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Features

How to divorce your vendor

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Sure, hooking up with a new service provider is all cigars and handshakes at first. Promises are made and stars glimmer in your eyes as you sign the contract. The future looks bright.

Then things start to go sour. The deadlines you carefully negotiated are being ignored. The fancy custom app you paid dearly to be developed suddenly doesn't work, and that around-the-clock support you were promised turns out to be largely imaginary. The thrill is gone and it's not coming back.

So you decide to make a clean break and start fresh with someone new.

But before you do, consider this cautionary tale of a small biotech firm that decided to dump its IT consultant. When the consultant got wind he was about to be canned, he installed a script that automatically blind-copied him on all e-mails to or from the company's top executives. He quickly discovered that the firm's lead scientist was having an affair. On the day he was to be fired, the consultant zapped 500 racy e-mails and, using another executive's account, forwarded them to the scientist's wife.

"It was worse than a soap opera, and very tragic for the client," says Patty Laushman, president of Uptime Group, an IT shop asked to perform computer forensics to prove that the firm's IT consultant was behind the scheme. (Uptime ultimately took on the biotech firm's IT business.) "Had we known how unhappy they were with their current vendor, we would have coached them on how to make the switch safely."

Of course, not all jilted vendors turn into Glenn Close in Fatal Attraction. Most vendors who feel wronged will just sue. But with easy access to your most confidential information and core business systems, the risks from a bad breakup with IT outsourcers are especially high. The industry is rife with horror stories of companies that terminated relationships only to find they're locked out of their own networks or their ERP systems suddenly stopped working; some even discover that they don't actually own the code they use to run their business and have to go crawling back to the developer to get it.

Hell hath no fury like a vendor scorned.

Fortunately, you don't have to suffer through an ugly divorce -- provided you go about it the right way.

Two words: "Pre Nup"

Before you axe your current vendor, you must secure a replacement. But as one particularly unlucky biotech exec can tell you, you don't necessarily want the vendor to know too soon -- especially if the vendor has people working at your offices.

Laushman advises companies to avoid using internal e-mail or IM to discuss potential changes. She meets prospective customers in coffee shops or other off-site locales, and has her staff audit a potential client's systems at night and on weekends to avoid suspicion and make sure Uptime has all the info it needs for a smooth transition.

Although sneaking around on your vendor may be necessary (not to mention fun), it's more important to anticipate breakups from the start, and bake provisions into your service contract that protect you if things get ugly. In business arrangements, as in marriage, nothing beats a solid pre nup.

For example, a key part of any contract is termination rights, such as non performance. That means both parties must agree on a way to grade the vendor's performance and schedule periodic reviews, says Jon Piot, co-author of The Executive's Guide to Information Technology, and president of Technisource Solutions Group, a division of Technisource.

"If the vendor isn't earning a good grade, it gives you an opportunity to raise issues and work through them," Piot says. "If they can't improve and it's time to fire the vendor, then at least it's not a surprise. The times I've seen it get real ugly is when there's no measurement in place and issues are not discussed. That can descend into mutual destructiveness."

Equally important, companies should specify what happens when the contract is terminated -- such as how long the vendor should continue to provide service (and get paid) while the transition is under way.

"It's in your best interests to have a transition plan," says attorney Richard Neff, who heads the intellectual property and technology practice for the law firm Greenberg Glusker. "If it's a mission-critical Net application, you'd want at least 90 days, and with some types of software up to a year."

It also helps to pay attention to the fine print. In 2001, a mid-size networking company contracted with a major Web host to migrate its site to new servers. Six months later the site hadn't budged, so the company pulled the plug and did the migration in-house. It also stopped paying the host's $US60,000 monthly fee, says the firm's CIO, who asked that the parties involved not be identified.

But according to the hosting contract, the company had to send a certified letter to the host giving it 30 days to correct the problems -- e-mail and phone calls didn't count.

"It was one of those stupid semantic things," the CIO says. "They said we needed to keep paying them. We said we're not paying $60,000 a month for nothing. They sued us, we countersued them, and we ended up settling out of court."

