[The Art of]
IT Contract Negotiations

How to get from lose-win to win-win

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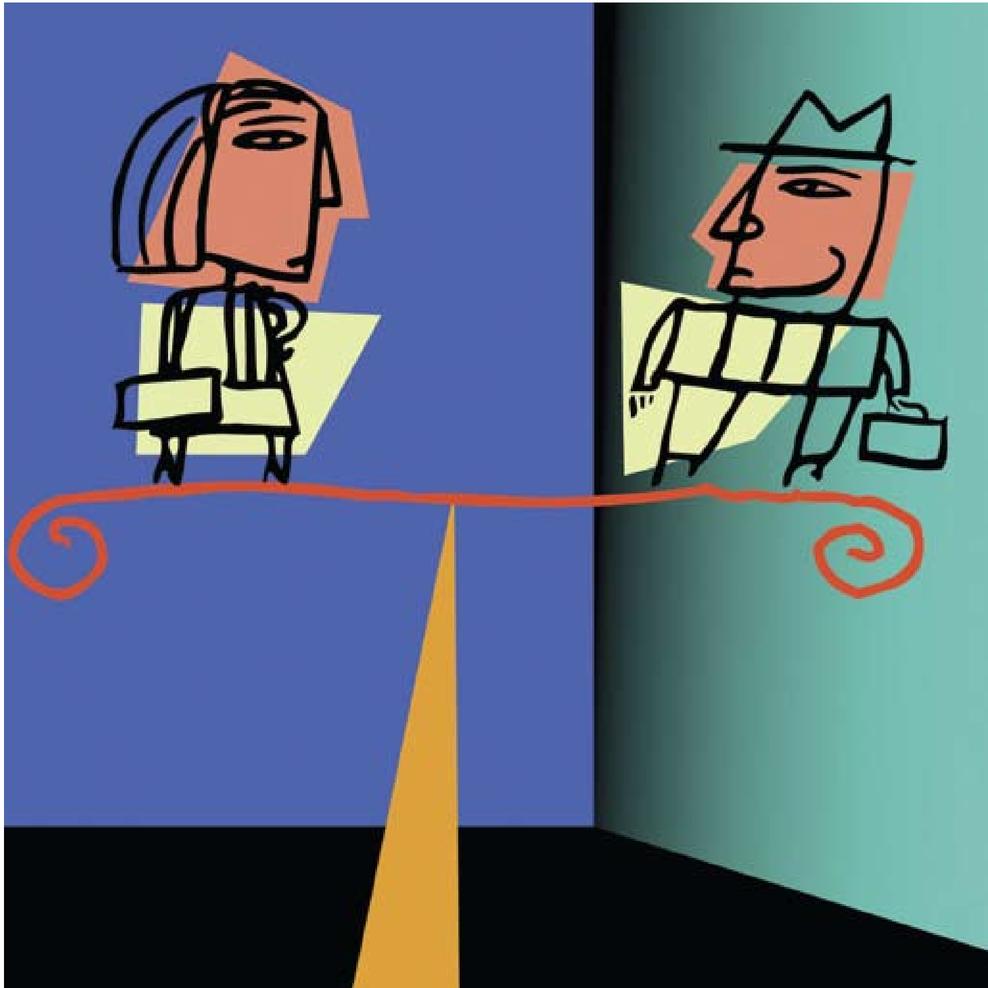

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The long vendor selection process is finally over. You have selected the perfect system for your cancer program. The vendor calls, thanks you for selecting them, and says they are sending the contract package so you can sign it and get the project started. The next day you receive hundreds of pages of order forms, catalog numbers, and prices along with several bound, preprinted sets of contracts. Overwhelmed, you read through the paperwork and discover that your cancer program has incurred all the risks, while the vendor has little to no accountability for the success and/or failure of your cancer program's most critical IT project. Sound familiar? Fortunately this nightmare does not have to end badly. Take a deep breath and a step back. Remember, you are the customer and you still have what the vendor values most: the deal and the money.

