A Twenty-Point Vendor Contract Checklist

I'll be the first to admit that sometimes even with the best of intent, the best of stewardship practices, a firm hand is needed to bring a vendor to heel to acceptable behavior. This applies to risk exposure in contracts, to pricing, to terms, to quality-of-service delivery, and beyond.

Let it be known however that once a successful relationship is in place, the need to "correct" is virtually eliminated. And in fact, you will be surprised at the energy and creativity the "vendor" is bringing to your venture.

Below is a partial list to use when reviewing existing or new agreements.

1. Do you have other vendors currently offering a similar service to your firm and redundancy of service delivery is not needed for business continuity? If so, consider collapsing all into a single vendor's lap. See the article "The Benefits of Scanning for Vendor Footprint Collapse".

2. Are the Ts & Cs mutually beneficial? The typical MSA (Master Services Agreement) is written by the vendor's attorney, whose job is to eliminate risk, regardless of how well their client performs for you. You likely deserve better.

3. Constructive or restrictive renewal language? Ask that the renewal terms meet your needs, not the cookie-cutter solution which serves the vendor alone.

4. Payment terms. Again, ask that they meet your needs.

5. Control who has authority to incur cost. If the agreement is for a service that can be modified which in turn increases cost to your firm, do you have control of who from your firm can invoke such costs by contacting the vendor? Ask the vendor to accept such requests from your list of authorized contacts, and in what fashion i.e. email, phone, etc.

6. Is an NDA (Non-Disclosure Agreement) needed? Would you like to ensure sensitive information your vendor might learn about your firm not end up in a competitor's hands? Get an NDA in place.

7. Escape clauses, whether due to performance gaps, business downturn, etc.

8. And on a related note, no one liked the idea of having to leave a vendor but if it does become necessary, protect how you would expect them to respond in writing as part of the sales contract. Address deconversion at the time that you negotiate your contract

9. Market pricing rate stability and adaptability? If you are buying Internet access for example and sign even a three-year term, chances are good that before the term expires, rates will have dropped for the same level of service, leaving you stuck paying higher than current market rates. Get a clause in the agreement that gives you the flexibility to revisit w/o penalty.

10. Who owns it? By this we mean, what are the tasks owned by the vendor and client to ensure successful delivery of what's being contracted. Finding out after signature of a key deliverable you own is not good.

11. Where's the data? What kind of data would you like to have which would objectively measure the vendor's performance on your behalf? This takes the emotion out of a situation which will inevitably arise when something goes wrong. A good vendor will typically embrace the idea of documenting their successful delivery of their service. Like a compensation plan drives the behavior of a sales rep, the contract and reporting requirements often drive a vendor's performance.

12. Do you need an SLA? Having one in place that causes the vendor to pay you for lack of execution can be helpful. It's not that we expect the payment to offset the loss. But it goes back to behavior modifiers.
13. How's the SOW (Statement of Work)? If you have any complexity at all to a deployment, a good SOW is highly advisable. And it would include key milestones with mutually agreed dates and well documented task ownerships.

14. Project Management. Is this the kind of project which would benefit by a project manager? Too many under-estimate the value of a good PM. And this is a cost the vendor can often absorb.

15. Training. Is this a service for which you want the vendor to provide some knowledge transfer to your staff?

16. Guarantee the quality of your front-line support. The vendor typically puts its best people on the job for client acquisition and onboarding. But what about afterwards? See if you can reserve the right to interview and participate in the

selection of account representation and service support. You want the right to accept or reject account support in writing.

17. YOU want to have control of how often there's formal communication between you and the vendor, for the tasks of steady-state performance review, project review, etc. Similarly, you want an escalation path provided prior to signing a contract, with commitments of updates of same as applicable.

18. Agree with your vendor on hiring practices. Are you OK with the vendor hiring from your team? If not or you want this mitigated, now is the time. Likewise, they may ask the same of you.

19. Your vendor merging or being acquired can result in their priorities shifting, and not always with your best interests in mind. One way to cover yourself, have a contract clause stating that if there were a change of management control with the vendor, you have the right to void the contract.

20. Actively participate in vendor client organizations. Not a contract checkpoint but worth considering if the vendor's contribution is paramount to your firm's success. Third party vendors make decisions about service and product enhancements based upon what their clients tell them that they want. If you want to ensure that future vendor investments into products and services remain aligned with your own organization's goals, you should make it a point to participate regularly in vendor panels, user groups, conferences, and forums. This gives you a voice and an opportunity to propose enhancements to vendor products and services that will benefit your organization.