees, including assisting users with:
 - VPN, software, PC setup, and configuration.
 - Security systems.
 - Building access.
- Seller to provide use and access to the intranet knowledge base and information repositories including SharePoint related to in-scope dedicated and shared resources.
- Seller to provide continued use and support for file storage and sharing services. This includes the management and maintenance of existing accounts and modifications to file and folder permissions. Seller to accommodate storage growth needs as required by NewCo.
- Seller to provide use and support of conferencing and real-time collaboration software currently used by the target business, including MS Office Suite, Microsoft Teams, and any other associated technologies to the limit of existing licensing at execution.
- Seller to provide as-is use and support of conveying laptop software and hardware. Support includes all productivity software currently used by the target business for end-user computing (EUC) activities including after-hours and weekend support, EUC software distribution and assessment management, virtual desktop infrastructure (VDI) usage, and provisioning assets to NewCo's new hires.
- Seller to provide support for end-user mobile devices. This includes all activities enabled by mobile device management (MDM) software such as securing and partitioning corporate data from personal data on mobile phones allowing access to enterprise applications (email, calendars, documents) via a mobile device, and supporting migration activities.
- Seller to provide usage and support of existing data center services including:
 - System software and OS patching services, event monitoring for warning and critical alerts (including SOC, NOC, and system monitoring), and standard IT service management operations.
 - Physical hosting (servers, cabinet rack space, power, cooling, and facility services such as fire suppression).
 - Server virtualization on physical servers (for reduced cost, shared resource utilization), processors, memory, storage solutions, etc.
 - Storage medium, i.e., network attached storage (NAS) systems, storage area networks (SANs).
 - Onsite data backup services and support.
 - Offsite data/medium storage cost, i.e., backup tapes.
- Seller to provide cloud infrastructure and services related to hosting production, test, train, and development cloud environments.
- Seller to conduct database administration as required, consistent with the services currently provided by seller on existing production and development systems. Administrative functions include:
 - Backup;
 - Recovery;
 - Incident and performance tuning; and
 - General troubleshooting.

- Seller to conduct regular backups, retain data, and complete restore operations as required, consistent with the services currently provided by seller. These services may include schedule or retention modifications required.
- Seller to continue any existing business continuity planning (BCP) and disaster recovery services to the NewCo as required, consistent with the services currently provided by seller, in support of the migration activities. This includes third-party disaster recovery services, initiation of BCP, and disaster recovery in the event of an emergency. Seller to provide maintenance and updates to the BCP and disaster recovery until such time as all systems services are transitioned.

- Seller to provide support and maintenance related to all internal and external (third-party) data feeds into production systems.
- Seller will maintain webpages and subdomains.

The seller will not support data network or telecom system enhancements or bandwidth increases at existing facilities.

IT Services – Information Security⁴



Run rate or one-time? *Run rate*



Minimum transition period: *12 months*



Cost considerations: *Historical allocation, pass-through if provided by the vendor, FTE-based (all IT-related costs are in IT TSAs), number of licenses or fixed fee/tiered pricing*




- Seller will continue to provide vulnerability scanning, penetration testing, and forensic services as required, consistent with the services currently provided by seller. Services should include activities and reporting that are required to meet compliance requirements and regulatory needs and align company assets with, consistent with the services currently provided by the seller and industry-standard leading practices. Seller to provide results of vulnerability scanning and penetration testing activities to the NewCo. Seller to provide threat and vulnerability management and data protection services, security and backup of data while maintaining compliance with national and global regulations, and monitor, detect, and manage breaches of information security.
- Seller to provide use and support of distributed denial of service (DDoS), web filtering, and application testing services. This includes activities required for compliance/regulatory needs and industry standard leading practices, consistent with the services currently provided by seller, related to security.
- Seller to provide use and support of all services relevant—consistent with the services currently provided by seller, to drive compliance—and regulatory and security needs are met.

Information security services:

- Provide incident management and response;
- Provide insider risk for assets with seller imaged assets;
- Provide security audit support;
- Provide security awareness training;
- Provide cybersecurity migration services;
- Provide enterprise security, endpoint protection for seller's imaged assets;
- Facilitate cyber/fraud insurance coverage for data in the seller's data center;
- Provide cyber risk assessment;
- Execute HITRUST remediations, as applicable;
- Perform independent privacy assessment;
- Provide cloud security support;
- Decouple integrations with seller;
- Conduct log monitoring; and
- Provide support to reissue SSL certificates under the target business's new name.