Here are some practical tactics to help your cancer program or practice shift the paradigm from a lose-win contract to a win-win contract that will help facilitate a long-term, successful customer/vendor relationship. Before we start, you should first understand that getting the "best" price from the vendor may not ensure that your cancer program will be protected from a failed IT project or long-term challenges.

Deal or No Deal?

The first step to creating a win-win contract is to determine whether the vendor is willing to negotiate a win-win deal *and* whether your cancer program is prepared to pay for the success associated with a win-win transaction. The win-win contract approach described in this article is a risk-based approach. Not all vendors are willing to negotiate a risk-based contract. In fact, some vendors may seem unwilling to negotiate any of their standard contract language. To secure a win-win contract, your cancer program must be

committed to forcing the vendor to negotiate a contract that is mutually beneficial to both parties. Keep in mind: cancer programs willing to commit to a risk-based agreement have a track record of paying a little more for performance. This scenario may be not be the norm at your institution, but implementation of a major IT system, such as an EMR, may be a great time to test the waters.

What You Get for Your Money

Figure 1 depicts a typical cost breakdown of the fees paid to a vendor for a clinical IT application. Note: This does *not* reflect the total cost of ownership (TCO) for the system. A TCO model entails many other factors, including but not limited to, workstations, network upgrades, connectivity, travel, internal labor, resource replacement costs, and more.

As Figure 1 shows, software and implementation costs equal about 50 percent of the total cost of the application. These two items also have the biggest impact on the success of the overall system implementation. Therefore, software, software support, and implementation fees are critical factors in calculating any risk/reward structures. The other items included in Figure 1—subscriptions, hardware, and hardware support—are often "pass-through" charges from external vendors that are passed on to the application vendor and then, finally, to you, the client. Purchasing all major components from the vendor can be to your advantage if the vender is willing to provide maintenance and support for the entire integrated system (e.g., software, hardware, subscriptions, and support). This "one-stop-shop" approach allows you to allocate a greater percentage of risk to the vendor who now controls a much greater percentage of the overall system.

The Price is Right?

Ideally, during the vendor selection process you will have two or more vendors competing for your business. If you cannot negotiate with two vendors simultaneously, the following recommendations can also apply to a sole source selection process.

First, determine how the vendor formulates its pricing methodology (e.g. beds, events, revenue, etc.). If you don't fully understand the vendor's pricing methodology, you won't be able to evaluate the vendor's price compared with the prices of other vendors or predict increases/decreases in price as your cancer program grows/shrinks.

To determine if you are getting a fair price, you can:

- Compare the vendor's proposed prices to those of competing vendors
- Obtain public records for prices paid from other contracts
- Contact referral sources to obtain their pricing methodologies
- Hire a consulting firm to show how your prices rank against other similar clients in the marketplace.

Once you have other references on the vendor's pricing, you can develop a ranking methodology to compare the vendor's proposed pricing with that of a) competing vendors, and b) other facilities.

In calculating the overall cost of the system, obtain pricing for *all* of the vendor's offerings to ensure that your cancer program is not missing any hidden costs. For instance, your program may intend to implement certain modules or add-ons in the future. Additional items can dramatically affect the overall cost analysis if not taken into consideration during the initial negotiation process. Try to procure a discount off the price of future purchases for a defined period of time, as well as a discount on any increases in the scope of the underlying system purchase. Without guaranteed pricing discounts, these future fees can be an unpleasant surprise to your program's capital and operating budgets in future years.

Again, getting an artificially low price does not ensure success and may lead to poor vendor support or implementation. Think of pricing like a balloon—when you push down in one area, another area expands in unforeseen and unpredictable ways.

Fair pricing can be used very effectively as the basis for risk/reward negotiations. At the end of the day, the vendor has to make money to stay in business and properly service your account. Using a fair pricing methodology sends a message to the vendor that your cancer program is willing to be fair—as long as the overall contract package results in a win-win for both parties.

Aligning Goals

Even in the best of circumstances, providers and vendors start with conflicting goals (see Table 1, page 34). Once your cancer program has negotiated a fair price for the vendor's services, the next step is to create a risk/reward structure to align these goals.

