

Savvy MIS/IT Contracts that: Allocate Risks, Keep You on Target, Help Lead to Success

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ABBREVIATIONS:

K= Contract Pty = Party (to a contract)
V = Vendor; B = Buyer BU = Backup
SDLC = System Development Life Cycle
sw = software; hw = hardware; nw = network
proc = process; proj = project LT = Long Term
PM = Project Manager proc = recommendations
relat'shp = relationship rcm = process(es)
▲ = delta = change Desc = description
RFP = Request For Proposal ID = identify
rgmt = requirement; RE = Rqmts Elicitation (proc)

5. PROJECT MANAGEMENT (PM) & REPORTING (C)

5.1 Steering Comm role, structure, makeup, processes
5.2 SWAT Team role, structure, makeup, processes
5.3 Named Sys Integrator's role, resp, auth, accountability
5.4 Desc of V's project team Desc of B's Proj team
5.5 Designation of V's PM Designation of B's PM
5.6 Determ SDLC METHOD to be used; rules to deviate
5.7 PM Tools/Measures: BM; CPM; ETC; B's ch variances
5.8 V's resp for PM proj rpt'g format; freq; distrib; detail
5.9 V's/B's resp; BPR/new proc dev; link, train, test, approv
5.10 V's resp to ID, manage, mitigate RISKS, probs, delays
5.11 B's responsibility to address V's probs/res in 13pts
5.12 B's responsibility to assist V
5.13 B's responsibility for project problems or delays
5.14 Relationship to project timetable
5.15 Remedies for loss/reassignment of V's Proj Mgr (PM)

12. PROJECT COSTS & PAYMENT SCHED. (C)

12.1 Hw prices, if purchased (incl 'bundled' sw)
12.2 Sw prices, if purchased (& if 2b stated sep
12.3 Rental or lease pymts & method of calc
12.4 License fees for softw are and applications
12.5 Training fees; Refresher traing devel & apps
12.6 Maintenance fees for equipment and/or sw
12.7 Fees/\$ for adnl services (hosting, SaaS; BU)
12.8 Partial payments tied to major milestones
12.9 Start date for rental or lease payments
12.10 Commencement date for license fees
12.11 Commencement date for maintenance fees
12.12 Credits or offsets for delays or failures
12.13 Refunds if Contract is terminated
12.14 Most favored nation clause
12.15 No mods/addtl changes w/lo written approval
12.16 Invoicing procedures
12.17 Supporting docs
12.18 Required notice for price increases
12.19 Personnel/services rates to price chg orders
12.20 Limits on price increases
12.21 Right to benefit of price reductions
12.22 Relationship to Contract remedies
12.23 Payments under protest
12.24 Offset rights
12.25 Relat'shp to dispute resolution mechanisms

14. LOW LEVEL, SYSTEM & INTEGRAT'N TESTS (D)

6.1 Preparation & delivery of site prep specs
6.2 B's (or V's) obligation to prepare site
6.3 V's oblig to clarify specs, inspect & certify
6.4 B's obligation to approve
6.5 Remedies for improper site preparation
6.6 Remedies for inspection errors
6.7 Effect on proj timetable

7. COMPUTER CONFIG/DELIV & INSTALL (D)

7.1 Delivery of complete eqmptn configuration
7.2 Delivery of operating sys & other system sw
7.3 Access to site
7.4 Installation obligations of V
7.5 Installation obligations of B
7.6 Diagnst tests & relat'n to Accept Test provs
7.7 Def of completion of equipment installation
7.8 Remedies for delays in delivery or install'n
7.9 Relat'shp to termination rights

10. TRAINING (D)

10.1 V's obligation to provide training
10.2 Qualifications of trainers
10.3 Location of training
10.4 Sids for acceptable performance
10.5 Relat'shp to timetable
10.6 Relat'shp to proj costs
10.7 Availability of student mts
10.8 Avail of instructor's mts & training
10.9 Number of trainees
10.10 B's rights to reproduce & use training mts
10.11 Continuing Avail of sd-st v classes
10.12 Continuing Avail of on-site training by V
10.13 Remedies for delays in provide suitable train

