

Tame Complexity in Enterprise IT Services Agreements

By Christopher Barnett

Many large enterprises have made the decision to transition the support and management of their information technology assets and networks to third-party service providers, such as IBM or HP. Such arrangements can help companies to focus their internal efforts more on driving business with their customers, and less on internal work that may represent a distraction from core objectives. However, such contracts can be fraught with challenges, one of the most notable of which being the danger of unmanageable complexity.

The size and scope of many enterprise-level IT operations leads many CIOs to expect a commensurate level of detail in IT services agreements (ITSAs) to capture both the full range of services to be delivered by the service provider and the appropriate metrics under which those services will be billed. While that is to some extent an understandable and appropriate inclination, it needs to be carefully balanced against the risks of too much complexity, which include:

- **Rigidity.** Technology evolves and changes constantly. ITSAs often have terms lasting 5-10 years or more, so in that time the systems and network designs in place at the beginning of the term may be bordering on decrepitude as the contract nears expiration or renewal. Efforts to tie too tightly the service provider's obligations and billing rights to the enterprise's technologies can result in a service relationship marked by unmet expectations and unpleasant financial surprises for both parties. Lawyers and business teams drafting these agreements should not assume that the parties will be able to amend the ITSA to address future disconnects between the services to be provided and the technology that the enterprise will require to remain competitive.
- **Opaque Billing.** The other overarching challenge we see in these agreements is a tendency to implement billing metrics that give enterprises little if any visibility into how the providers produce their invoices under ITSAs. Billable events often can be very granular – down to the level of the number of CPU instructions processed during a given period of time on a given set of systems – and it might be difficult or impossible for enterprises to verify that the amounts billed accurately correspond to the quantity of resources used. Audit-rights provisions can provide a measure of leverage, but audits are expensive and almost always detrimental to the parties' business relationship. A better solution, where feasible, often is to agree on a fixed fee for a set period of time and then to provide for the recalculation of that fee at a later date based on changing circumstances.

ITSAs can rival M&A documentation for length and complexity, and they need to be handled with M&A-level of creativity and attention to detail.



About the author Christopher Barnett:

Christopher represents clients in a variety of business, intellectual property and IT-related contexts, with matters involving trademark registration and enforcement, software and licensing disputes and litigation, and mergers, divestments and service transactions. Christopher's practice includes substantial attention to concerns faced by media & technology companies and to disputes involving new media, especially the fast-evolving content on the Internet.

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