HR – US Employee 401(k) Benefits Administration⁵




(Applicable for employees in seller's legal entities; additional considerations apply)

-  **Run rate or one-time?** *Run rate*
-  **Minimum transition period:** *Until the open enrollment for the next calendar year*
-  **Cost considerations:** *Historical allocation, pass-through if provided by the vendor*

- Seller to provide 401(k) administration support in partnership with NewCo's third-party vendors for the 401(k) plan covering the NewCo employees (the "NewCo 401(k) Plan"), including:
 - Day-to-day plan administration.
 - Contributions to the NewCo 401(k) Plan on behalf of NewCo employees—and drive contributions (employee deferrals, match, non-elective) to process timely and accurately; provided, buyer shall establish or shall cause an ACH account to be established so that all NewCo contributions to the 401(k) Plan can be debited by the plan recordkeeper directly from such account.
 - Support to drive years of service credits are accurate (including support for calculating years of service).
 - Support annual testing requirements, 5500 filings, and annual plan audits by providing data as required for the buyer to execute.
- Seller will provide buyer all existing data and relevant documentation for buyer to set up the 401(k) Plan. For the avoidance of doubt, the NewCo employees will not participate in seller's 401(k) plan, and NewCo shall be responsible for all expenses of establishing, implementing, and operating new plan, including all vendor and legal fees to the extent not paid by the plan.

Tech Products

(Applicable for organizations having technical product)

-  **Run rate or one-time?** *Run rate*
-  **Minimum transition period:** *12 months*
-  **Cost considerations:** *Historical allocation, pass-through if any component is supported by the vendor, FTE-based (all IT-related costs are in IT TSAs), number of licenses or fixed fee/tiered pricing*

- Seller to provide use agreement support for various industry standard licensed coding sets.
- Seller to provide access and support of internal bots to process data into the content manager.

Commercial Operations

(Applicable for organizations having part of commercial operations supported by shared services or center of excellence)



Run rate or one-time? *Run rate*



Minimum transition period: *12 months*



Cost considerations: *Historical allocation, pass-through if any component is supported by the vendor, FTE-based (all IT-related costs are in IT TSAs)*

- Seller to provide pricing administration for customers, including processing maintenance requests, performing contract analysis, and responding to price inquiries, as well as:
 - Pricing setup, management, and maintenance (GPO [if applicable] and direct customer contracts);
 - Pricing review and update, including distribution agreements (DAs); and
 - Providing pricing files to distributors and direct customers (as applicable).
- Seller to provide administrative support related to tenders, including notification of upcoming tenders, reviewing all tenders, organizing company and product information requested in tenders, coordinating with the commercial teams with respect to responses to tender language and pricing, preparing and drafting responses to the tenders, seeking review and approval of legal terms and conditions from buyer's legal representatives, and completing and preparing the final tender packages for submission. After tender submission, the seller to provide support in responding to customers' and administrators' questions about the tender and responding to document requests related to the tender submission.
- Seller to provide support for servicing non-consenting customers (order-to-cash and distribution/warehousing until expiry of last non-consenting tender).
- Seller to provide demand forecast data and service to support shipment, transport, and sales order processing-related activities.
- Seller to provide support and access to current services provided under seller's warehouse, including:
 - Warehouse and logistics services, including transportation to customers, and distributors served by this market.
 - Customer service support, including:
 - Order entry;
 - Responding to all customer inquiries, both financial and product-related;
 - Managing returned products and processes as currently managed;
 - Claims processing for product returns to reimburse credit to customer;
 - Customer invoicing; and
 - Customer data management.
 - Consignment inventory management services including order-to-cash services (accepting and fulfilling orders).

Facilities and Real Estate Support



Run rate or one-time? *Run rate*



Minimum transition period: *12 months*



Cost considerations: *Historical allocation, pass-through if any component is supported by the vendor, FTE-based (all IT-related costs are in IT TSAs)*

- For all NewCo employees that currently occupy non-conveying facilities, seller will continue to provide access to workstations, common area, gyms, cafeteria, and other amenities.
- For facilities in which seller is providing facilities management services, seller will continue to provide the same facilities management support (cleaning, repairs, maintenance, vendor support).
- For both leased and owned facilities, the seller will continue to provide security technology services, including:
 - Badge access and troubleshooting support.
 - Access control (card readers).
 - Camera/closed circuit TV (CCTV) support.

