



Getting Stripped of Your Profits: How to Use Contractual Language to Minimize Risks

by: Julie Machal-Fulks

Negotiation is not a policy. It's a technique.
It's something you use when it's to your
advantage, and something that you don't use
when it's not to your advantage. - *John
Bolton, former UN Ambassador*

Overview

Common Issues MSPS encounter when negotiating relationships with customers, channel partners, and resellers:

- Price
- Service Expectations
- Indemnification
- Non-solicitation
- Contractual hurdles

Common Issues

- 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.

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.

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

- 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

- 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

Typical Client Concerns to Address

- 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?

Julie Machal –Fulks, Partner
Scott & Scott, LLP

1256 Main Street, Suite 200
Southlake, TX 76092

214-999-2905

julie@scottandscottllp.com