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 been 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\textsuperscript{rd} Party Access)
  – \textit{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”

...and those are the few, little, minor concessions we’d expect you to make!

My first born child too?

Vendor and/or Customer

Vendor and/or Customer
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

<table>
<thead>
<tr>
<th>Traditional Model</th>
<th>ASP Model</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capital Budget</td>
<td>Operations Budget</td>
</tr>
<tr>
<td>Fixed Expense</td>
<td>Variable Expense</td>
</tr>
<tr>
<td>Onsite Computers</td>
<td>Offsite Computers</td>
</tr>
<tr>
<td>Maintenance Intensive</td>
<td>Central Maintenance</td>
</tr>
</tbody>
</table>
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?