11. DOCUMENTATION (D)

11.1 Desc of types of docs
11.2 Doc stds for user, system & program docs
11.3 Relationship to proj timetable
11.4 Relationship to performance measures
11.5 B's rights to reproduce docs
11.6 B's rights to future docs or enhancements
11.7 B's rights to source code & related docs
11.8 Remedies for delays or inadequate docs

3. FUNCT RQMTS & PERFORMANCE MEASURES (B)

3.1 Desc of biz func to be performed (or x-ref to RFP)
3.2 Rqmts Blicitation (RE)/Scope Change (▲) Process
- ID specf Users/Classes; assure/sched availability
- Prep timeline; ID RE technq/tools/docs used/produced
- Escalation/dispute resolution process
- Scope ▲ process; proposed, est all impacts,
decis crit; doc, update ests, CPM, staff, monitor
- Embrace change: Iterative, incremental, interactive
3.3 Incorp of Functional Requirements Docs
- Rqts incl success crit; 'abilities'; R&F current/future;
L1: rpts; biz procs & rules; ops parms; doc map; RTM
GAPs/As; rollout plan; test results; sys stability; Go-Live
checklist; rqtg As; ▲ process/tools; defer/tradeoff;
training plan; converted data; legacy iface; security
passw'ords; enabled Ops/ Maint. Groups, etc.
3.4 Incorp of V's proposal/s, website, marketing mat, etc.
3.5 Performance Parameters:
a. Relationship to functional processing rqmts.
b. Types & volumes of data to be stored
c. Number of users; Locations
d. Special features or capabilities
e. Hosting, SaaS, other service act w trial period
f. Use by affiliates
g. Transfers to other CPUs or locations
h. Right to make copies, incl bkup or archiv copies
i. Grow th cap meas'd in increas tranx process rate
k. Capacity for field modification or enhancement
l. Other V representations

3.6 Performance "ABILITIES"

SW QA: [abilities] hw, sw, nw, architecture
USERS: Avail; Design; File; Integr-
Oper- Rpt- Modif- Use- Scala Safety Secur-
Surviv- R&R- Config- Utility; \$ Effect [vs benchm'k's]
DEVELS [Internal]: Adapt- Audit- Deploy- Reuse-
Interop- Maint- Perform- Port- Extense- Struct-
Manufact- Trace- Reuse- TEST- Struct-
3.7 Relationship to acceptance criteria & testing
3.8 Relationship to ongoing maintenance reqmts

4. PROJECT TIMETABLE (C)

4.1 Definition of proj tasks
4.2 Definition of deliverables for each task
4.3 Estimating meth used; assum's; update provs
4.4 B's responsibilities; V's responsibilities
4.5 Target completion dates by task
4.6 Final completion dates by task
4.7 B's right to delay or cancel proj tasks
4.8 Major perform milestones & relat'shp to pymt sch
4.9 Delay remedies & bonuses for early perform
4.10 Relationship to termination rights
4.11 Prompt notice of anticipated delays

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8. CUSTOM PROGRAMMING SERVICES (E)

8.1 Incorp of Functional processing rqmts docs
8.2 V's obligation to develop custom apps
8.3 Relationship to stipulated performance measures
8.4 Relationship to proj timetable
8.5 Development by V of detailed design specs
8.6 Review/approval by B of detailed design specs
8.7 ID B's resp to create, dev, link, test new BPR
8.8 Prog stds spec; x-ref to sys, prog, user docs std
8.9 Specification of change order procedures
8.10 X-ref to system & acceptance test provisions
8.11 V's responsib for acceptable unit/sy test procs
8.12 V's obligat'n to deliv source code & related docs
8.13 Relat'shp to proj timetable
8.14 Remedies for delays in completion
8.15 Relat'shp to termination rights

