Third Party Relationships: Important Factors to Consider in Contract Negotiation

The Knowledge Group
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Overview

- Conduct due diligence
- Regulatory / legal concerns
- Data privacy and security
- Service level agreements
- Other contractual protections
Conduct Due Diligence

- Assess your needs and priorities
- Research prospective vendors
  - Business intelligence reports
  - User groups
  - Customer references
- RFP/RFI and proposal process
- Negotiation process
Regulatory / Legal Concerns

- HIPAA and HITECH
  - Health care
- Gramm-Leach-Bliley
  - Financial services
- Sarbanes Oxley
  - US public companies
- FTC enforcement actions
- U.S. state data privacy laws
- Export control regulations
- EU Data Protection Directive
Data Privacy and Security

• What data will be stored?
  – Any personal data?
    • Individuals from what states or countries?
  – Will data be encrypted?

• Where will data be stored?
  – Do you know? Can you limit locations?

• Who will have what rights to data (and derivative data)?

• Who can access data?

• When / how will data be returned?
Standards / Audits

Service Organization Control (SOC) Reports

• SSAE 16 (SOC 1)
  – Replacement of SAS70
  – Examines financial controls at a service organization

• SOC 2 and SOC 3
  – Type 1 vs. Type 2
  – “Trust services principles”
    • Security, availability, processing integrity, confidentiality, privacy
Other Standards

- Various ISO standards
  - ISO 9000
    - Quality management
  - ISO 27001
    - Information security management systems

- International standards
  • ISAE 3402
    - Assurance reports on controls at a service organization
Service Levels

- Tailor to your particular deal
  - Problem response
  - Problem resolution
  - Availability
  - Internal (application) response time
  - Mean time to answer
  - Errors / 1000 lines of code
Service Levels (cont’d)

- Service level metrics / calculation
- Remedies for service level failures
  - Automated monitoring / reports (vs. only upon request)
  - Credits
  - Audit rights
  - Termination right for chronic or recurring failures
Other Contractual Protections

- Tailor to your particular deal
  - Termination rights
    - Cause, convenience, force majeure, change of control, change in law, etc.
  - Rights of approval
    - Locations of performance / data
    - Subcontractors
    - Assignment
Other Contractual Protections

- Dispute resolution
  - Choice of law
  - Choice of forum
  - Litigation vs. alternative methods
    - Consider arbitration for international disputes

- Taxes
  - Involve country-specific experts
Other Contractual Protections

- Exchange rates
- IP rights / licenses
- Disaster recovery / data retention
- Extract / return of data
- Required disclosures of data
- Security breaches
- Force majeure
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Questions?

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