At the start of contract negotiations, the cancer program typically has all the risks and must work toward obtaining the appropriate protections from the vendor. Otherwise, if the vendor fails to deliver on the expectations, your program will suffer. If your cancer program does not successfully complete implementation the first time around, it can be very difficult to recover and "right the ship." The good news: successful IT implementation is possible and can bring rewards such as a return on investment (ROI) and the potential to fundamentally transform the business, clinical, and/or financial operations of the cancer program. Having a vendor as your partner (and not your adversary) can help ensure your program's success. Aligning the goals of both parties can lay

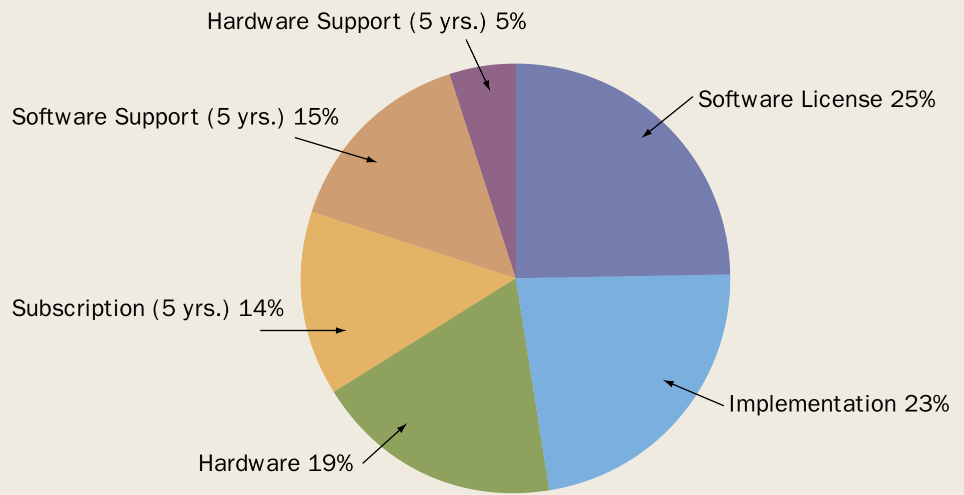


Figure 1. Typical Breakdown of Fees for a Clinical IT Application

the foundation for this partnership and help motivate everyone to work toward common milestones and deliverables.

The first step is to identify risks and/or rewards over the course of the entire IT project. This move provides a continuous stream of interest and staff involvement, and helps avoid let-downs at various stages of the IT implementation. Remember, aligning both parties' business objectives is much better than pointing fingers at each other—the "blame game" is a poor way to motivate your staff and the vendor. Here are five approaches to align provider and IT vendor goals:

1. *Set up milestone payments and/or adjustments associated with different deliverables throughout the project*. For example, pay a certain pre-defined amount upon completion of the Design Phase, but have quantifiable criteria to determine whether such payment should be increased or decreased depending on the quality of the deliverable.
2. *Use compliance-based final acceptance procedures*. The cancer program can outline "must-have" functionality. In addition, no payments will be paid to the vendor until such functionality is tested and verified by the cancer program as complying with its specifications.
3. *Develop a performance-structured support model*. For example, your cancer program could distribute customer satisfaction questionnaires to staff and physicians, and base ongoing support payments on the quality of the survey responses.
4. *Consider sharing return on investment (ROI) gains*. If the vendor's product and functionality affects your ability to achieve ROI, are you willing to share some ROI to get the vendor's attention? Will the vendor give back part of the cost of the application if you do not achieve your ROI benefits? Your cancer program can determine the pre-system implementation ROI baseline, and then base any ROI payments or credits on the measurement of pre-determined, future-state metrics that correlate back to the baseline measurements.
5. *Adopt the "fails, meets, or exceeds" methodology*. In this approach, the vendor's hourly rate for implementation services is reduced, left the same, or increased based upon the vendor's performance during a defined period of time. For this model to work properly, the success criteria used must be realistic, measurable, agreed to, and readily explained. These criteria can be broken down into components to make them more manageable. The vendor's hourly rate would be directly affected based upon its success or failure in meeting pre-defined criteria. For example, the IT vendor might be paid $150/hour for meeting the needs of the cancer program. This amount can be increased—$175/hour for exceeding expectations—or decreased—$125/hour for coming in below expectations.

