



Drafting IT Master Services Agreements

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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?

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