

Contract risk and opportunities



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thoughtful and precisely written contract that allows for all parties involved a thorough understanding of every detail and all expectations and procedures will provide a beneficial working relationship for all parties involved.

Creating a contract that has the ability to expand and contract within a working relationship, as air does in our lungs without thought, creates a more effortless situation that in the end will minimize misunderstands and disagreements. If, in this case, C-S and Span had been more specific in the offer and C-S in the demands, many of the disputes could have been avoided. A contract is a legal and binding agreement between two or more parties if it includes the following: Offer: a specific proposal to enter into an agreement with another. An offer is essential to the formation of an enforceable contract. An offer and acceptance of the offer creates the contract (Hill & Hill, 2005). Acceptance: receiving something from another with the intent to keep it, and showing that this was based on a previous agreement (Hill & Hill, 2005).

Consideration: consideration is a benefit which must be bargained for between the parties, and is the essential reason for a party entering into a contract. Consideration must be of value (at least to the parties), and is exchanged for the performance or promise of performance by the other party (such performance itself is consideration) (Hill & Hill, 2005). There are other legal requirements that must be met such as the parties involved must be of legal age and sound mind. Minors and people with proven limited mental capacity are forbidden to enter into contracts. Contractual

agreements involving illegal activities such as selling drugs are not valid and are unenforceable.

Any contract that goes against public policy is also unenforceable, such as offering to pay someone to walk through town naked. ??? The one-year contract between Span and C-S is worth 6 million. C-S??™s bigger e-CRM order is in the pipeline, and chances of Span getting the order hinge on the performance of this contract??? (University of Phoenix [UOP], 2009). Span??™s objective must be to exceed C-S??™s expectations on all levels in order to insure, or at least improve the chances of Span getting the e-CRM project. A contract that spells out all details regarding performance and expectation by both companies will at least allow the possibility of exceeding aforementioned expectations. Contractual details between C-S and Span Systems In the simulation Citizen-Schwarz AG (C-S) and Span Systems showed offer and acceptance by Span offering to create software for C-S, and C-S accepting the offer in exchange for payment.

A promise of services in exchange for payment was made, thereby satisfying a legal requirement, consideration. This agreement is in accordance with the law, and satisfies all legal requirements. C-S agreed to pay Span \$6 million to create software that would increase the banks ability and efficiency in various bank transactions. Performance More likely than not, a dispute arises due to lack of clarity concerning a party??™s obligation. C-S must more carefully consider the kind of product they want, a way to measure quality, and what kind of time frame for delivery of said product would be desirable. The current agreement for performance states ??? Performance: ??;neither

party may cancel this agreement, in whole or in part, subsequent to more than fifty percent of the consideration having been tendered by the other.

??? (University of Phoenix [UOP], 2009). This performance clause must be rewritten in order to move forward in a mutually beneficial manner.

Performance per contract is considered met when the ??? successful execution of a contract, or fulfillment of an obligation, in a manner that releases the performer from all liabilities under the contract??? (Luthra, 2009) is achieved. Span has not met these obligations in total thus far, and begs the question – at what point can/cannot C-S rescind the contract. The ambiguity surrounding the determination of how to measure the quality of work and what to do when C-S requests changes that are above and beyond the agreed pervue must be what is rewritten in the new contract. Per original contract within the Performance Clause if 50% or more of the work is complete (C-S is claiming only 40% is complete) (UOP, 2009) at acceptable levels of quality, neither party may rescind the contract.

The new Performance Clause includes: ??? specific time frames specifying when work is to be completed, as a percentage ??? definition of what constitutes ??? quality work??? ??? all changes not agreed upon in the original contract will require ??? change orders??? ??? regular communication at the project level ??? a Change Control Board with 2 members from companies on the board With the combined effort of both companies a Change Control Board can monitor, accept, or deny requested changes as normal and acceptable changes according to the contract. If not considered normal the board can extend Span??™s due date per change and

assess a fee to C-S based on an aggregated scale of work and/or time.

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