

TYPES NOT MAPPED YET September 06, 2017 | TTR not mapped yet | Matthew I. Hafter

# How to guarantee bad performance from your vendors

A well-crafted master services agreement for outsourced services can create a powerful alliance between you as the customer and the service provider or vendor.

On the other hand, there are some pitfalls that will likely or almost guarantee an unsuccessful relationship with your vendors. We've highlighted a few below, presented with a hearty dose of well-meaning sarcasm.

**Make sure the business unit using the services stops their involvement in the procurement process after the RFP.** It's always best for the master services agreement to be negotiated by financial or legal representatives who know the least about the services and the needs of the users. Like the old joke goes ... "Question: Which is worse, ignorance or apathy? Answer: I don't know and I don't care." **Use the word "penalty" to describe fee credits for service level failures.** Penalties are unenforceable in most commercial contracts, but what the heck – let's give the vendor a way to avoid having to bear the consequences of its performance deficiencies. Besides, it takes too long to craft an enforceable **"liquidated damages"** provision. **Why reinvent the wheel? Mark up the service level agreement from the last deal.** The service level agreements all pretty much deal with the same issues and there's no need to tailor them to the specific services or operating environment. Wash. Rinse. Repeat. Done! **Get a good price because (a) this vendor is inexperienced and can't command a market rate, (b) the vendor really needs the business, (c) the vendor is using this contract as a loss leader to get more business from us, or (d) the vendor's sales person needs to make the sale to earn his or her bonus.** It's great to get the lowest possible price, even if the vendor doesn't make a reasonable profit. Vendors always use their best people and devote a lot of time and energy to engagements even if they can make a higher margin on other clients' work. **High performance ratings on hard metrics are all we need to worry about.** User satisfaction surveys are bunk. You can't measure the effectiveness of personal interactions reliably, so even if your employees or customers hate dealing with vendor, the deal is still good if uptime is solid and errors are low. **Expect perfection because you are paying a high fee.** In the RFP, the vendor gave examples of its historically flawless performance. Why should you expect (or plan for) anything less from your relationship with them? If the vendor falls short, you're not going to waste time going over a root cause analysis or launching any executive-level discussions, you're going straight to court. Litigation is an extremely efficient, cost-effective way to resolve disputes about complicated technical issues that involve your highly sensitive business information and functions, and judges always insist on strict performance rather than "substantial performance." As for judges, see "old joke" in item #1 above. **Don't make the vendor obtain insurance for cybersecurity incidents.** I'm sure the vendor is financially sound and can pick up the cost of any losses, and you'll probably be the only customer of that vendor asserting a claim should they suffer a massive cybersecurity attack. And how often do data breaches happen anyway? **Don't pay any attention to the vendor's disaster recovery plan.** See #7. Hurricanes, fires, power outages, flooded underground tunnels ... how bad could it be? The vendor will just do a workaround. **Don't pay attention to employee morale.** After downsizing the team who used to perform this work in-house, whoever is left will gladly cooperate with the outsiders who provide the service on an outsourced basis. Smiles all the way around! **Expect support to be available when you need it.** Your vendor will adjust its normal business hours for the help desk or other support to be available during your business hours regardless of time zones. No need to write this part into the agreement.

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