

# A Crash Course on Avoiding Software Project Disputes

Simple things you can do to avoid the hell of mediation, arbitration and court proceedings

## PRIOR TO THE CONTRACT

- **Hire** outside legal counsel with contract law and software project experience.
- **Demand** data on investments in vendors from integrators and consultants who might have conflicts of interest. You have a right to know if their vendor picks are influenced by a financial stake.
- **Demand** that the vendor name any subcontractors it plans to use.
- **Ask for** references who engaged in similar projects. No references, no deal.
- **Research** past and current lawsuits in which the vendor was a participant.
- **Require** that the vendor has these insurance policies and that it will cover all damages you may be forced to seek.
  1. Commercial General Liability (CGL)
  2. Electronic Errors & Omissions (EE&O)
  3. Internet liability insurance
- **Hire** an independent consultant to analyze specific metrics the project must meet: response times, level of hardware, processing power and so on.
- **Save** all correspondence with bidders. Retain reporting and documentation of meetings and interactions.

## IN THE CONTRACT

- **Specify** the functionality to be delivered.  
*Bad:* "Typical CRM functionality"  
*Good:* "A system that will amass data on goods sold in retail outlets that is stored in a database for instant and anytime retrieval by marketing personnel for data-mining purposes."
- **Mandate** performance-level testing.  
"Database must return queries in less than two seconds with 100 concurrent users, under all conditions."
- **Specify** the minimum skill level and amount of staff for the project.
- **Mandate** a project plan including:
  1. Progress milestones that detail what

will function and how.

2. Payment due at each milestone.

3. The specific method by which there will be sign-off on these milestones.

- **Mandate** source code escrow and regular audits of the escrow so that you can take possession of source code or other intellectual property if the vendor suffers a disaster or goes bankrupt.
- **Require** that all contract provisions apply to subcontractors' work as if it were the vendor's own work.
- **Detail** a dispute resolution process:
  1. Describe specifically when mediation, arbitration and court proceedings will be used.
  2. Assign a specific "honest broker" or independent mediator to the project.
- **Mandate** a clause that specifies damages allowed in the event of a dispute.
- **State** that the vendor's liability isn't limited to any specific version of the software used in the project.
- **Don't sign** a contract that limits a vendor's exposure to lawsuits to, for example, one year after signing.

## AFTER SIGNING THE CONTRACT

- **Create** a warranty that the vendor will address changes to the software as time goes on.
- **Make sure** the execution of the contract provisions is sound.
- **Follow through** on acceptance tests before signing off on milestones. Confirm that auditing of escrow source code is actually happening and so on.
- **If things go bad:**
  1. Call in legal counsel.
  2. Document everything.
  3. Keep the systems online—the best way to prove a system doesn't work is to show it doesn't work.
  4. Do not talk to the press.

SOURCE: CIO reporting

Why it's a good idea to hire an independent consultant like **Katzscan** before and during a software selection & implementation project.

If you're not happy with your software implementation, **Katzscan** can perform an independent analysis and work with both parties towards a resolution.

**Katzscan** brings both business operations and technical skills to the table, making us well-qualified to help before, during, and after.