9. CONVERSION & OTHER SUPPT SERVICES (E)

9.1 Data convert; plan, cleanse, map; load; audit; S/O
9.2 Data & Apps sched, resources, conversion
9.3 Development of test data
9.4 Assist to B w/ th site acquisition &/or prep
9.5 Assist to B in acquiring other products/services
9.6 Assist to B in locating & screening employees
9.7 Coordination of telecom procurement
9.8 Responsibility for trouble-shooting
9.9 Assist to B with development of backup plans
9.10 Assist to B with backup arrangements
9.11 Assist to B in developing security plan
9.12 Assist to B in develop'g disaster recovery plan
9.13 Pre-installation machine time

- 1. RECITALS (A)**
- 1.1 V's areas of expertise, experience, etc.
1.2 B's business & data processing rqmts
1.3 V's ability or experience to handle B's rqmts
1.4 Spec/execut'n of a quality RFP process; req V services
1.5 B's issuance of Request For Proposals (RFP)
1.6 V's Response to B's RFP; feasible, honest, suitable
1.7 Adnl docs or communications between B & V
1.8 Proposal eval factors & assumpts affecting B's decis'ns
1.9 Biz Case Discussion (?)
- 2. DESC OF SYSTEM (A)**
- 2.1 Desc/specs for equip, comp'n's, media, cable, etc.
2.2 Configuration warranty
2.3 Desc & specs for sys sw; current; complete; usable
2.4 Desc & specs for packaged apps sw
2.5 Desc & specs for custom mtd to packaged apps
2.6 Desc & specs for custom sw apps to be devel by V
2.7 List & Desc of all manuals, system & user docs, etc.
2.8 Incorp of RFP, proposals, brochures; mtg mtrls, etc.
2.9 Sys Incp (5 Rs: Right person; trng; tools; address; time)
2.10 Definitions of other terms & Relationship to system
2.11 Timing: proc; types; rgmt; tools; staff; doc; S/O; crit
2.12 X-refs to other K provisions & exhibits (inc Biz Case)

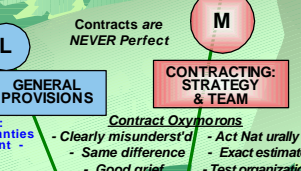
- Contracts ALLOCATE Risks**
- SET STAGE**
1. Recitals
2. System Desc
- NUTS: Not Using The Standards**
- THE BARGAN?**
- 3. Funct Rqmts & Perform Measures**

- Contracts are an SDLC STEP**
- PROJECT MGMT (PM)**
- 4. Project Timetable**
5. Proj Mnt & Reporting
12. Proj Costs & Pay Sched
- Contracts take time, \$, hard work**
- PRE-GO-LIVE ITEMS**
6. Site Prep
7. Config/DELIV/Install
10. Training 11. Docs
14. Lower Level Tests
15. Accept Tests

- Contracts Intencitize' Parties to Cooperate**
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- An ORAL contract isn't worth the paper it's written on!**
- 0. BASICS (M)**
- 0.1 No such thing as a PERFECT contract (K)
0.2 The PROCESS is key, NOT just the contract
0.3 K is a LIVING doc; willing to adapt to change
0.4 K long often ambiguous/incomplete; Drafters gone
0.5 Clear/explicit delineat'n V/B rights, obj's, expect's
0.6 Req, ID, negot, apprch others' view's, obj's B deal
0.7 Generally produces much better:
a. workg relat during emergency/surprise periods
b. prospect of project success:
i. \$, Sch, F&F, QA, SH, Risk
ii. < costs, staff, inv.; > Cserv, mkt share
0.8 Best Team/CXO, CFO, Law yer; SME/eng xprts
0.9 Best Team/CXO, CFO, Law yer; SME/eng xprts



Contract Oxyrnons

- Clearly misunderstand'g - Act Natrally
- Same difference - Exact estimate
- Good grief - Test organization