Contract Review: The Fine Print

The contract review process is time and resource intensive. Your senior IT leader may need several months to complete all the tasks associated with the initial contract review. This staff member will need to work closely with an experienced IT contract attorney to ensure that the business, clinical, and technical concepts are not lost in the details of the final contract documentation.

Contract negotiations—part art, part science—demand a great deal of dedication and perseverance from all members of the cancer program. Creating a win-win contract can be time-consuming, and even frustrating, but never lose sight of the fact that you will be "living" with this vendor and this IT system for many years into the future. Structuring a contract that aligns and incorporates both parties' goals is critical to not only the success of the project, but the overall, long-term success of your practice.

Your cancer program has negotiated a fair price for the IT system. Check. The cancer program and IT vendor have agreed on a risk/reward model that aligns both parties' business objectives. Check. And now everyone is ready to sign the contract documentation. But wait! Before you sign on the dotted line, you need to take a good look at the vendor's standard documentation. Four critical legal issues involved in a typical acquisition of healthcare technology are:

1. Ensuring the IT project is on time and under budget
2. Understanding liability limits
3. Developing documentation and acceptance testing
4. Obtaining adequate maintenance and support now and for the future.

In today's competitive environment, **budget overruns and endless implementation projects are unacceptable.**

Before we look at each of these issues, a caveat: each transaction presents unique legal and operational issues, and the particular method(s) of addressing those issues will change substantially with each transaction and each vendor. The following guidelines—including examples of language taken directly from real-life vendor contracts—can help cancer programs mitigate the risks inherent in vendor-oriented contract provisions.

Ensure Your IT Project is On Time and Under Budget

Most, if not all, healthcare entities have experienced technology acquisition projects that significantly exceeded budgets and/or project timelines. In today's competitive environment, budget overruns and endless implementation projects are unacceptable. A number of contractual tools are available to ensure that *your* IT project is completed on time and under budget.

Most standard vendor agreements (Agreement) do not contain enforceable project timelines. When pressed, most vendors try to avoid the development of a detailed work plan until after the Agreement is executed by the parties. Even when a detailed work plan is attached, vendors will usually attempt to use a "level of effort" (e.g., "commercially reasonable" efforts) standard to describe their contractual obligations. Here is an example of such legal boilerplate language.

> Following the Effective Date of this Agreement, Vendor shall develop a project plan (the "Project Plan") that describes tasks and events leading to the implementation of the System. Vendor and Customer expressly acknowledge and agree that any timelines or schedules set forth in the Project Plan shall not be considered firm or fixed dates, and are to be regarded only as the estimated dates for beginning and completing the described activities. Vendor agrees to use commercially reasonable efforts to perform the tasks assigned to Vendor in such Project Plan; provided, however, that Customer understands and agrees that Vendor's performance is conditioned on the full performance of Customer's responsibilities under this Agreement, including, but not limited to, the performance of all responsibilities in the Project Plan, and the provision of appropriate equipment, supplies, work space, and other facilities deemed necessary by Vendor.

So what does all this legal jargon actually mean for your cancer program? First, this standard vendor contract boilerplate language noticeably lacks any enforceable project timelines. Second, most vendor agreements also contain an unlimited "time and materials" approach to project implementation services, with fees paid on a recurring (e.g., monthly) basis. Then, if the actual work effort required is double the originally projected work effort, the vendor's implementation fees are also doubled. Furthermore, the vendor receives regular payments regardless of progress (or lack of progress) and regardless of whether the system and/or system components are working. These types of payment structures invite budget overruns.

