

# Contracting For An LIS – Protecting Your Interests

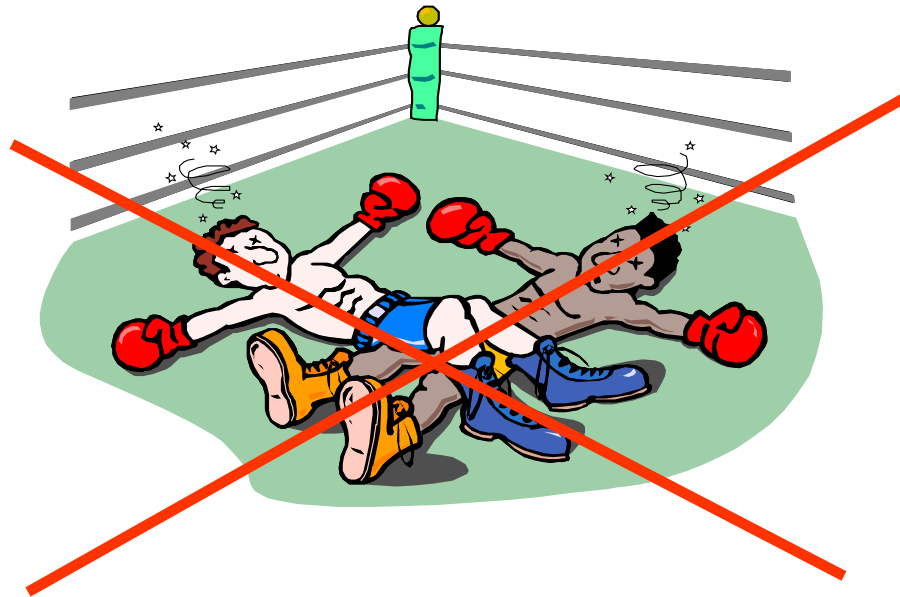
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# How NOT to Contract!



# Topics

- What is a Contract and type of Contracts
- Negotiating long-term vendor contracts
- Service level agreements
- Modifying the vendors standard terms
- Risk-based contracts
- Updates and upgrades
- Data access and data conversion
- Traditional vs. ASP Agreements



# A Contract Is:

- “A promise or set of promises for deliverable items and/or services for the breach of which the law gives a remedy; or the performance of which the law recognizes as a duty.”
- i.e. If you say that you will do it, then you should. If you don't do it or don't do it on time, you will be penalized (or not rewarded).



# Why A Contract?

- Insure that all rights, responsibilities, conditions and obligations of all parties are understood, accepted and protected.
- Clear understanding of those responsibilities, conditions and obligations is the most important element.
- Ideally, after the contract has been signed and filed away, it need never be taken out again.



# Different Objectives

## User

- Pay a fair price
- Accurate, complete project plan
- Dedicated, trained resources applied to their installation
- Excellent service levels
- On-time install
- Protection against vendor false claims

## Vendor

- Maximize profits
- Low sustainable staffing levels
- Hospital meet its staffing commitments
- Service levels sufficient to maintain customer satisfaction
- No penalties, reduced responsibility for success



# Approach To Negotiation

- Include contract provision desiderata in RFI/RFP
- Vendor response to be part of contract
- Request sample vendor contract during selection
- Form a negotiating team
- Prioritize (realistically) your objectives
- Maintain an “issue-resolution” attitude
- Be flexible (within limits) – Be fair
- Don’t be adversarial



# LIS Contract Checklist

- System Specifications
  - Function/Feature
- Operational
  - Performance
  - Reliability/Availability
  - Backup/recovery
- Acceptance Testing Criteria



# LIS Contract Checklist

- Delivery and Implementation Performance Milestones and Schedule
- Terms and Conditions of Licenses
- Payment Terms
- Source Code Availability
- User Programming Provisions & Constraints
- Acceptance criteria (function/feature, performance, uptime, backup/recovery, remedies)



# LIS Contract Checklist

- Inclusion of RFI/RFP Response
- Confidentiality of Data (vendor access)
- Provision for Additional Locations
- Provision for Additional Users
- Rights to Future New Applications (lock price)
- Manuals and Other Documentation
- Performance (standards, workload/user growth)



# LIS Contract Checklist

- Service Level Agreements
  - When Do Support Fees Start?
  - New Releases
  - Problem Resolution
  - Guaranteed Renewal
  - Coverage (Days, Hours)
  - Response Times/Remuneration
  - Cost (Limitations on Increases)
  - Escalation
  - Default (Including 3<sup>rd</sup> Party Access)
  - *Guarantee against obsolescence for x years*