The "HE SAID... SHE SAID..." Chart - for Failed Software Projects

K Area X-Ref	SDLC Step	Category: "abilities"	What Users, Acquirers, In-house IT Dept Teams Say:	What Vendors, Software Developers, Sys Integrators Say:
2, 3	Biz Case/Rqmts Feasibility	Feasibility	System doesn't work; Not what we wanted	You changed your minds; You don't know what you want; need; Not viable
3, 8	Rqmts Elicit/Scope Mgmt	Capability	You delivered limited functionality/performance	You continually changed project scope
3, 14, 15	BPR/Accept Test	Compatibility	The system failed in the field & in production	You didn't perform required 'business process reengineer' to make it work
1, 2, 3	Recitals/Feasibility	Credibility	Your software, services & expertise were oversold	You conducted ref checks & Due Diligence; What didn't you do/know?
10, 11	Training/Implement	Usability	No one can use system! Poor training	"Required staff" never came to primary/refresher training
1, 14, 15	Selection	Stability	System fundamentaly flawed	We only need 2 months to fix it all
4, 5, 12, 13	Project/Risk Mgmt	Culpability	You never told us that! You gave poor advice!	You didn't follow our recs; You changed/delayed making decisions
8, 9, 14, 15	Testing	Reliability	The system is full of bugs!	Bad data conversion/interface cause probs. Always have bugs!
4, 5, 12	Project Mgmt	Responsibility	You failed as Systems Integration Proj. Mgr. - SIPM	No! YOU failed as the SIPM. That role was not my job!
13	Staffing	Availability	Bait & Switch! Staff unequal, hi T/O, poor PMs, Steer Com	YOU bait & switch! Staff unqualif'd, hi T/O, poor PMs, Steer Com
11	Planning/SDLC	Suitability	You stopped good PM & Sys Dev Life Cycle (SDLC) method	You were unwilling to comply w agreed to/promised/necess methods

- 13. PERSONNEL (E)**
- 13.1 V's staff qual's/B's approv rights; evals; courses; exp
13.2 Application certified/certificates; Updated CMM rating
13.3 Periods of Avail
13.4 Prohibitions against interruptions in Availability
13.5 Temporary replacements for sickness, etc.
13.6 Right to request replacements
13.7 Prohibition against removal or reassignment
- 16. WARRANTIES (G)**
- 16.1 V's financial condition
16.2 hw warranties
16.3 sw warranties
16.4 Service warranties
16.5 Pass through of third party warranties
16.6 Relat'shp to performance measures
16.7 Start date(s)/length of warranty period(s)
16.8 Relat'shp to maintenance provisions
16.9 Scope of warranty obligations
16.10 Remedies for failure to meet w arr obligs
16.11 Assignability of warranties
16.12 Relat'shp to disclaimers/Limits of V's l'bs

- 22. RISK OF LOSS/DAMAGE (J)**
- 22.1 During shipment
22.2 After shipment
22.3 Cross-reference to insurance provisions
- 23. INSURANCE (J)**
- 23.1 V's obligations to provide insurance
23.2 B's obligations to provide insurance
23.3 Types & scope of coverage
23.4 Acceptable under riters
23.5 responsibility for payment of premiums
23.6 responsibility for processing claims
23.7 Relat'shp to Limits of liability

- 29. LIMITS & EXCLUSIONS OF LIABILITY (K)**
- 29.1 Express/ implied warr disclaimr inc in K
29.2 Exclusion of consequential damages
29.3 Limits on V's liabilities: 29.4 Limits on B's l'bs
29.5 Except'ns to disclaimers, exclusions/Limits

- 24. PRICE PROTECTION (J)**
- 24.1 Limits on future price or fee increases
24.2 Desc on future procurem'ts & period of Avail
24.3 Most favored cust treatment & period of Avail
24.4 Guaranteed prices & period of Avail
24.5 Relat'shp to trade-in provisions

