



Locking IT Down: How to Protect Your Business in Technology Contracting

Essential Strategies for IT Service Providers

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Meet our presenters



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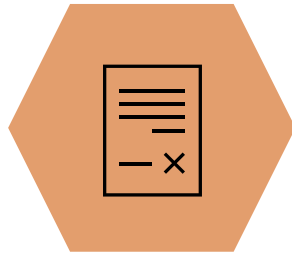
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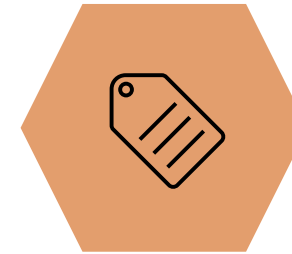
RFP responses and proposals



How proposals/responses can
make their way into the contract



Reproducing pre-contractual
representations in the
contract



Incorporating relevant
proposal documents into the
contract by reference

Defining the scope clearly and accurately



- 'Back-end' specifications just as important as 'front-end' terms and conditions
- Can take a requirements-based or specifications-based approach, but clarity is key
- Failure to do so → risk of disputes or repeated change requests

Drafting in plain language



Avoid...

- Passive voice
- Complexity
- Ambiguity
- Latin
- Repetition
- Technicality

Rather, clearly and logically set out rights and obligations in a concise manner.



Increased focus on security

Customers want to address supply chain risk – providers should consider implementing typical safeguards.



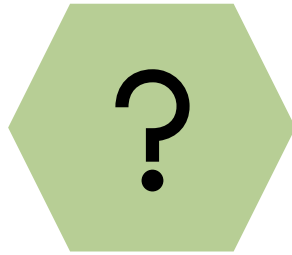
Administrative safeguards

- Security management processes
- Information access management
- Security incident procedures and contingency plans

Technical safeguards

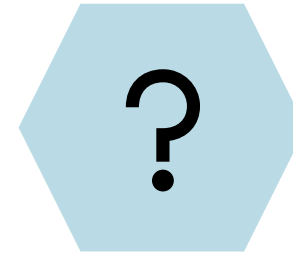
- Access controls
- Audit controls
- Person or entity authentication
- Specifying frequency and location of backups
- Encryption of data

Ensuring a fair and reasonable apportionment of risk



Why?

- Things can go wrong, and loss is suffered
- Neither party will want uncapped liability



How?

- Limitation and exclusion of liability clauses
- Indemnities

How to resolve disputes amicably



- Follow effective dispute resolution mechanisms to avoid the risk of costly litigation

Include:

- Good governance processes
- Effective contract management regime
- Dispute resolution clauses – escalation and ADR

Anticipating and managing the exit



Consider

1

Whether a 'wind-down'
period is required

2

Return or destruction of
the customer's data

3

Appropriate inclusions for
the 'survival' clause

Negotiations



Negotiations are largely inevitable.

Remember to:

- Factor it into the timeframe of concluding the transaction
- Focus on the important issues
- Approach negotiations respectfully and in good faith

Don't cling to untenable positions or engage in 'points scoring'.

The dangers of agreeing to agree



Why is this a bad idea?

- May render the contract unenforceable for uncertainty
- Loss of bargaining power
- The issue is unlikely to be revisited as people move on



The compliance with laws discussion



“Customer
laws”

APRA
Prudential
Standards

Privacy Act

Liability



- Important, but not the be-all and end-all
- Know our policies and guidelines – what are acceptable outcomes?



Consider:

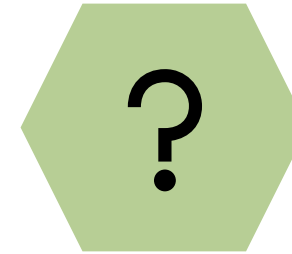
- 'Cutting to the chase' on your baseline position
- Focusing on other tools to drive contract behaviour

The importance of contract management and governance



Why?

- To allow customers to optimise IT investments and business benefits
- To facilitate better relationships
- To improve risk management



How?

- Enable reasonable monitoring of performance
- Include provisions to enable strategic management

Staying across case law and legislative change



The law is constantly evolving through:

- New case law
- Legislative change



For example:

- *Hadley v Baxendale* → *Peerless*
- Privacy Act reforms

No drafting in 'silos'!



What you want

One single, coherent,
internally-aligned whole



What you don't want

Disparate parts using
inconsistent language and
contradictory
terms/positions