Contract Negotiation For System Administrators

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Who are you, and why should I listen to a word you say?

- I've been managing teams of system administrators for a number of years now, at organizations including higher ed, a top 20 dot-com site, and a global managed-hosting provider.

- Part and parcel of leading such teams is - invariably - dealing with contracts in some fashion

- I've been negotiating contracts of various sorts for most of my leadership career

But…

#include <giant_ianal_disclaimer.h>

I am not an attorney, and am not qualified or licensed to practice law. Nothing in this presentation should be interpreted as legal advice. The contents of this presentation represent solely my own personal experiences dealing with contracts either during the negotiation phase, or, after signing, in the compliance phase.

Please consult a licensed attorney to deal with your specific contractual and legal needs.

In other words, don't trust what I say, unless the attorney you pay money to backs it up. And then, if something goes wrong, blame them.

What's this talk about?

- Contract Negotiation
- For SysAdmins
- Duh.

Who I'm talking to

- This talk is targeted at companies (as clients) negotiating with vendors, not vendors negotiating with their clients.
- Typically on the vendor side, it's sales and management dealing with the contracts, not operations folks.
- As clients, though, operations folks can have significant exposure to contracts. Hence, presumably, why you're here.

What will I take home with me?

- Better understanding of the basic phases of contract negotiation
- Better understanding of how to deal, both with your lawyers and with "theirs"
- Better understanding of how to read legal agreements the way a lawyer or judge would

What's a contract?

- Contracts (or their equivalent) are everywhere in a sysadmin's daily life:
  - End User License Agreements
  - Service Level Agreements
  - Master Service Agreements
  - Terms and Conditions
  - Sales Orders
  - Employment Agreements

The SOW - Is it a contract?

- A word of note about the Statement of Work (SOW)
  - In many cases, not written (or even reviewed) by lawyers. It's often *just* technical description of work to be performed, service to be provided, etc.
  - It is usually "incorporated" into the main document (we'll talk about that later)
  - While it's not reviewed by lawyers, it still has binding force as though it had been. For your part - treat it as part of the contract.

Purchase Orders

- A special type of contract
- Stripped down, bare-bones
- Effectively an agreement to purchase whatever is spelled out in the purchase order, at whatever price is in the purchase order
- May include simple language regarding delivery timeline commitments, payment terms, and penalties for breaking either.

- Similarly, must be signed by someone with signing authority
- Typically used for "goods", as opposed to "services"

FOB (Free On Board)

- When buying physical product, it's common to see a field in the quote for "FOB".
- Typically, since the vendor prepares the quote, it will say "FOB Origin".

- FOB is the point in the process at which ownership is transferred from buyer to seller
- As the buyer, you want that to be as late as possible in the process.
- Especially since you have generally so little say in how a package gets from them to you.
- You should be insisting upon getting "FOB Destination", such that you become the owner only once it is safely delivered to your facility.

Example: The Shipping Mishap

- Five pallets of hardware. $5,000,000 worth of goods on the line
- Quote and PO specify "FOB Origin"
- The long-haul tractor-trailer carrying the hardware is involved in a wreck on the interstate

- With FOB Origin, the shipper has no legal responsibility.
- You, as the owner of the hardware on the truck, have to deal with insurers and shippers to get made whole on the scrap-metal sitting in the middle of Interstate 80 somewhere in Iowa.
- The shipper needs to be paid, according to the agreed-upon terms, for both the destroyed shipment **and** any replacement gear you might create a new PO for.

- Some shippers may work with you in terms of delaying your payment obligations on the dead gear until after you get reimbursed, but for big purchases, you can't count on it.
- They've got to pay the bills upstream as well, probably.
- Everyone makes out well on this, in terms of commissions, etc., except for you and the freight company.

- With FOB Destination, like you should have had....
- The *vendor's* gear is strewn across central Iowa, not yours.
- You're still waiting for the shipper to make good on your purchase order.
- If you have "delivery commitment" deadlines in your purchase order, it's the shipper's problem to ensure they meet those deadlines under the changed circumstances.