Supply Chain Support



Run rate or one-time? *Run rate*



Minimum transition period: *To be discussed and has dependency on TMA expiry timeline*



Cost considerations: *Historical allocation, pass-through if any component is supported by the vendor, FTE-based (all IT-related costs are in IT TSAs)*

- The seller to provide Free Trade Zone services in the applicable jurisdiction (where non-FDA approved products are held until deployed outside applicable jurisdiction).
- The seller to provide support for global trade operations and international logistics.
- The seller to provide transportation services as needed for the movement of products between regions across the global supply chain, including returns and rebalance needs.
- The seller to provide classification, origin determination, FTAs, valuation, master data management, license determination, govern inquiries, and trade audits and party screening services.
- The seller to provide import and export services (includes LSP broker management), transportation support, international supply chain support (delivery success, new lane setup).
- The seller to provide services to support quality inventory control (QIC) processes within ERP and QMS/SC systems as well as inventory resolution support.

Below are one-time support-related services required for TSA exit.

Knowledge Transfer



Run rate or one-time? *One-time*



Minimum transition period: *Varies by function and by topic(s)*



Cost considerations: *FTE-based (all IT-related costs are in IT TSAs) with fixed hours per month*

- Seller will provide subject-matter-expert knowledge transfer for all business functions, including, but not limited to: (i) legal, (ii) compliance (including, but not limited to, IT and regulatory), (iii) treasury, (iv) tax, and (v) marketing, sales, and customer support (regardless of whether any such function is covered by a TSA service) for the purpose of knowledge transfer and business continuity. Seller will provide copies of all related documentation, including regulatory and compliance policies and procedures currently in effect (including industry-specific regulatory and compliance documents) specific to the target business. Knowledge transfer will be coordinated through TSA governance and provided during normal business hours, upon request.
- Provide reasonable assistance to NewCo with respect to the target business, with data migration and transition activities (e.g., interface and configuration changes), given historical knowledge and understanding of current-state and legacy data of the target business. This includes access to and support exiting or transferring data from all finance-related systems (e.g., ERP, Concur/T&E, Salesforce/CRM) and depends on related IT services.
- Seller will make available through TSA governance knowledgeable service seller personnel for knowledge transfer and discussion with respect to the services and the processes, procedures, and systems used in the provision of the services. Seller shall, and shall cause the company, and each of its and their respective representatives, to: (i) furnish promptly to NewCo all information concerning the target business as NewCo may reasonably request with respect to the services and the processes, procedures, and systems used in the provision of the services, or in connection with the integration of the target business by NewCo following the closing, and (ii) afford NewCo and its representatives reasonable access during normal business hours to the business employees and the transferred assets for the same purpose.

Functional Documentation Extract(s)



Run rate or one-time? *One-time*



Minimum transition period: *N/A*



Cost considerations: *N/A*

Seller will provide extracts of all functional products/services/ processes data used in connection with the target business based on parameters agreed to by the seller and NewCo.

Contracts Novation



Run rate or one-time? *One-time*



Minimum transition period: *N/A*



Cost considerations: *N/A*

For NewCo's business customers/vendors with contracts that, in the seller's judgment, require coordination with NewCo's customers/vendors, NewCo will provide services including, but not limited to, coordination with the respective customers/vendors

to drive completion of contract assignment/novation/split, billing, accounts receivable/payable, monitoring and reporting of aged receivables/payables, follow-ups on payments, and cash application/reimbursement.

