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Managed Services Contract Negotiation: How to Win More Business While Staying Safe!

Presenter: Julie Machal-Fulks



- Let us never negotiate out of fear. But let us never fear to negotiate. - *John Fitzgerald Kennedy*
- A verbal contract isn't worth the paper it's written on. - *Samuel Goldwyn*



Overview

- Do You Need A Written Agreement Without Your Customers and Vendors?
- Ambiguity - What Are the Dangers of Bad Contractual Language?
- Using Form Agreements – Why It is Important to Understand All the Contractual Provisions in Your Agreements.
- Regulatory Requirements and the Contract Process
- Client Concerns
- Importance of Legal Review



Importance of Written Agreements

- Memorializes the parties' obligations
- Identifies potential misunderstandings at the beginning of the relationship
- Contains provisions to protect each parties' rights
- **If Agreements are done correctly, they can be sales tools!**



Ambiguity

In order for Customer to qualify for a pro-rata credit for a Service Outage, the Service Outage must have occurred during Service Hours and be reported within one business day or be included in the list of Critical Outages.



Ambiguity – Interpretation One

In order for Customer to qualify for a pro-rata credit for a Service Outage, the Service Outage must have occurred:

- during Service Hours and be reported within one business day; or
- be included in the list of Critical Outages.



Ambiguity – Interpretation Two

In order for Customer to qualify for a pro-rata credit for a Service Outage, the Service Outage must have occurred:

- during Service Hours and
 - be reported within one business day; or
 - be included in the list of Critical Outages.



Form Contracts – Understanding all the Contractual Language

- If you use a form agreement, make sure you READ and UNDERSTAND all the provisions
- Avoid legalese if possible
- It is worse to have a contractual obligation that you cannot deliver than to have an agreement that is silent



Regulatory Requirements and the Contract Process

- Familiarize yourselves with the regulatory requirements that impact your clients' businesses
- Document the processes and procedures you developed to protect client information
- Price the services so that you can be compliant with regulatory requirements and still make a profit



HIPAA / HITECH

Are MSPs Business Associates?

The answer depends on the services provided to the Covered Entity.

- Service examples: consulting, data aggregation, management, administration, financial
- Activity examples: data analysis, processing or administration, and practice management

Covered Entities generally wish to treat most service providers as Business Associates

- If your client insists you sign a Business Associates agreement, you may be contractually obligated to comply with the HITECH breach notification requirements.



Typical Client Concerns That Should be Addressed in the Contract

- What do I get for my money?
- What will be required from my team?
- What happens if there is a problem with the services?
- Do you have a guarantee, if so what is covered and not covered?



Importance of Legal Review

- Always advisable to get input from an attorney
 - Familiarity with / ability to research applicable law
 - Check for consistency across client-facing and other documents



Questions?

