Avoid Overpaying for Your Technology Contracts

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In a world where technology is rapidly changing and companies' technology budgets are rising, companies must, more than ever, be vigilant in reviewing their technology contracts. Businesses cannot afford to ignore this cost category as technology spend represent 2% to 7% of a company's revenue (according to Deloitte's 2016-17 Global CIO Survey).

While the number of technology contracts is growing, most companies lack the proper personnel, tools, and processes to properly manage their existing contract flow, let alone any increased flow. This deficiency results in excessive costs and risk exposure to these businesses. To avoid monetary and other pitfalls, these contracts should be thoroughly reviewed and negotiated by knowledgeable and experienced personnel.

When reviewing technology contracts, such as software licenses and subscriptions, managed services, cloud hosting, support and maintenance, IT outsourcing and telecom, companies should not only confirm that they are paying market rates but also validate they are using what they are paying for. Since companies' technology needs change over time, these contracts must build in flexibility, detail the vendors' obligations, and contain triggers to hold them accountable.

To avoid being complacent, companies must be proactive in reviewing and understanding the terms of their technology contracts to protect their contractual and business interests. If the contract review and vendor negotiations cannot be handled in-house due to lack of time, experience or other factors, the company should strongly consider retaining a consultant who is experienced in technology contract negotiations.

When acquiring new technology, companies should take the following steps in selecting a technology vendor that will satisfy its current and anticipated future needs:

● **Negotiate contracts at the outset.** The best time to negotiate contract terms is when first entering into one. This is when the buyer has the most leverage and when vendors are most willing to give favorable terms. Through negotiations, a company can gauge whether a vendor is reasonable and professional. If not, the best move may be to walk away and find another vendor better suited to meet the company's needs.

● **Obtain multiple quotes.** To determine market rates and available features and functionality, a company should obtain quotes from multiple vendors. Consultants typically have benchmarked rates from larger vendors that can expedite this process. The technology stakeholders should actively participate in the purchasing process to ensure the technology will satisfy be all stakeholder's objectives.

● **Seek favorable payment terms**. To get the most favorable payment terms and only pay for the technology actually needed, the following information should be obtained from the vendor:

- Are licenses concurrent (*i.e.*, shared among users) or individually assigned?
- Are license fees based on (a) the actual number of issued licenses or registered users, or (b) blocks of licenses or users? If the latter, a company should negotiate the smallest block size possible and, if possible, a year-end true-up based on the *actual* number of licenses used.

- Can the company increase and decrease license counts during the term and at what cost or credit? Is there a minimum number of licenses that can be increased or decreased? Ideally, pricing tiers would accommodate these increases and decreases during the contract term.
- Does the vendor offer a discount for paying annually in advance (vs. monthly)?
- If payments are annually in advance, would the vendor charge extra for paying quarterly in advance?

● **Determine initial contract length and renewal terms.** Companies should explore the benefits of multiyear contract terms and understand their contract renewal terms. Some points to consider:

- Is a discount available for entering into a multiyear contract? Even if no discount is offered, a company may be able to avoid annual price increases by entering into a multiyear contract.
- Can a multiyear agreement be terminated "without cause"? This is a beneficial clause even if the termination right is limited in time or accompanied by an early termination fee.
- Does the contract auto-renew and, if so, for how long? Companies should track contract expiration dates and, for agreements with auto-renewal clauses, when a termination notice needs to be given to the vendor to avoid contract renewal.
- Are there vendor limitations on price increases upon contract renewal?

● **Specify Vendor Obligations.** The contract should clearly spell out the vendor's obligations and the timeframes in which these duties must be performed, especially implementation and post-sale support obligations.

- Detailed statements of work should obligate the vendor to meet certain performance milestones within specified timelines from project kickoff, or else financial penalties will be assessed against the vendor.
- Where vendor support is critical, service level agreements (SLAs) should obligate the vendor to respond and diagnose a problem within certain time periods based upon the severity level of the support issue, or else monetary credits will be given to the company.
- In the event of a breach of contract by the vendor, the limited liability provision should allow for the company to recover the actual damages incurred from such breach, subject to a reasonable monetary cap (e.g., amounts paid in the last 12 months preceding the claim). Such cap may not be appropriate for certain vendor breaches, such as confidentiality and data security.
- A vendor's indemnification provisions should ensure the company is indemnified against intellectual property infringement claims brought against the company by third parties.

Companies can no longer afford to put their technology contracts on "auto-pilot" and should have systems in place to optimize these agreements. The days of "if it's not broken, don't fix it" are gone because, in just 3-5 years, a vendor's technology and pricing structure, and the marketplace in general, can shift dramatically.

By implementing the steps outlined in this article, companies will be better suited to achieve their objective of optimizing those technology contracts that are critical to their business operations while mitigating risk posed by these contracts.

About The Authors

Seth Tuman has more than 20 years of experience managing resources, budgets and financials, and growth for professional services firms. He has worked with sole proprietors, limited liability companies, professional corporations, and government agencies to assess and manage personnel, develop and implement efficiencies, strategize business development and scale, and maximize profits. His education, experience, and entrepreneurial spirit facilitate analysis of each unique environment to help businesses succeed. For more information, Seth can be reached at Seth@Coos2go.com or (925) 482-8664.

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