

5 Ways to Recession Proof Service Provider Contracts

Monthly Webinar Series
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Free Monthly Webinar Series

Every month James River presents a new 30 minute Webinar on every-day contracts issues faced by businesses of all sizes. Pick up some practical advice. No registration required. Visit www.jamesriverllc.com for dates & times, dial in information and slide downloads.

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Introduction

- What is a Recession?—Negative economic growth
- Bernanke announced likely recession on April 2
- What is the connection between recession and contracts?
 - In period of growth, focus is on acquiring customers, not on how business is done > contracts sometimes seen as obstacle
 - In recession, focus is on solidifying existing business and minimizing costs > contracts gain attention
- Theme: Contract recession proofing is inexpensive and more valuable than most realize (high ROI)

5 Ways to Recession Proof Service Provider Contracts

1. Define Scope of Service

- "Scope creep" = lost revenue from existing business
Example: Provider does IT and facility maintenance, customer asks provider to guide supplier on interfaces
- Especially critical in long term subscriptions and fixed price projects where price is negotiated up front
- Absolutely depends on the contract wording
- Orient descriptions around end service products, not responsibilities
Example: Work: Improve company compliance--Responsibility: manage existing operations / End Product: Produce flow chart showing critical non compliance and process changes
- Also requires active management of work by provider

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2. Establish Long Term, Exclusive Contracts

- Make the most out of existing business
- "Exclusivity" provision not necessarily the best approach—1) controversial, 2) difficult to patrol, 3) not always enforced by courts
- Non-direct approaches:
 - Negotiate set prices and terms for out years
 - Incentives for meeting performance metrics and for innovation
Example: Quality control consulting will change overall customer rating from "good" to "excellent" after 1 year
 - Generate management reporting

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2. Establish Long Term, Exclusive Contracts

- Aggressive approaches:
 - Hold on to title to IP and work product
 - Termination provision absent
 - Liquidated "ramp down" fee

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3. Deal with Large Corporate Customers

- Make up for fewer newer customers with bigger customers, but prepare for more complex relationship
- Corporate governance—parent, subsidiaries, overseas
- Purchase order is contract in minds of many
 - Example: Provision referencing purchase order number and amount, maximum \$ amount per PO
- Points of contact and responsibilities
- Customer contract terms
- Extras in the contract—financial qualifications, insurance, sub-supplier transparency, standards compliance like ISO and EC Directives

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4. Proactively Offer Service Levels

- More outsourcing and fiercer competition lead to farther reaching service levels, but must maintain control by offering something up front
- Goals of a good SLA:
 - Clear and simple standard
 - Effect on end user, either customer or customer's customer
 - Provider can itself recognize and resolve non-compliance
 - Insulated from customer acts and omissions
 - Affordable to manage
 - Customers want quality of service, not credits
 - Defined to guard against negative revenues, e.g., incidents

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4. Proactively Offer Service Levels

- Examples:
 - 99.99% service availability, provider logs in as customer to test, redirect customer to 3rd party mirror site after 24 hours
 - 5-20% improvement in aggregate performance of outsourced operations over in house, provider not responsible for either customer failure to fulfill its responsibilities or for changes in business assumptions
- Alternatives to SLAs:
 - Transparency
 - Industry standards
 - Third party cert's.
 - Change orders funded by provider or customer

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5. Minimize Negotiation, Resolution and Litigation

- Time spent not selling and professional fees are enormous costs
- Minimize Negotiation
 - Standard contracts in plain English, short, no unnecessary legal provisions
 - Commoditized description of services
 - Playbook of backup provisions
- Minimize Dispute Resolution
 - No dispute resolution processes or arbitration clauses
 - Segment out disputed work
 - Designate single sales-type person to receive and resolve claim
 - Prescribe claim format including evidence and set deadline

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5. Minimize Negotiation, Resolution and Litigation

- Minimize Litigation
 - Liquidate damages as much as possible
 - European rule of loser pays

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Conclusion

- Investment in Named Methods Yields Enormous Pays Off In Future
- Easier to Change Ways of Doing Business Midstream Through a 3rd Party Consultant
- Many Additional Benefits—Stronger financial statements, higher valuations