



Six Secrets to Negotiating Managed Services Agreements

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Legalese – What is it?

- Legalese Example
- I am herewith returning the requested document outlining the aforementioned company's proposal for the above-mentioned project; the same being duly executed by me.
- Plain English Example
- As requested, I am forwarding the signed proposal for your project.

Legalese – Pros and Cons

- Pros
 - Less conversational
 - Formality of the document reflects seriousness of transaction
 - Often covers more possible outcomes
- Cons
 - Hard to understand
 - Makes documents more lengthy
 - Intimidating to clients
 - Clients may choose provider with easier agreement

To Guarantee or not to Guarantee – that is the question

- Service Level Guarantee – Type A
- Identifies amount of time a network will be available
- Rarely calculated as required by the contract
- Limited value due to exclusions
- Service Level Guarantee – Type B
- Identifies a response time
- Provides way to differentiate for faster service
- Can create unrealistic expectations

To Guarantee or not to Guarantee – Are Guarantees Necessary?

- For type A, not usually
- For type B, it is currently common in the industry
- If you are going to include a guarantee, make sure you have the capability to do the following:
 - Clearly identify your response and resolution times
 - Explain in the contract what constitutes urgent (clients often think everything is urgent)
 - Measure your own performance
 - Give the customers credit if required

Service Descriptions - Inclusions and Exclusions

- Try to use addenda to identify services and prices so that a price increase does not require renegotiation of the terms
- Be specific on which products and services are included, which are excluded, and which can be included for an additional charge
- Make sure to list all exclusions to uptime guarantee (scheduled maintenance hours, if client's internet connection is interrupted)

Critical Provisions – Limitations of Liability

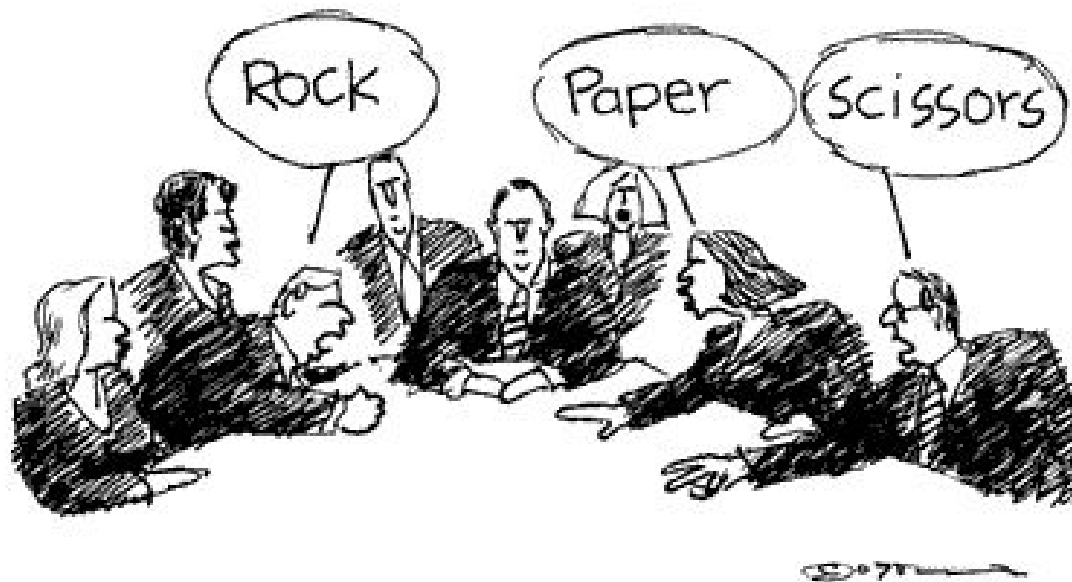
- Identifies how much you will have to pay your clients or customers if something goes wrong; e.g., data breach, unrecoverable backups, etc.
- Typically limited to the amount paid under the contract
- Alternatives include covering risks with insurance policies designed to work for MSPs
- Make sure you understand the obligations and do not negotiate much on these provisions

Critical Provisions - Indemnity

- Identifies how much you will have to pay if someone else makes a claim against your client related to your services
- Make sure you carefully review any indemnity provision related to software licensing and copyright claims
- If you and your client have access to the network, consider including a provision asking your client to indemnify if a publisher tries to penalize you for the customer's usage of products

Using Favorable Terms as Differentiators

- Be familiar with what local providers are doing
- If there terms are less favorable, use that information in your sales process
- Typical one-sided provisions:
 - Indemnity
 - Limitations of Liability
 - Choice of Law
 - Dispute Resolution
 - Penalties for late payments



Jameson, the mediator, uses his last remaining negotiating tool in an effort to break the stalemate.

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Negotiate Wisely

- If a customer asks for something in a negotiation and it does not increase your cost or risk, give it to them
- Do not get stuck in negotiating unimportant points
- Understand before you start negotiating which provisions can be compromised or rewritten
- Be wary of negotiating your indemnification and limitations of liability without counsel
- Make sure your agreements are appropriate for the risks you are assuming in the transaction



Questions?

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