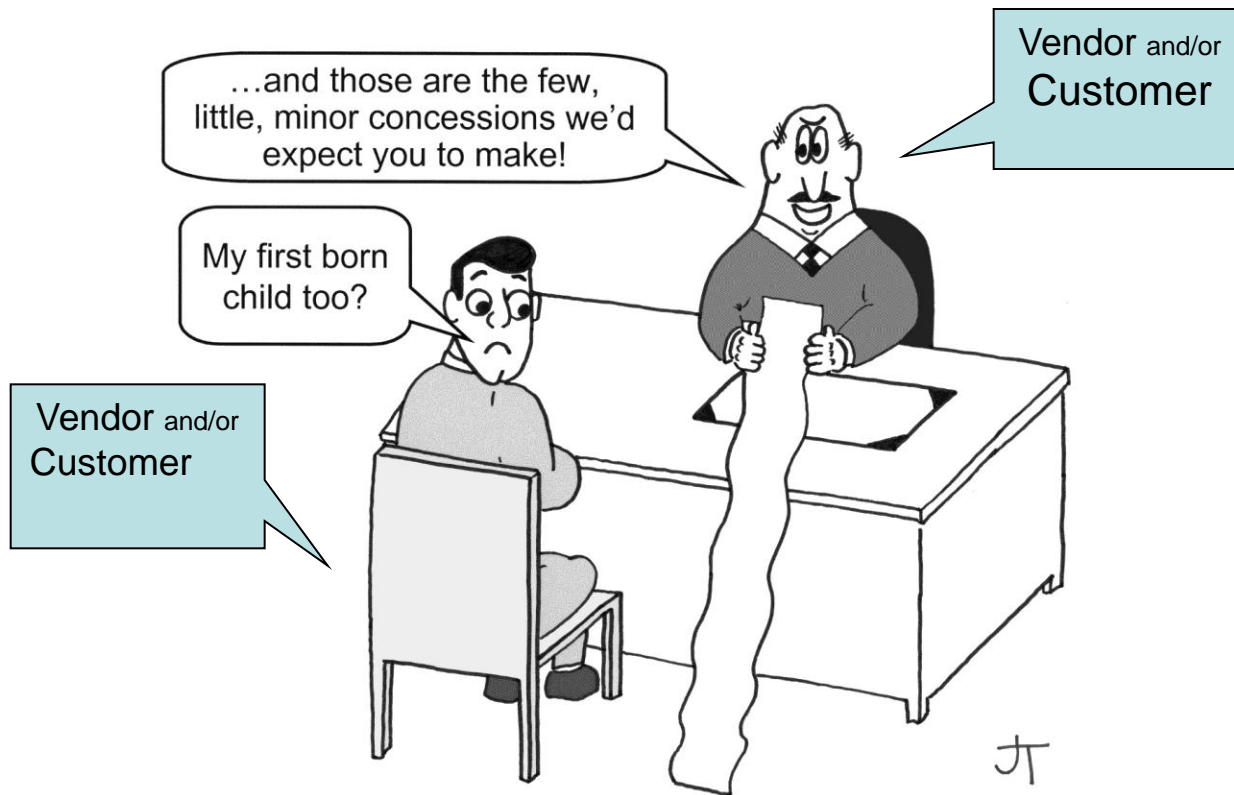
# LIS Contract Checklist

- Legal Stuff
  - Arbitration vs. Litigation
  - Laws of YOUR State
  - Cancellation
  - Remedies
  - Liability
- Domain Of Your Attorney



# Negotiating A Long-term Vendor Relationship

- “ a two-way street”

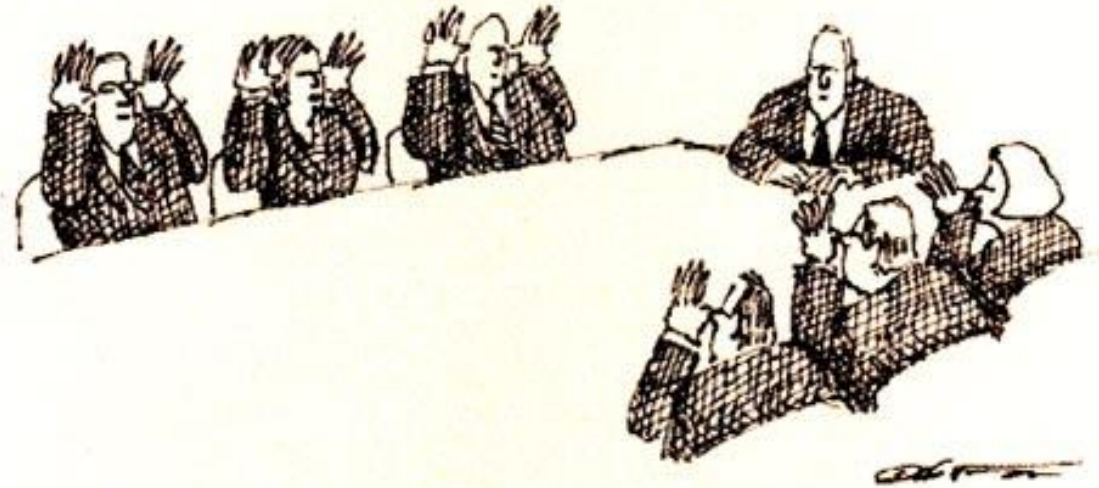


# Success Factors

- Understand your vendor's culture – corporate visits
  - Long-term partnership
- Set your own internal rules, objectives and expectations early on – but be prepared to change
- Create a control organization and project team
- Clearly define external vendor access to your organization
- Keep communicating on a regular basis



