

Managing The Vendor Relationship: A Marriage Made in Heaven or Hell?

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Mid-Atlantic CIO Forum January 21, 2016



Overview

- The decision to entrust company and customer data to a vendor has significant legal, financial, technical, and operational ramifications.
- Understanding and managing the risks associated with third party management of technology and information enhances your ability to realize a successful, value-added transaction and protect the company's interests.

Decisions....



Your choice to select a particular vendor should carefully contemplate your ability to work with the provider, both within the framework of the contract and in your informal dealings to achieve your corporate goals.

Why Does this Matter?

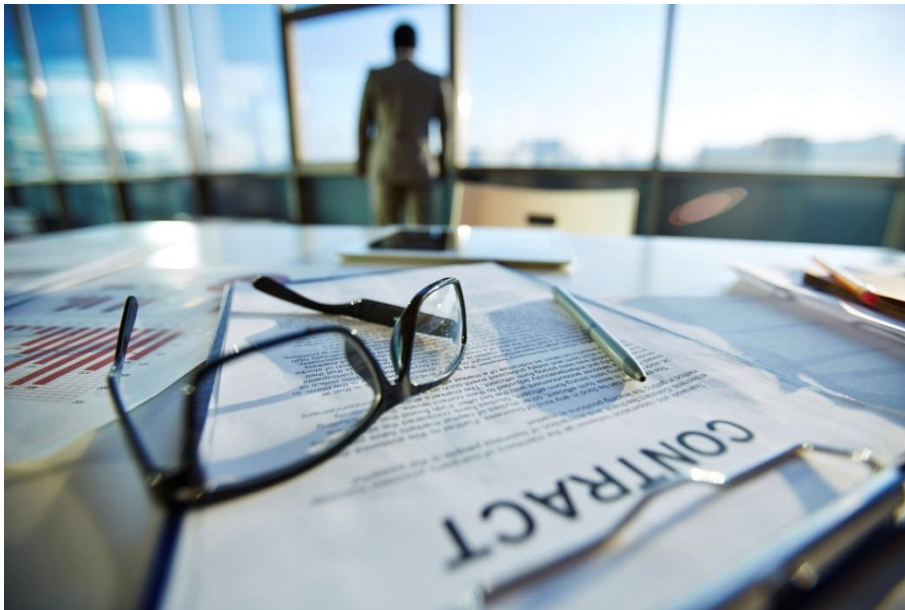
- Federal Trade Commission has issued several consent decree findings related to companies' lack of due diligence regarding third party service providers
- Fall-out from a problem vendor relationship could result in:
 - Brand damage for your organization
 - Loss of business
 - Adverse media coverage
 - Legal action
 - Regulator investigations
 - Fines, penalties, settlement

Discussion Topics

- Pre-Contract Considerations
 - Criticality of the relationship
 - Internal practices, policies and protocols
 - Determine extent of due diligence and develop the due diligence process
- The Contract and On-Going Relationship Management
 - Operational concerns
 - Legal/Risk management issues
 - Communications needs
- Exiting the Vendor Relationship
 - Return of information
 - Transition needs
 - Post-relationship dealings

Pre-Contract Considerations— Should we use a vendor?

- Is outsourcing the right choice for us (how much control do we need over the product/service)?



- Are we operating in a regulated industry?
- Are we a consumer-facing operation?
- What is our jurisdictional footprint?

Pre-Contract Considerations – Initial Questions

- Protecting our information/data. What will vendor access and control?
 - Is personal information involved?
 - Is other confidential / proprietary data involved; is vendor creating work product?
 - Who will control access, storage and transfer of the data?
Who will have access?
 - Who controls the data security plan and breach response?

Pre-Contract Considerations - Due Diligence Theory vs. Reality

What does due diligence really mean?

- How do we balance best practices with business time and money concerns?
 - *Who is the vendor and who is really doing their work?*
 - *What do I really need to know about them and their business practices?*



Pre-Contract Considerations – Internal Practices, Policies and Procedures

- The best offense is often a strong defense.
 - Can we use our corporate practices and policies to structure, manage and back-stop vendor expectations?
- Security policies and controls – cyber and physical
- Personnel management
- Insurance and general risk management program

Pre-Contract Considerations - Due Diligence Process

- Due diligence checklist
 - What do we really need to know (and what would we like to know)?
- Due diligence team
- We all bring strengths to the process!
 - Operations
 - IT
 - Attorney
 - Finance
 - Communications

Contract Considerations – Operational Concerns

- Internal vs. external facing services
- Vendor control over Company information and operations
 - Vendor personnel and subcontractors/providers
- Timing Needs
 - Contract execution
 - Implementation

