

## Smarter IT Outsourcing Contracts

### Introduction

One effect of the recession has been the number of outsourcing deals signed in haste to reduce an organisation's costs. A recent report by the London School of Economics suggests that many of these deals will be terminated shortly on the grounds that they are not appropriate for business as the economy improves.

Coupled with the fact that many older outsourcing deals will come up for renewal or rebidding then now is a good time to review your approach and your contract terms.

As the outsourcing market has matured the corresponding commercial agreements have evolved to give more protection to customers to ensure they receive the benefits they were supposed to. However, sharing of this knowledge is not always easy so this whitepaper lists a few areas which are sometimes overlooked.

### Keep it Simple

Before we move onto the list let us define a few design principles for an outsourcing agreement.

Typically managers who negotiate an outsourcing deal are not the ones who have to make it work. Capturing and articulating the essence of a deal is important not only for the customer's staff but also for those of the service provider.

Altica recommends the following design principles for the agreement:

- Simplicity
- Clear accountability for delivery
- Measurement and articulation of benefits
- Escalation process

Agreements tend to run to many pages and are typically constructed to cover circumstances when things go wrong. If things do go wrong (and they will) good processes are more useful than detailed contractual terms. This way the problem is solved and the relationship continues to grow.

### In-House or External Help?

Some organisations have the resources to manage outsourcing contracts in-house, whilst others use external help.

The reasons to use external resources include:

- Typically an external consultant will have broader market experience and can suggest ideas you may have missed
- An external consultant will know what current market rates are
- An external consultant is dedicated to the task and not diverted to other internal projects

## Outsourcing Contract Tips

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### **Termination**

It is surprising how many outsourcing contracts make little or no provision for what to do in the event of planned or unplanned termination. Service providers have little incentive to help during termination so it is important to define the type and nature of activity you expect during the wind down of the service. Remember to agree resource rates otherwise you may have a nasty surprise.

### **Whole Agreement Clause**

Service providers try to mitigate their commercial exposure with this clause. Basically, it states that everything which materially affects the agreement is contained within the contract, thereby negating any commitments (real or assumed) made during the sales phase.

An interesting twist is the recent case in London of a broadcaster vs an outsourcer where the court found that statements made during the sales phase but not later fulfilled amounted to breach of contract.

### **Change of ownership**

Generally included to allow either party to terminate the contract if the other party is acquired.

Useful if you have had an issue with the new acquirer of your service provider and you do not wish to deal with them.

Also a useful inclusion giving you a future option (if needed) to terminate an agreement without penalty if your provider is acquired.

### **Include an Annual Review**

All outsourcing contracts benefit from holding an annual review to ensure that metrics provide meaningful insight into performance, there is an opportunity to get an updated understanding of outsourced operations and how well they're running, and ensure that you're getting what you've paid for per the contract.

|                                     |  |
|-------------------------------------|--|
| <b>Change of Legislation</b>        | Make provision for a commercial review based on change of national or international legislation. For example, in the EU new legislation came into effect making customers liable for VAT on services provided from outside of the EU. This amounted to a cost hike of 17.5% for organisations not able to offset this against their VAT charges. |
| <b>Pass Through Expenses</b>        | What is allowable and what is your authorisation process to remove unplanned expenditure? Inclusion of this in the contract removes all ambiguity and prevents overspend. You should include the level of spend in your annual review.   |
| <b>Continuous Improvement Plans</b> | Often talked about during the sale phase but make sure you see a real plan and test the feasibility of how the provider will make it happen.   |
| <b>SLA Review</b>                   | Your requirements will change over time make sure that you review the SLA's on an annual basis so they clearly meet your needs. If you incorporate service credits within your SLA make sure all parties understand the mechanism and insist that service credits are always applied or included in negotiations.                                |
| <b>Access Control</b>               | Make sure you see the service provider's access management process and ask for proof of its operation. If staff leave the service provider they could retain access to your confidential data if controls are not in place.  |

## Contact Altica

Altica has experience of many types of IT outsourcing agreements. If you would like help and advice with a new or existing IT outsourcing contract in the UK contact us:

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