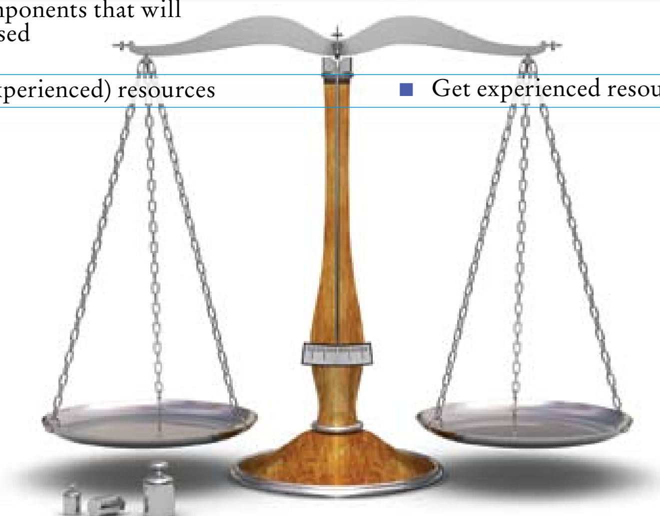
Implementation costs and timelines are the most obvious risks to your cancer program; however, failure to adequately address payment issues in a number of other areas can also result in hidden costs to your organization. For example, many agreements contain unclear licensing metrics (e.g., vaguely worded descriptions of how the vendor counts concurrent users) that can result in substantial unanticipated license fees. Most vendors offer no protection that agreed-upon third-party software and hardware will be adequate to operate the vendor's software. As a result, if additional third-party technology is required, it will most likely be your cancer program's financial responsibility—despite the fact that you purchased the exact third-party software and hardware configuration specified by your vendor.

If these and other problems are not addressed in the Agreement, project budgets and timelines will amount to nothing more than your current "best guess" and are often based substantially on oral conversations and vendor promises that are not included in the Agreement. The following strategies can help your cancer program ensure that the vendor appropriately shares the risk of meeting project timelines and/or budget:

- ✔ Develop a project plan and timeline before the execution of the Agreement with the vendor, and attach it to the Agreement as an exhibit. Obligate the vendor to meet the milestones described in the exhibit on or before the prescribed dates. Ensure that the vendor's obligations are clearly described, and avoid "level of effort" language that merely obligates the vendor to using "commercially reasonable efforts" (or some other level of effort) to meet project timelines.
- ✔ Consider alternative payment methods for the vendor's implementation fees. These include "fixed fee" projects, "not-to-exceed" projects, or a "hybrid" structure whereby cost overruns progressively reduce the vendor's hourly or daily rate to the point where the vendor is providing services without charge.
- ✔ Regardless of the chosen methodology, payments should be milestone driven. Payments should be released to the

Table 1. Provider vs. Vendor Goals

Typical Vendor Goals	Typical Provider Goals
Tie payments to date milestones or easily achieved events	Pay when results are achieved
Maximize pricing	Get lowest possible price
Sell as many products as possible	Buy only what you need
Focus on sale	Focus on ROI (return on investment)
Manage and resource implementation	Decide who will manage and resource implementation
Control all non-customer resources	Control all non-customer resources
Use standard boilerplate contract language	Use contract language that protects your interests
Get resources in and out and move on to next client	Have resources focused on achieving results
Use standard post-live support resources	Get prompt post-live support from expert resources
Get a good reference	Be a good reference, if appropriate
Obtain small discounts for future purchases	Obtain same or better discounts for future purchases
Offset lower upfront pricing by removing key components that will need to be purchased separately	Avoid purchasing surprises
Use available (inexperienced) resources	Get experienced resources



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vendor based upon actual results (e.g., the acceptance of a particular deliverable), not the passage of time.

✔ Ensure that the Agreement clearly and unambiguously describes the applicable licensing metric(s). If necessary, include examples to ensure that both parties are in agreement regarding when additional licensing fees will be paid.

✔ Include appropriate configuration warranties to ensure that the vendor will bear any costs of unexpected additional third-party technology that may be necessary to support your use of the vendor's system.

Understand Liability Limits

Most IT vendors use their standard agreements as a vehicle for limiting their liability in the event of a problem during the implementation or use of their product. Although these liability limitations come in different forms, they share the fundamental purpose of shifting the risk of the vendor's non-performance to *your* organization.