Contract is your last resort

- The contract is the first thing you write and the last thing you want to refer to.
- If you're having to "go back to the contract", then the relationship between the vendor and yourself is already breaking down.
- Think of the contract in the same way as a pre-nuptial agreement. It's there to cover how you handle things when the relationship goes sideways, so negotiate it towards that end.

What's "Negotiation"?

- *Webster's* calls it "a discussion between people trying to reach an agreement."
- It is really multiple parts
  - Understanding your own needs and desires
  - Understanding the other party's needs and desires
  - Trying to find the middle ground where both parties' needs are best-addressed (not necessarily *met!*) in a manner acceptable to both

The Basics

- Did you fully read the last End User License Agreement you clicked to agree to?

- Did you notice the clause that gave Jeff Bezos right of *primae noctis?* No? Shame on you.

- It may *sound* obvious, but it must be said: Start getting in the habit of reading, actually reading, every set of legal terms and conditions you're presented with, top to bottom. The more often you do it, the easier it will be, and the stronger your bargaining position later.

Part 1: Understanding the agreement

- Reading through the legal agreement you're presented with, in whatever form it appears, and understanding it.

- Put yourself in the opposing party's shoes
- Read through twice, with two different mindsets for the vendor:
    - "How does this agreement protect the vendor, if their employees, or their agents, are wildly incompetent?"
    - "How does this agreement protect the vendor, if their employees, or their agents, decide to wildly screw over the poor sap they just gave it to?" (in other words, you)

Protecting vendor incompetence

- Sometimes, the contract is written the way it is to protect the vendor against their own incompetence (or potential incompetence)
- Will vary by the company, and what they do
  - Protecting your privacy/data
  - Keeping your systems up and running
  - Ensuring your access to your data

Example: The Service Level Agreement (SLA)

- Often measured in terms of "percentage availability"
- Understand the worst-case scenario. Know how much "badness" you are accepting without any sort of recourse in the way of SLA abatement.
- Ask yourself, "What would my boss/shareholders/customers say if we experienced the SLA-maximum downtime every billing cycle?"

Protecting Vendor Malice

- Sometimes, the contract is written the way it is in order to protect the vendor in what might be considered "malice" (or, at the very least, business practices not in the clients' best interests)
- Will vary by company and what they do
  - Allowing for sale of your personal data to their partners
  - Might allow for the vendor to terminate the relationship on a whim, say, if a manager doesn't like you any more.

Example: Data Usage or Privacy Policy

- For those cases where you are getting something for free or cheap -- where you are not the customer but the product
- What are you allowing the other party to tell others about you, for fun and (their) profit?
- What are you allowing them to do with your data?
- Would your boss/customers/shareholders think that this is acceptable?

Read it as a 'whole' not as 'parts'

- No matter how "tight" a section is, it does not stand alone
- Different parts of the contract can modify each other under certain conditions
- Be keenly aware of the possibility that a well-crafted and rock-solid section may simply be dismissed out of hand by another section

Example: Force Majeure

- Literally "superior force", something you cannot overcome.
- Force majeure clauses can be the bane of your existence but necessary
- Very few people are going to agree to an SLA that remains in effect if, say, someone decides to fly a plane into their building
- Force Majeure clauses are textbook example of "one clause that - if invoked - completely invalidates other clauses".

Common Force Majeure Conditions

- Man-Made Issues: War, Terrorism, Government orders, Strikes
- "Act of God" Issues: Floods, Hurricanes, Tornadoes
- Generally: Anything outside the control of the vendor, and which it would not be reasonable to try and prevent against

Force Majeure Exceptions

- Be sure, for example, that "loss of power" isn't considered a Force Majeure Event, which overrides all of your finely-tuned SLAs including, say, your "Power Availability SLA".
- Typically, you'd want to ensure that there's language to exclude any effects which the vendor might reasonably be expected to prevent, such as power or cooling availability or their own staff going on strike

"Reasonable"

- The word "reasonable" is your best friend.
- *Black's Law* says it means "fair, proper, or moderate under the circumstances"
- In practice, it's how you ensure that neither party to the contract abuses that contract to act like an asshole.
- It's reasonable to ensure that the colocation facility has generators to prevent power outages. It's unreasonable to expect that they've hardened them in adamantium bunkers that can withstand an F-5 tornado.