# How to Avoid A Bad Contract Process



*The mediator sensed that the negotiations were in trouble.*



# Approach To Negotiation

- Both disclose “mandatory” requirements up front
- Vendor response to RFI/RFP to be part of contract
- Form a negotiating team early on
- Prioritize (realistically) your objectives
- Be prepared to resolve issues quickly
- Be flexible (within limits) – Be fair
- Don't be adversarial



# Contract Negotiation Basics

- Premise # 1
  - Worst time to negotiate contract is during contract negotiations
- Premise # 2
  - The vendor standard contract has value
  - The stuff in bold can be changed
- Premise # 3
  - Contract must cover the ENTIRE system
- Premise # 4
  - Contract must be fair and protect the interests of both parties (not a contest)



# Risk Based Contracts

## Pros and Cons



# What is Risk Based Contracting?

- An alliance between a buyer and vendor incorporating significant financial, implementation, support and planning commitments on both parties
- A method to share in the benefits of a successful system implementation as well be held accountable for the risks of failure
- A long-term relationship, not just a one-shot purchase



# What is it not?

- Solely a method to penalize a vendor
- Applicable to all contracts
- Applicable to all implementations



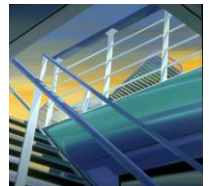
# What are the types of risk-based contracts?

- Outsourcing
- Development partner agreements
- Tied to Milestone achievement
- Performance based
- Benefit based
- Combinations of above



# Steps

- Gain top level commitment
- Perform system assessment
- Define base line objectives (quantify)
- Define expected service levels
- Define expected growth
- Define communication and monitoring processes
- Set expectations



# Vendor Responsibilities

- Products must work - sell what you can support
- Be prepared to provide trained resources
- Treat customer as strategic business partner
- Manage the relationship with on-going communications



# Customer Responsibilities

- Be prepared to dedicate adequate resources
- Be prepared to spend more money for more vendor support
- Executive level commitment



# How Do You Quantify Benefits?

- Clear, measurable milestones with defined resources required from both parties
- Metrics to measure performance against predetermined goals
- Pre-Implementation Baseline (PIB)
- Post-Implementation Audit (PIA)



# Example - On-time delivery

- Milestone Based
  - Project defined in X milestones.
  - At each milestone, vendor and customer must have met their defined work requirements.
  - If date met, vendor gets paid.
  - If milestone missed because of customer delay, vendor still gets paid.
  - If earlier achievement, vendor gets paid plus bonus.
  - If milestone missed and customer has met its obligation, vendor pays customer penalty.



# Example - Risk/Reward

- System will reduce one full FTE due to implementation of Auto-verification
  - Metric - 50% of all tests will be auto-released
- If metric met and customer has not reduced or re-allocated FTE - shame on customer!
- If metric is not met, vendor pays pre-determined penalty
- If metric is exceeded, customer pays additional incentive fee



# Risk Contracting Summary

- It's not for everyone
- Not all vendors are willing to participate
- Must have commitment at all levels - both with enterprise and vendor
- If based on benefits to be realized, a comprehensive benefits realization study with measurable metrics must be performed
- As a strategic partnering agreement it can be a win-win for everyone!!



# Data Access and Conversion

- Contractual agreement for access to your data
  - With or without vendor assistance
- Third party tools
  - File/database connectors and extraction
  - XML and HL7 interface streams
  - Screen/report scraper
  - Data conversion



# Healthcare Economic Tradeoffs

## Traditional vs Applications Services Provider

### TRADITIONAL MODEL

- Capital Budget
- Fixed Expense
- Onsite Computers
- Maintenance Intensive

### ASP MODEL

- Operations Budget
- Variable Expense
- Offsite Computers
- Central Maintenance



# ASP - Pros

- Low Up-Front Investment
- Operating Budget – Not Capital
- Lower Lifetime Costs
- Risk Sharing with Vendor
- Solves Skill Shortage
- Limits Administrative Responsibilities
- Technology Upgrades from ASP
- Conformance with Regulations via ASP



# ASP - Cons

- Generic Solution – May not “fit”
- Inadequate Speed – Bandwidth
- Inadequate Reliability, Security
- Risk in Achieving Actual Savings
- Long Term Contract to get Payback
- Loss of Control of Data
- Vendor Stability, Longevity Issues



# ASP CONTRACTS

## Things To Consider

- Performance-Response times
- Reliability-guaranteed uptime
- Pricing and Duration Of Contract
- Interfacing Requirements
- Training
- Upgrade Cycle & Notification
- Availability of “Core” Applications
- Security
- Consequences of failure to meet SLA and remedies



# Summary

- Contracts need to be “Win-Win”
- There are different types of contracts
- Prepare a contracts checklist
- Be realistic with your “demands”
- Assure that your primary interests are protected
- Communicate – Negotiate
- Both parties want this to work



**FINI...NO MAS...FINITO...  
THE END**



# Questions?