- 25. RENEWAL OPTIONS (J)**
- 25.1 Renewal of hw maintenance support
25.2 Renewal of sw maint &/or enhancem't support
25.3 Lease renew al(s)
25.4 Calc of charges or fees w/i renew al period(s)

- 26. PURCHASE OPTIONS (J)**
- 26.1 Guaranteed prices & period of Avail
26.2 Credits for rent or lease payments
26.3 Method of exercising option
26.4 Assignability of options
26.5 Relat'shp to accept (AT), w warranty, maint provs

- 27. TRADE-IN RIGHTS (J)**
- 27.1 Right to upgrade to new avail hw/sw; avail per'd
27.2 Right to upgrade to curr avail hw/sw & avail per'd
27.3 Calculation of trade-in credits
27.4 Relat'shp to compatibility representations
27.5 Relat'shp to guaranteed or future discounts
27.6 Relat'shp to perform fees, AT, warr, maint provs

- 33.1 Biz Considerations, & RISKS (I)**
- 33.1a ~59% of all OS/Ks fail (Compass '05; Forrester
33.1b SOX/Rqmts adherence; No subbing to China
33.1c Think w/rcost 70-80% less but only profit 20-30%
In fact, most report 1st year savings of 0%
33.1d "Please You; Don't Ask?"; 90% of time w/say "OK"
33.1e Time Zone diff; Infrastructure poor; 22 official
too many polit parties; Turnover by
33.1f Security/privacy laws; cyber crime; terrorism
33.1g M/have both org's staff on both sites; Build trust
33.1h Define Success (iterative, incremental,
33.1i OS in internat'l market w/lo intl. ops exper
33.1j No variety of perspectives in selection process
33.1k Using poorly defined documented serv provd spec
33.1l Not doing biz/financial due diligence on OS cand'
33.1m Insuff knowledge of OS capacity limits
33.1n Not resolv'g ops issues b4 move to legal
33.1o No full com plan in effect; no escal, reg sch

- 33.2 Contract ("K") Considerations (H)**
- © 2007 Michele Kane, Wendy Gross all rights reserved
33.2 Train both Cust & OS mgt'm & operations on O/S K
33.4 Proc to initiate/request new service, ▲, proj's
33.5 Right to use 3rd party OS to in-source/cle-re-source
33.6 Control of arch, tech, and org change stds
33.7 OS obligs to update w tech advances; refresh tech
33.8 SLAs (how they wk, credits, contin improv oblig, ▲)
33.9 Commitments regarding supplier personnel
33.10 Financial terms
33.11 Ownership of custom developer work product
33.12 Term: terminat'n assist services/termin rights
33.13 Min retent'n per for transf'd/incl (T) & LT key Eas
33.14 Diff for single silo outsource'g than for "big bang"
33.15 Keep staff knowl'n in-apps; biz, in-scope tech, procs
33.16 K provisions to secure appropriate supplier talent
33.17 K provisions to limit use of subs (e.g., to China)
33.18 Change process: biz, staff, tech, ind stnds, laws,
33.18 Limit unnecess charges; data recovery; serv re-pe
33.19 Baseline OS/resources for ongoing suppt & proj's
to allow C to re-priorit/assign OS services/resources
33.20 K's req' OS to track: asset vet/loc, ID, ser/mf loc, #s, in serv date; s/w/hw upgrades; if own: lease, licen/in resp typ; Tie apps to servers; Log ▲ s
33.21 Coop Oblig: betw OS/C/3rd parties; staff; facilities, equip, sw, doc, biz process access; Adding new OS's;
33.22 K cost reduct'n comm'ts, process improv; Sids; ind
33.23 Service level imp prov (esp if SLAs met but serv unv)
33.24 Terminat'n assist: doc plan; staff; all equip, sw, mat, data, 3rd pty Ks/ tools to prov serv; train C/ 3rd pty in equip, s/w, tools; Right to employ OS staff; Right to
33.25 Counsel's role does not end when deal signed!