In a sense, this clause is the most important part of your organization's agreement with the vendor. Even if you successfully negotiate an agreement that contains very specific implementation timelines, functionality commitments, and other vendor promises, these commitments are only as good as your organization's ability to enforce the Agreement in the event of a vendor breach. If the limitation of liability protects the vendor from incurring any meaningful damages if the vendor breaches the Agreement, the value of these commitments is substantially reduced or negated.

The most common such clause is usually labeled as a "Limitation of Liability." For legal reasons, this language often appears in capitalized or bold text. Typically, these clauses prohibit the customer from recovering certain types of damages (usually indirect, consequential, incidental, special, and punitive damages); and limit the amount of recovery for other types of damages, even if the customer is able to prove that the vendor breached its obligations and that the breach caused the damages. Here

is an example of standard legal boilerplate language related to limitations of liability.

IN NO EVENT SHALL VENDOR BE LIABLE FOR (A) ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY DAMAGES ASSOCIATED WITH LOSS OF USE, INTERRUPTION OF BUSINESS, LOSS OF DATA, OR LOSS OF PROFITS), OR (B) ANY AMOUNT IN EXCESS OF THE AMOUNTS PAID IN THE SIX (6) MONTHS PRIOR TO THE DEFAULT FOR THE PRODUCT OR SERVICE TO WHICH THE DEFAULT RELATES.

THE ABOVE LIMITATIONS SHALL APPLY TO ANY CLAIMS OR DAMAGES ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE, EVEN IF VENDOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. The parties acknowledge that Vendor has set its prices and entered into this Agreement in reliance upon the limitations of liability and disclaimers of warranties and damages set forth in this Agreement, and that the same form an essential basis of the bargain between the parties. The parties agree that the limitations, exclusions or disclaimers in this Agreement will survive and apply even if found to have failed of their essential purpose.

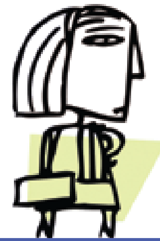
Limitations of liability are a critical part of healthcare technology transactions. In a healthcare environment, a product failure could cause an inability to treat patients or bill for services rendered. In the worst-case scenario, a defective product could harm a patient. As a result, limitations of liability should be carefully scrutinized. Remember, just because limitations of liability are common in the technology industry, they are not always fair or reasonable to the customer—in this case the cancer care provider. In fact, in most cases, liability limitations are neither fair nor reasonable. It is critical that your cancer program evaluate the risks posed by these limitations, and determine in each case whether it is acceptable for the vendor to shift the risk of its non-performance to your organization. Here are five tips to understanding and, hopefully, improving liability limitations in your IT contract:

- ✔ Remember that the commitments found elsewhere in the Agreement are only as good as the limitation of liability. If the vendor provides "iron-clad" commitments elsewhere in the Agreement, those commitments are worthless if your cancer program does not have the ability to enforce them.
- ✔ Do not assume that all agreements must contain a prohibition on the recovery of consequential, indirect, incidental, punitive, and other similar damages. This issue, like all others, will be dictated by the course of the negotiation and the parties' respective bargaining positions.
- ✔ If the vendor insists on an overall cap on liability, ensure that the cap amount is sufficient to permit the recovery of your cancer program's potential damages. This amount will, of course, vary greatly depending on the type of IT product and the size of the transaction.
- ✔ Ensure that all liability limitations and exclusions of damages apply equally to *both* parties.
- ✔ Include "carve-outs" from any liability limitations to protect your cancer program from certain "worst-case scenarios," or to address those situations where a limitation of liability cannot be justified under any circumstances. Consider the following carve-outs (in addition to any others that are relevant to the particular transaction):
  1. Damages caused by a breach of confidentiality obligations.
  2. Damages covered by insurance, up to the amount of such insurance.
  3. Damages caused by the intentional breach of the Agreement.
  4. Damages caused by the violation of applicable law (e.g., HIPAA).
  5. Damages caused to individual persons and/or personal property.