"Reasonable"

- It's common to see phrases like "make reasonable effort".
- Reasonable is vague, but in a legally acceptable way.
- What is or is not reasonable ultimately is decided by whatever judge is deciding your civil case that invokes the contract.

"Reasonable" vs "Best Effort"

- As a technically minded person, you might *think* "reasonable" and "best effort" are synonymous. <u>They are not.</u>
- "Best effort", as a term of legal art, can be held to mean "the best you could do," ignoring your own fiduciary interests, common sense, commitments to other parties, etc. Bankrupting your business to meet the contract is "best effort." Assigning every man and woman in the company to fill the contract is "best effort".

- "Good faith effort" generally means along the same lines as "reasonable". Another commonly used phrase is "commercially reasonable efforts".

- You almost certainly never want to see "best effort" in legal terms.

- Although, if your vendor wants to hold *themselves* to best effort, by all means let them. Ponder their quality of counsel, and know you've got a nice ace in the hole down the road if you ever need it.

Flip Side:
Pointing out vendor-harmful language

- Sometimes it's in your interest to, when you see your vendor using language you can later use to ruin them, point it out to them.

- The amount of good will you can obtain with a vendor when they definitively know you're not looking to screw them over cannot be overstated.

- For instance, explaining to a vendor that they shouldn't commit themselves to "best effort", and why, may make them more likely to concede points to you elsewhere in the negotiations.

Part 2: Language Adjustment

- Wait, let's come back to this

Part 1A: Figuring out if you've got a choice

- Pick your battles
- You can negotiate with almost everyone, on almost anything, but there are notable counter-examples
  - Amazon/AWS
  - Tariffed telecommunications services
  - The click-wrap agreement on a software package
  - A Microsoft EULA

- A good rule of thumb: *If you've got a sales rep you're working with, the terms are probably not immutable*

- Weigh the business need for the service/product against the negatives you find in the agreement

- Is the convenience of one worth the risk of the other?

- Often, this is a business decision made by those above you. Give them the best information you can, and let them decide.
- If the answer is "no, those terms are unacceptable," then reach out to someone and *try* to see if they'll consider changes, but prepare yourself for disappointment.
- Everything past this point assumes that the terms aren't immutable.

First Rule

If the terms aren't immutable, then it's not a contract, it's just a proposal.

“If the other guy doesn't say 'No', you didn't ask for enough.”

- Every successful businessperson ever

Second Rule

Never accept the first proposal. It's designed to make the other party's life awesome and do next to nothing for yours.

Part 2: Language Adjustment

- Remember that they chose that language to service *their* needs, not yours.
- Why did the other party write that language the way they did?
- When in doubt, pretend that they just cribbed the language from some other agreement, rather than malice or incompetence. It's what everyone does.

Example: 99.99% SLA

- Allows for ~9 seconds a day, on average of downtime (4.5 min/mo.)
- Is it because:
  - The vendor is incompetent, and they know they're always tweaking something, causing outages, so they don't want to commit?
  - The vendor is fiscally conservative, and they don't want to leave money on the table that they don't have to?

Example: Incorporated Documents

- It is typical for one legal document to *incorporate* (or include by reference) the entirety of another document.
- For example, in signing a Web Hosting contract, the agreement might include language saying you agree to abide by an "Acceptable Use Policy"

- Incorporated documents are dangerous, but common-place
- The key is to ensure that you scrutinize those documents with the same vigor as your primary contract
- Incorporated documents are also typically the sorts of documents which claim to be "subject to change", which exponentially increases their risk to you.

Example: "Subject to Change"

- If any part of your contract (usually an incorporated agreement) is subject to change, you should require both a **notification clause** and an **out-clause**

- **Notification Clause**: You can't be expected to be referring to the referred document constantly looking for changes. Such language would require the vendor to notify you in writing of any changes, and have a lead-time after that notification before those changes take effect.