Data Migration Exit and Cutover



Run rate or one-time? *One-time*



Minimum transition period: *N/A*



Cost considerations: *Pass-through if any component is supported by the vendor, FTE-based (all IT-related costs are in IT TSAs)*

Seller to:

- Provide extracts from target business solutions including key architecture diagrams, fields, attributes, and hierarchies to help inform NewCo's end-state for a replacement solution.
- Perform data separation work to segment and stage target business's data from seller data, including data disbursement/retention considerations on legal holds (if applicable).
- Provide extract of target business's data in native form (to be determined by seller) for purposes of testing/validation.
- Provide final extract of target business's data in native form (to be determined by seller) for purposes of final exit.
- Seller will assist in designing forwarding rules and redirecting traffic for NewCo provided domains, as needed, and provide appropriate communication for the products conveying over to NewCo.
- Seller to provide support for cloud accounts in preparation for migration to target business tenant, assist with transferring clean accounts, and separating non-target business workloads including bifurcating virtual private clouds.

- The seller will provide real-time email out-of-office messaging response for all users and shared mailboxes that move with the target business, notifying the sender that the sender should use the new NewCo address for the emailed user as directed by the NewCo. The NewCo will need to re-create internal email distribution lists.
- Provide reports and all data extracts from supported applications that are required, in NewCo's reasonable judgment, to support the day-to-day running of the target business post-closing, including data required to analyze and create tax reports that are required by the target business in the ordinary course and as mutually agreed upon by NewCo and seller, and depends on related IT services. Examples of reports include new sales vs. renewals; active customers; billing summary by customer, by product, by period; collection per period, per customer; and receivables aging.

The above services are inclusive of dedicated applications and shared applications where target data resides.

Desktop Data Migration



Run rate or one-time? *One-time*



Minimum transition period: *N/A*



Cost considerations: *Pass-through if any component is supported by the vendor,
FTE-based (all IT-related costs are in IT TSAs)*

Seller will provide access for NewCo to perform desktop and laptop data migration using One Drive or similar agreed-upon cloud-based solution.

Current device life cycle will continue to be supported.

- Target business new hires will be onboarded through seller's existing HR workflow, and standard hardware will be provisioned and imaged by seller.

- NewCo may reimage any EUC devices that transfer support and security controls from seller to NewCo.
- At the end of the transition period, all EUC devices will be reimaged and removed from seller's control and wiped via remote process.
- All provisioned equipment, associated warranties, and licenses will be retained by, or transferred to, NewCo at the end of the transition period.

Regulatory License Transfer Support



Run rate or one-time? *One-time*



Minimum transition period: *Adjusted to support the last MA transfer post-legal entity name change, as applicable to the transaction*



Cost considerations: *Pass-through if any component is supported by the vendor,
FTE-based (all IT-related costs are in IT TSAs)*

- Seller to support transfer or usage of import licenses and other necessary approvals to NewCo or NewCo's designated entity. Seller to provide support to maintain existing licenses and access to the market for existing products.
- Seller to provide marketing authorization holder (MAH) services until MAHs are established and products are registered by the NewCo.
- In those countries for which the NewCo does not have the personnel, the seller will support any field action. These activities include:
 - Notification to consignees;
 - Collection, reconciliation, disposition, rework, over-labeling, and/or scrapping of affected product; and
 - Submissions to impacted regulatory authorities.
- The seller will keep NewCo informed of current status of all field actions on a monthly basis. The seller will provide all regulatory communications to NewCo for review prior to submission to regulatory authorities. To clarify, this support is contingent upon the NewCo providing disposition information to regions to enable timely closure.
- The seller will maintain resources to support the complaint intake process as it exists at time of close, using existing systems until the earlier of such time that a support model is implemented or the end of the service period.

- The seller will provide regulatory affairs services to support the NewCo in any necessary regulatory authority interactions and/or regulatory submissions under review by the regulatory authority on the effective date or submitted under the seller's name after the effective date.
- The seller will provide the regulatory documentation (including but not limited to product submissions, approvals, certificates, and a complete list of all catalog numbers within scope of each license/approval). For product registrations owned by third-party license holders, the seller will provide appropriate Regulatory Affairs contacts.
- For registrations owned by the seller, in the event any renewal applications are required before the NewCo transfers registrations to its name, the seller will review and approve the renewal application for completeness, accuracy, and compliance. The seller will then submit the renewal application and support the renewal process. For clarity, the NewCo will prepare renewal applications.
- The seller will work with the NewCo to facilitate the transfer of site registrations, including but not limited to FDA establishment registrations and device listings, state licenses, etc.

The seller will provide QA support for product holds, inbound products, and country-specific labeling-over-labeling if needed.

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Endnotes

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