Develop Documentation and Acceptance Testing

Most vendor agreements tie all warranties and representations, as well as the performance of the product, to the vendor's standard "documentation." This approach has several significant pitfalls for the cancer program. First, the relevant vendor documentation is not likely to be delivered or carefully reviewed before the Agreement is executed. If the vendor documentation serves as the standard for the performance of the product, any failure to carefully review this documentation is equivalent to permitting the vendor to define your cancer program's requirements. Too often, providers spend significant amounts of time analyzing competing products, defining requirements, drafting request for proposals (RFPs), and selecting vendors/products, only to put all of this hard work in jeopardy when it matters most—when the vendor is actually being asked to commit to meeting these standards and requirements.

Second, the vendor's documentation is usually subject to change at any time by the vendor, and usually without



notice to its customers. As a result, if the vendor experiences a particular problem, it can effectively remove its contractual obligation to fix the problem by deleting the description of that functionality from its documentation.

Finally, the documentation will not include any reference to specific representations made by the vendor's sales staff and technical staff about the performance of the product(s) in your environment. If your cancer program bases its vendor or product choice upon these representations, be sure to include them as vendor commitments in the Agreement. Below is an example of legal boilerplate language related to vendor documentation.

> "Documentation" shall mean Vendor's standard documentation provided with the Product at the time of delivery of the Product to Client (as amended from time to time by vendor in its sole discretion).

So, what can cancer programs do to guard against these documentation pitfalls? We strongly recommend supplementing the vendor's documentation with other standards and requirements. These additional materials should almost always include an exhibit or schedule to the Agreement that describes your program's key requirements for the acquired product. If your cancer program used an RFP, consider including the RFP documents. Together with the vendor documentation, these additional materials should be defined collectively as the "Documentation" and used consistently throughout the Agreement. The Agreement also should clarify that in the event of any inconsistency between the vendor documentation and your defined requirements, your defined requirements should prevail.

Most vendor agreements do not refer to the concept of "acceptance." If a vendor-drafted agreement does include an "acceptance" provision, it is likely to state that acceptance shall be deemed to occur upon a certain event and/or the expiration of a certain period of time. Invariably, these "deemed acceptance" clauses are triggered so early in the acquisition process that they effectively prevent any meaningful acceptance testing rights. Here is how boilerplate acceptance language might read.

> Customer agrees that the Product shall be deemed to be accepted on the earlier of (i) thirty calendar days after delivery; or (i) the date of Customer's first use of the Product.

Your cancer program should revise the Agreement to include specific acceptance testing rights, processes to follow if the product fails to pass these tests, and the ultimate consequences of failed acceptance testing. If the vendor is unable to fix reported problems after a reasonable number of attempts, the cancer program should retain the option to terminate the Agreement and receive a full refund of all amounts paid for the defective product/system.

In brief, cancer programs should consider the following strategies for IT vendor documentation and acceptance testing:

- ✔ Prepare a "Product Requirements" exhibit that defines your cancer program's key requirements (e.g., functionality, interoperability, etc.) for the acquired product.
- ✔ Ensure that the definition of "Documentation" includes all materials prepared by the cancer program, and submitted by the vendor, as part of the RFP process.
- ✔ Use the revised definition of "Documentation" as the standard for the product not only in product warranties, but also as part of acceptance testing and maintenance and support obligations.
- ✔ Include a specific "Acceptance Testing" provision in your agreement that authorizes your cancer program to perform those acceptance tests deemed necessary to confirm that the product complies with its "Documentation."
- ✔ In the "Acceptance Testing" clause, include: 1) a predefined process to follow if the product fails acceptance testing; and 2) a clear description of the consequences of failed acceptance tests. These consequences should include the right to terminate the Agreement and receive a refund of any amounts paid to the vendor, as well as reimbursement of other costs and expenses incurred in connection with the failed project.
- ✔ Do not agree to automatic "deemed" acceptance after an arbitrary period of time. Acceptance should only occur when your cancer program has certified that the product complies with the Documentation.
- ✔ Withhold a meaningful portion of the payment until final acceptance.