- **Out Clause**: Basically, if a contract term changes such that you no longer find it acceptable, you need the ability to get out of the agreement without penalty or further fees. This will often require describing to the vendor exactly how this impacts you to demonstrate that it's a material change for you.

Another Out-Clause: Change of Control

- What do you do when AwesomeCorp, who you've researched for months gets bought by CrappyServiceCo?
- Answer: You make sure there are clauses to permit you a penalty-free window, say 90- or 180-days (depending on what the service is) to allow you out of the contract in the event of a "change of control"

Pre-Nuptial Agreement

- We mentioned this before.
- Know what your early termination responsibilities are
- Ensure that you have out-clauses tied to your SLAs, or anything else that would make you not want to deal with your partner. (e.g., "3 SLA events in a rolling 90 day window allows for termination of the contract without further obligation")

End of the Contract Term

- Often, a contract will include language about what happens at the end of the term
- Know what is is you want to happen at the end of the contract. Ensure that the contract does that for you.
- Sometimes there is a narrow window of when you can actually control what happens at the end of the contract term

Common Outcomes

- Auto-renews duplicating the term of the original agreement
- Converts to month to month at the same cost as the end of the agreement
- Either of the above, but with the rate adjusted in some fashion (either predictive, such as "+5%", or non-deterministic, like "then prevailing price")
- Terminates completely

- Remember that for longer contracts -- three, five, eight years from now -- nobody who works in your organization today might still be around to even remember the contract and its expiration.
- A common tactic is to ensure that the service provider must provide written notice of the contract's expiration 90-120 days out from the end of term, which will prompt action on your (or those who follow you) part

Confidential Information

- In a hosting agreement, for example, it's common to have provisions protecting confidentiality

- Often times, one side or the other will include provisions that confidential material must be explicitly labeled as such

- Each side would prefer "you treat anything I give you as confidential, but anything you give me must be marked as such."

- To protect *your own* confidential material, it's better to compromise with "anything shared with each other is confidential, unless it's already demonstrably available to other unencumbered parties"

- Unencumbered here = not themselves under an NDA

- **NOT** just "public info" though, because sales discount levels might not be "public", but aren't necessarily "confidential info," either.

Logos and Marketing Use

- Part and parcel with confidentiality
- Is your status as a "customer" of the vendor a secret?
- Do you want to allow them to use your name/brand/logo in their marketing materials?

- Generally speaking, good idea to ensure you have to approve in writing any use
- Your marketing and branding folks will be the ones approving anything that the vendor wants to use
- Things they'll be looking for include not wanting to be seen as an endorsement, whether your logo is bigger/smaller/same-size compared to your competitors', whether the logo use is consistent with your brand-use guidelines.

"Little Stuff" and "Lost Causes"

- You're going to come across areas where "you don't like it, but it's so small it's not worth bringing up"
- Alternatively, areas that are a real pain for you, but which you don't think there's any chance of the other side budging.
- Both of these are useful negotiation points, and you should still propose language adjustments

- Things that are so small that you don't care about them are items you can easily concede as good-will gestures if need be.

- Things that are "big" and non-negotiable are leverage points to wield against the other party (effectively, "you gave us *nothing* on this big point over here, and I get that, but can't we do *something* on this other point?")

    - If you were never going to be able to change that language anyway, use that intractability to your own advantage