- 18. TITLE (I)**
- 18.1 V's reps as to owner/rights to transf hw/sw
18.2 Transfer of title to hw
18.3 Retention of security interest
18.4 Execution of security docs
18.5 Release of security interest upon payment
18.6 Title xfer to sw (or x-ref to licensing provs)
18.7 Owner/license/rmt rights to V made sw mods
18.8 Owner/license/rmt rights to B made sw mods
18.9 X-ref to license & authorized use provisions
18.10 Rights to use ideas/invent'ns devel dur'g proj
- 19. LICENSE RIGHTS (I)**
- 19.1 Exclusive or non-exclusive rights
19.2 Term of license
19.3 Products covered
19.4 Types of use permitted:
a. Types of equipment
b. Number of CPUs
c. Number of users
d. Types of apps
e. Timesharing or service bureau activities
f. Locations
g. Use by affiliates
h. Transfers to other CPUs or locations
i. Right to make copies, incl bkup/archiv copies
19.5 Rights to source code &/or hw maintan docs
19.6 Relat'shp to assignment rights
19.7 Relat'shp to V's termination rights
- 20. PROPRIETARY RIGHTS INDEMNITIES (I)**
- 20.1 V's indems v/infring: patent/ (c)/ trade secr/IP
20.2 Notice of claims
20.3 V's obligation to defend
20.4 B's obligation to cooperate
20.5 B's right to participate in defense
20.6 V's oblig to replace/modify infringing products
20.7 V's rights to remove infringing products
20.8 Calc of B's refund for products removed by V
- 21. CONFIDENTIALITY & SECURITY (I)**
- 21.1 Definition of V's confidential information
21.2 Definition of B's confidential information
21.3 Scope of V's obligs for confidentiality/security
21.4 Scope of B's obligs for confidentiality/security
21.5 Remedies for breach
21.6 Relat'shp to termination provisions

- 11. GENERAL PROVISIONS (L)**
- I. Parties to 'Contract' (L)**
- i.1 Correct legal names i.2 Principal places of biz
i.3 Legal Relat'shp to other entities involved in tranx
i.4 State or jurisdiction of incorporation/formation.
i.5 Authority of signatories
- II. General Reps & Warranties (L)**
- ii.1 Legal status of entity ii.2 Auth to enter into K
ii.3 No conflicting agreements
ii.4 No legal impediments ii.5 No brokers/agents
- III. Definition of Terms (L)**
- IV. Assignment or Delegation (L)**
- iv.1 Restrictions on assignment &/or delegation
iv.2 Exception for affiliated entities
iv.3 Exception for business reorganizations
iv.4 Except'n for sale or transfer of substnt all biz
iv.5 Consents not unreasonably withheld
- V. Interpretation of Agreement (L)**
- v.1 Entire agreement v.2 Governing law
v.3 Venue of litigation or arbitration
v.4 Consent to in person jurisdiction of courts
v.5 Situat'n making liquidated damages reasonable
v.6 Joint participation in drafting of K
v.7 Partial invalidity; severability
v.8 Remedies not exclusive
v.9 Number & gender v.10 Waivers

- 11. General Provis ions:**
- Parties - Gen'l Reps/Warranties
Definitions - Assignment - Interpret'
- U-CRINGE: Unplanned Chang'g Rqmts In-valldate Good Economics/Engineering**
- Balance liab limits w essential purpose of remedies**

- 32.1 Dispute Resolution Mechanisms (K)**
- 32.1 Mediation by designated party reps
32.2 Arbitration
a. Types of disputes & method of initiating b. Location; c. # of arbitrators ("arbs")
d. Qualifications of arb(s) e. Arb selection
f. Compensation of arbitrators
g. Arbitration rules & procedures
h. Provisional remedies
i. Discovery rules j. Rules of Evidence
k. Funding of arbitration costs
l. Reimbursement of costs & fees
m. Governing law n. Briefs
o. Findings & conclusions
q. Rendering & enforcement of award
32.3 Use of sys pending resolution of disputes