These days, he says, his firm insists on the right to terminate contracts for any reason with 30 days' notice, as well as a 90-day transition period to a new vendor.

Custody battles

Another big mistake is becoming too dependent on a single vendor or outsourcer. Small firms in particular often fail to obtain full-time custody of the apps, content, or systems their now ex-vendor has created. They end up with apps that can't be upgraded or systems no one else can use.

"In many cases, customers are surprised to find out that the vendor owns the intellectual property for work the customer has paid the vendor to perform," says Seth Hishmeh, chief operating officer of USAS Technologies, a multinational IT consulting and professional services company. Hishmeh says a small manufacturing firm once asked USAS to take over development of an unfinished back-office application, only to find out the firm didn't own the rights to the app's source code.

"It would be like trying to finish a house without access to the architectural drawings or floor plans," Hishmeh says. "There was nothing we could do. They had to work it out with their old vendor."

*eff says he's witnessed a few horror stories about Web site developers who retained rights to their clients' content long after their relationship was kaput. "It's your Web site," he says. "You need to obtain the rights for all work done for it."

Besides code and content, organizations must own the knowledge of how their IT systems work, Laushman says. The last thing you want is a situation in which a single person has total knowledge of a business-critical system, with no paper trail for anyone else to follow.

"One guy had been our client's sole custom developer for 10 years, with zero documentation," Laushman says. "We met with the company and said we need to figure out how to get some documentation without arousing his suspicions. Otherwise it was going to cost them a lot of money while we figured out how everything worked. Most network and system admins hate doing doc work, but you have to insist they provide it along the way. Every piece of documentation will save you money down the line."

Five good reasons to fire your vendor

- **It can't provide the service you need.** When it takes three phone calls to get a response or three repairs to get something working right, it's time to get out, says the Uptime Group's Patty Laushman. "If you're paying the vendor, they should know what they're doing. You shouldn't have to call three times to fix the same problem.
- **It can't scale.** If the vendors you started with can't keep up with your company's growth, it's time to move on. "When you're a small company, you want to deal with vendors that understand your needs," says USAS Technologies' Seth Hishmeh. "Once you've grown from, say, 20 to 100 employees, you may need a different kind of company."
- **It can't meet your security requirements.** Developers don't always build robust security into their apps, says Bruce Eissner, CEO of Polar Cove, a consultancy that specializes in information security. "We sometimes find those applications don't provide the level of assurance our clients need," he says.
- **It can't meet compliance standards.** If the vendor fails to meet Sarbanes-Oxley or other mandated guidelines, you'll still be held responsible, Eissner says. "You can't say, 'we asked them to do this and trusted what they told me.' Ignorance is no defence."
- **It is in financial trouble.** The last thing you want is the vendor's disgruntled employees with their hands on your IT systems, and this can happen if the vendor skips payrolls, says Technisource's Jon Piot. Ask your service provider for financials, check its Dunn & Bradstreet scores, and listen to what its own employees are saying, Piot advises, as "that will give you a pretty good idea of what's going on".

Five bad reasons to divorce your vendor

- **You're angry.** "It's the No. 1 bad reason to fire somebody," says consultant Rick Brenner. "If you're talking to the vendor on the phone and you look down and see your fists are clenched, hang up and go for a walk. Nothing good is going to happen if you keep talking."
- **Your brother-in-law can do it cheaper.** "Getting out of an existing contract is difficult enough," says Polar Cove's Eissner. "Saying that you might reassign the work to your nephew is indefensible."
- **You're new and you want new blood.** Newly hired managers often want to axe vendors hired by their predecessors and bring in familiar partners, says Technisource's Jon Piot. Evaluate vendors honestly. If they are doing a good job, it's a bad idea to fire them.
- **You have unrealistic expectations.** "In IT, nothing is ever done quickly enough," says USAS Technologies' Seth Hishmeh. "Customers need to ask themselves whether they are really providing feedback and information to the vendor to enable them to do a good job.
- **You're in financial trouble.** Struggling firms sometimes make up reasons to get out of costly contracts. But if you can't keep up with the payments, don't be surprised if the vendor decides to fire you.

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