Venue Choice

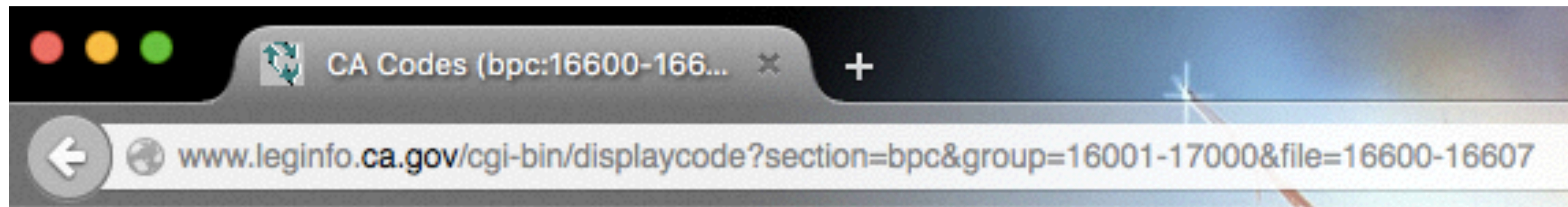
- It's common for a vendor to choose a "venue" for any legal actions which might arise out of a contract.
- It makes the application of the terms of the contract predictable, since they will often specify, down to the county, where any such lawsuits shall be tried ("United States, the State of California, Santa Clara County", for example)

- This can be something to consider, based on wherever *you* are located. Any cause of action you bring will need to be in the venue specified which might itself represent a burden for you

- It can also help you, if the other party doesn't know what they're doing (or is just trying to scare you)

Example: The Non-Compete Clause

- Worked for a company whose employment agreements all specified that - even for a globally located work-force - the agreements were to be judged under California law
- Included both non-compete and no-coworker-poaching clauses



BUSINESS AND PROFESSIONS CODE
SECTION 16600-16607

16600. Except as provided in this chapter, every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void.

- The clauses are unenforceable (*but*, you still will have to go through the pain of lawyers/court to prove that point).
- The deterrent is based in the "pain threshold", not in the expected outcome.

An Important Lesson

- Sometimes the hassle of a lawsuit is enough of a deterrence such that the party that is "in the right" just gives in and doesn't bother enforcing their own rights

The Worst Venue: Arbitration

- Disclaimer: The headline is my opinion only. I've never known anyone with nice things to say about binding arbitration, but I've not dealt with it first-hand

- Arbitration is very uncertain in its outcome, far more uncertain than the court.

- Unless you do so regularly, and know which arbitrator to choose, and have choice of arbitrator, good to avoid it as a resolution option.

Notification

- You'll want to determine *how* parties may notify each other when they are required to do so
- It's common, in the modern era, to stipulate that electronic notification (i.e., e-mail) is sufficient notification for most purposes
- You might want to call out certain notifications which must be done via mail, or to stipulate what happens if the sending party receives a bounce message to their e-mail (fallback to postal service?)

So now what?

- At this point, you've got a bunch of proposed language from your vendor, and some number of changes you want to make to it.
- Determine the language that says what *you* want
- How much of a change is it from what the other party proposed
- Do this for the entire document in a first pass
- Determine if you're only looking at one or two changes, or a bunch.
- If it's a small number of changes ($n \leq 3$) suggest language change via e-mail, or even via phone. More, use redlining.

Redlining

- Redlining is the act of creating a marked up version of the agreement that highlights the changes you make to the document

- The industry-standard method is using Microsoft Word documents and "Track and Highlight Changes"

- Yes, use actual real Microsoft Word, preferably on a Windows PC. If you don't, you'll invariably cause all sorts of wholesale formatting changes

    - Word for Mac generally works fine these days, if it's a current version

Redlining, Part 2

- How do you get the Word doc with the agreement in it?
- Never paste the agreement into Word. It wastes your time and annoys the lawyers.
- Talk to your sales rep. Tell them you need the agreement in question, in Word format, so you can "pass it along to the lawyers for review"
- This is a common request. They'll sort it out.

Aside: The Sales-Rep Is Your Friend

- Yes, this is counter to some folks' normal vendor relations
- The sales rep wants to close the deal, and will negotiate the internal bureaucracy to get you the document you need, and push their legal department to agree to your *reasonable* changes

Redline Review

- Go through your document and just make every single change you want to make to agreement.
- Don't be stingy with the comments.
  - Add comments on your own changes, so others who follow will understand what you're asking for (caution: the other side will see them)
  - Add comments on text to highlight things you want your lawyers to pay closer attention to when they do their review, or questions you want answered.

OK, Now what?