Contract Considerations – Operational Concerns

- Flexibility
 - Organizational changes
 - Changes in use volume and scope
- Access and Availability
 - Availability, Responsiveness
 - Security
 - Redundancies
- Recourse for Breach (practical needs)



Contract Considerations – Legal and Risk Management Issues

- Confidentiality/Privacy Protections
 - Includes proprietary and personal information
- Warranties and covenants
 - Legal compliance
 - Performance
 - Maintenance of security and redundancy protocols
- Indemnities and limits on liability
- Ability to assign, expand and contract access

Contract Considerations – Legal and Risk Management Issues

- Default Remedies (from the legal perspective)
- Insurance (internal and external coverage)
- Compliance and audit needs
- DRPs and security protocols
- Handling of data breach and response

Contract Considerations – Communications Needs

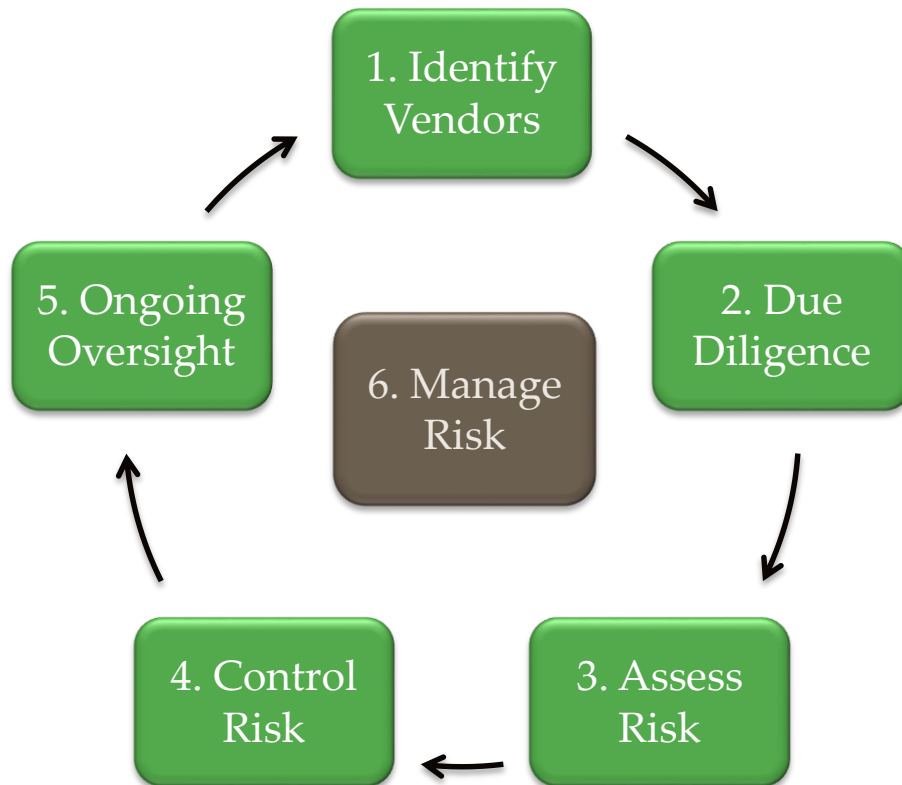
- Key Personnel
- Meetings/Status Calls
- Oversight Ability to Verify Compliance



Exiting the Relationship

- Access to Data
 - Ease of access and retrieval
 - Post-term access and retrieval
 - Vendor transition concerns
 - Contract disputes
- Cooperation by Provider
 - Transition
 - Audit rights
 - Disclosure requests and litigation holds

Creating a Vendor Management Program



1. Identify Vendors

Who are the possible partners?

2. Collect Information

Conduct due diligence - What are the vendor's practices and ability/willingness to address company needs and concerns

3. Assess Risk

Assess possible outcomes, *given the specific circumstances of the project and company business?*

4. Control Risk

Manage identified risks through selection criteria, contractual terms, internally adjusting scope of exposure

5. Manage Relationship

Ongoing oversight, communications and monitoring of vendor and project – examples include requesting updated information on a regular basis, status meetings, performing audits or practices

6. Manage Risk

By consistent application of the program

Firm Overview



Miles & Stockbridge is a leading, full-service law firm with more than 230 lawyers and offices in Maryland, Washington, D.C., and Northern Virginia. Our comprehensive business and litigation experience covers 120 practices and 16 client industries, including manufacturing and distribution, real estate, and finance and capital markets. Across all practices and industries, we work to create and preserve value by helping clients solve their most important problems.

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