



## CAREFULLY DEvised CONTRACTS PREVENT SYSTEM GLITCHES

BY ELLEN DEPASQUALE

Over the years, Alice Russell has managed several major computer upgrades for Ward Howell International, Inc., a Manhattan-based executive search firm. But before a single piece of hardware or software was ever delivered, Ms. Russell drew up a contract that specified what should happen if the equipment didn't perform as expected. And even before any contract was written, Ward Howell's director of finance had a heart-to-heart with her supplier and her co-workers to make sure there was a consensus on what the technology needed to do.

Though the process is time-consuming, Ms. Russell says that once both she and Business Management International, her Manhattan-based systems supplier, understood what Ward Howell required in its new system, signing a contract was easy. "Every new project has an extensive needs-analysis period," she says. "I have asked, 'Do we really have to go through all this?' and I always get the same answer: yes."

The decision to purchase a new computer system is the first step in what is usually a massive project, with many phases. A well-written contract will help the project

run smoothly, resulting in a successful system installation. And if there are problems, the contract will also provide the resolution guidelines. It can save the customer from being stuck with a useless system.

According to The Standish Group International Inc., a Cape Cod, Mass.-based market research and consulting company, 31.1% of computer projects will be cancelled before completion. Completed project will include only 61% of the originally specified features.

### **Watch the specs**

"There are unique clauses in computer contracts that need review before the paperwork is signed. Charles H. Knull, a lawyer in private practice in New York City, specializes in computer contracts. "System specifications are one of the most important documents to be attached to the contract and must be fully understood by both parties to result in a usable system," he says.

Usable, but not necessarily completely successful. Developing computer systems is not an exact science, and any

combination of hardware and software components could cause problems. Computer contracts typically include a clause that addresses unforeseen difficulties.

Experts say that systems buyers should be careful with the wording in this clause. Although no computer professional can be aware of every possible conflict, each should be made responsible for researching whether there are any known conflicts between the specified hardware and software before recommending a system solution.

Jeff Monassebian, a computer contract lawyer at Lieberman & Nowak in Manhattan, also recommends a clause he calls the acceptance test—a plan for the step-by-step testing of the completed system. This document must be presented to the vendor shortly after the signing of the contract and must be agreed upon by both parties.

### **Avoid third party claims**

Another necessary clause is the intellectual property rights indemnity. This is a warranty by the vendor that there is no third party ownership or conflict. In the event that a third party makes a claim, the vendor must protect the customer from liability, and if the third party wins a lawsuit, the supplier must take steps to work out a solution before resorting to the termination of the contract and removal of the system.

For software development contracts, a clause about the escrow of source code is necessary. There are escrow companies that will hold the code—which produces customized modifications to a software program—and provide it to the customer only if the vendor goes out of business. This provision does not cover ownership of the code, merely its use for system maintenance.

However, if a system purchaser contracts with a consultant to modify already existing software, the software publisher may not allow its code to go into escrow. In this case, purchasing the original

source code from the software publisher may be the only option.

Other important issues to cover in the contract include a separate provision stating that the system will support date calculations up to at least the year 2150, and a vendor guarantee that he has checked the system for all known viruses.

Beyond these key clauses, there are many more to consider. Mr. Monassebian offers information and advice in his new book, *A Survival Guide to Computer Contracts*.

The top factor in project success is customer involvement. “There must be a level of trust,” Ward Howell’s Ms. Russell emphasizes, “and clauses in the contract that protect both customer and vendor.”

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