- You've got your fully revised and marked-up agreement.
- Go over it with your management, or whoever will have to eventually sign it. Keep them in the loop throughout the process.
- Send it to *your* attorney.
- Depending on your billing arrangement, schedule a call with them to go over it after they review it.
- The work-product you expect from your attorney is a redlined version of the document which reflects changes *your attorney* would be OK with.

Dealing With Your Attorney

- One thing that cannot be stated enough: *Be sure your attorney understands why you made the changes you made.*

- It's uncommon for the attorney who is reviewing your contract to understand your technical needs.

- Your technical needs will very often drive your legal needs.

- This may seem like a time-sink, but it's money well spent considering the potential risk to your company

Example: Termination of Service

- Negotiating a colocation agreement
- Knew that there were a lot of ways one could intentionally screw with us years from now when we were trying to vacate the facility
- Once our attorney understood that I wanted the termination clause to help ensure "smooth transition" outward, he was able to craft language which met our needs and was acceptable to the vendor.

Screw Your Ego

- You're not a lawyer.
- If your lawyer changes your language to something you don't understand, ask them to explain it to you.
- If your lawyer changes your language in a way that you think "breaks" what you were trying to accomplish, *TELL THEM,* and let them re-revise it, and get it to a place where both they and you are happy with it.
- The point is to do as many back and forth edits between your lawyer and you as necessary to put on a unified front for the vendor.

"Our attorneys had a few changes they'd like to see..."

- This is always the language you use.
- It keeps the relationship between yourself and the vendor sales rep amicable. This is a "lawyer problem".
- Certainly admit ownership of some of the ideas in the changes (if they're yours), but the tone is always about the "Dark Arts" of Law.

Document Naming Conventions

- At this point, the Word doc being shared almost certainly now ends in: _yourCompanyName_*YYYYMMDD_nn*.doc
- If it doesn't, "Make it so."
- The entire process is predicated on having to look only at the redlines/comments from this point forward.
- Be meticulous in updating that filename, but only on "your turn".

When is "my turn", aka "The Turn"

- A "Turn" is a full circuit of a redlined document from one party to the other and back again.
- A "Half-Turn" is, as you might expect, one party editing and revising the document, and sending it to the other. Some refer to this as a "flip."
- Once you've had your turn, you *do not* send another copy of that document until it's your turn again
- If you have changes you want to propose in the interim, either hold onto them and wait for your half-turn, or ask opposing counsel to add them in their "half-turn" if they're mutually agreeable.

Back and Forth

- The agreement will likely make *many* full turns as you propose language to them, and they to you.
- They alter it slightly to make it more amenable to their own needs, and send it back to you.
- That bit's important....

- Every time you get a half-turn from the vendor, you're getting information you didn't have before. You get to see what they *really* care about, and what they *really* want to preserve of the original language.

- At that point, you can try to satisfy their needs, as well as try to meet your own needs, revising the language to do both

- Repeat ad nauseam. (Yes, you will get sick of this)

- I've had agreements go through about 50 full turns.
- Your working directory fills up with various _20150712_01.doc, _20150713_01.doc, 20150713_02.doc files. This is normal.
- If there's comments that are no longer relevant, or changes which parties have accepted, click "accept" or "close" on them and get them out of your way.
- This way, every single comment/change is a point of contention that needs attention and negotiation

- Make sure that, every so often, the business folks who will have to sign this document have *also* looked over the changes and are on the same page
    - You don't want to spend a lot of time negotiating a point only to find out that the CEO who has to sign the contract isn't going to agree to that.

The Conference Call

- At some point, there will be sticking points.
- Your lawyer wants language "X" which is directly contrary to language "Y" which their lawyers want.
- This is frequently in areas of legal liability, insurance, and other dark regions where lurk evil dragons.

- Typical Participants on call:
  - You
  - Your attorney / outside counsel / etc.
  - The vendor's sales rep
  - The vendor's attorney / outside counsel / etc.