Ensure Adequate Maintenance and Support—Now and in the Future

Most healthcare IT vendors offer surprisingly few commitments regarding maintaining and supporting their products in the future. Often, vendors will only obligate themselves to provide services consistent with their "then-current support policies." Usually, IT vendors will then either provide a copy of the current support policies, or provide a reference to the Internet website where the policies are available. This practice presents a number of

If the vendor is unable to fix reported problems after a reasonable number of attempts, **the cancer program should retain the option to terminate the Agreement...**

problems. First, most vendors carefully draft these policies to avoid "iron-clad" commitments and obligations. The focus is on the customer's obligations and responsibilities rather than the vendor's. Second, these policies and procedures are subject to change without the customer's approval. Unfortunately, vendor agreements will not offer the option to terminate support or adjust the amount being paid for maintenance based on such unfavorable, unapproved changes. Boilerplate maintenance and support language might read as follows.

> Vendor shall use commercially reasonable efforts to respond to Customer's requests for maintenance and support services during Vendor's normal business hours. Vendor shall provide Customer with updates to the Software as such updates are generally provided to Vendor's other customers. Any support services provided outside of Vendor's standard maintenance and support policies shall be billed at Vendors then-current time and materials rates plus all out-out-pocket expenses.

Despite the substantial costs associated with many healthcare IT initiatives, many vendors make no commitments regarding their obligation to offer future support beyond the initial term of any support contracts. When asked for such commitments, most vendors will initially respond that they will commit to provide support for only as long as the acquiring entity is willing to commit to purchase support. In other words, vendors are usually willing to extend the initial term of support, but are reluctant to make additional commitments. This type of vendor response is not acceptable. Providers cannot, and should not, be forced to sign support contracts that mirror the expected useful life of the acquired technology asset (e.g., usually five years or more). In most cases, the initial support term should be much shorter, with the customer having unilateral options to renew support. Finally, any maintenance and support fees should be fixed for a defined period of time (e.g., two to three years). After such time, any increases in maintenance and support fees should be capped at a fixed percentage (e.g., three percent over the prior year's fees). Without such protections, the vendor can force the customer to pay exorbitant maintenance and support fees because the vendor knows the customer must have the maintenance and support services to fully use the IT system.

To guard your cancer program against challenges related to maintenance and support of your new IT system:

- ✔ Acquire all technology assets with the assumption that they will have a useful life long enough to merit the price paid to the vendor. As such, the strength (or weakness) of the vendor's maintenance and support obligations will have a direct impact on the product's useful life and therefore your cancer program's ability to receive the expected benefits of the product.
- ✔ Do not define the vendor's support obligations with a simple reference to the "then-current support policies." Instead, ensure that the vendor's maintenance and support obligations are specifically described in the Agreement. These obligations should include, among other factors: specific hours of coverage; a description of problem severity levels and corresponding response time obligations; a clear statement that the vendor will provide onsite services without additional charge if remote services do not promptly fix the reported problem; a description of the vendor's obligation to provide enhancements, updates, upgrades, and more; and, most importantly, a clear statement that the vendor is obligated to fix the product to maintain its conformance with the Documentation described in the Agreement.
- ✔ Consider including "intermediate remedies" that give your cancer program the ability to exert leverage short of terminating or threatening a claim under the Agreement. These intermediate remedies may include liquidated damage assessments or the issuance of credits if the vendor fails to meet response times or fails to resolve any failure to conform to the Documentation.
- ✔ Ensure that the vendor is contractually obligated to offer the support services described in the Agreement for the expected useful life of the technology asset. In light of the length of this commitment, your cancer program may agree to permit the vendor to apply some form of price escalation [e.g., Consumer Price Index (CPI) or some other adjustment] in future years, but it is critical that the price for these future, optional maintenance services be described in the Agreement.

As you go forth into the challenging and time-consuming world of IT contract negotiations, keep in mind two underlying factors. First, how well you negotiate your IT purchases will affect the success of your cancer program's overall business, clinical, and/or technical components. Second, the ability to align your goals and objectives with those of your IT vendor will pay dividends not only during the implementation process, but throughout the life of your cancer program's IT initiative.

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