- Best practice: Be quiet and let the grown-ups talk
- You're paying your attorney by the hour. So is the vendor, potentially. Don't pay to hear your own voice unless it's really important.
- Make sure you understand what your attorney agrees to, but generally just let them decide on language
- The "Turn" rules still apply : whoever is holding the latest rev of the agreement at the start of the call, will be the one to incorporate all the language from the meeting into their half-turn (your competent counsel should sanity-check that they actually did so).

The Impasse

- It's rare but it happens
- Your attorney insists on language "X". Theirs insists on "Y" and neither one is willing to budge
- Be sure *you* understand the importance of "X" to your attorney. What is the business impact of "Y" that your language "X" solves/prevents.
- Engage with your attorney and with your management. Weigh the risks, and decide if this is "nice to have" or "can't live without".

"You can't go to a negotiating table pointing a gun, but you've got to keep it over your shoulder."

–Joe Slovo

Getting Past The Impasse

- Engage your vendor sales rep and/or sales manager on the phone (*not* e-mail)
- Explain that "your attorney doesn't want to sign off on *vendor's* language, and is really insisting on *yourCompany's* language."

- Sales managers have a *lot* of power to force language changes through their legal process, sometimes even to that company's huge detriment. Use that to your advantage.

- If the sales manager thinks all this time spent negotiating the deal will be for naught, he's even more incentivized.

The Immutable Impasse

- If given language in a proposal is immutable to the vendor, then the same rules discussed earlier apply
- Weigh the business need for the service/product against the specific terms you find objectionable.
- Is the convenience of one worth the risk of the other?
- Often, this is a business decision made by those above you. Give them the best information you can, and let them decide.

The Goal

- The goal is to get to the point where all the comments in the document have been addressed/closed, and all the language changes have been approved.
- ie., there's no notes in the margin anywhere in the entire document, and nothing complaining about an unapproved change
- If you've approved all their changes, and they've approved all yours, as the man says, "you've got yourself a deal" .... well, almost

One Last Thing... References

- There's two schools of thought to references. Some folks check them prior to going down the contract rabbit-hole, some at the end right before signing.
- Unless you're dealing with a brand-new company and a brand-new product, you're definitely within your rights to demand references
- Make sure they give you references for companies that are as similar to your own company as possible in terms of either market-sector, or use-case of the product, or both.

- Checking references is a lot like interviewing references for a candidate for a job
- What are the vendor's strengths? Weaknesses? Have they caused outages/data-leakage/loss/etc. at any point?
- Remember that like a job candidate, the references were hand-selected by the vendor and are likely to be pre-disposed to give you a good feeling. Scratch below the surface and find out what color the dirt is.

Closing The Deal

- Handshakes won't cut it, obviously.
- Someone with "signing authority" on your side needs to sign it.
  - If that's you, you'll know it explicitly. If you only *think* you might have signing authority, you almost certainly don't.
  - If it's not you, it's either your boss, or your boss will know who should do so

Signature Mechanics

- Signed and scanned is legally binding these days
- DocuSign (or a similar service) is quite common for e-signing of contracts.
  - Can either insert a digital image of your real signature, or it will fabricate a signature for you which is considered valid.
- If you have to manually sign it (like with a pen and paper) initial the bottom corner of every page, and scan the entire document.

- Once you've sent the vendor the signed contract, ensure that get a "counter-signed" or "fully-executed" copy back (with their authorized signature on it as well)

- If you had a manually-signed version, ensure that the countersigned version has your initials on the bottom corner of every page.

- Regardless, it's always a good idea to look over the copy you signed and the copy you got back to ensure they're the same, especially on particularly sticky bargaining points.

    - Better to find "accidents" now rather than in month nineteen.

Conclusions and Summary

- Know when you can negotiate and when you can't
- Any paperwork that's not immutable is no more than a proposal
- Make sure you understand what your lawyer is writing, to know that it meets your technical needs

- Make sure your lawyer understands your needs, so he can write what you need him to
- Your Sales Manager is your ally, whether you normally believe so or not.
- Be prepared to walk away if you can't reach mutually acceptable terms. Ultimately your business requirements are paramount.

Questions?

- Slides will be available at: http://www.megacity.org/slides/
- Feel free to e-mail me at: dredd@megacity.org