

How to DIVORCE Your Vendor

Untying the knot can open up a world of pain and regret — unless you follow a few simple rules

BY DAN TYNAN



SURE, HOOKING UP WITH A NEW SERVICE provider is all cigars and handshakes at first. Promises are made and stars glimmer in your eyes as you sign the contract. The future looks bright.

Then things start to go south. The deadlines you carefully negotiated are being ignored. The fancy custom app you paid dearly to be developed suddenly

doesn't work, and that around-the-clock support you were promised turns out to be largely imaginary. The thrill is gone and it ain't coming back.

So you decide to make a clean break and start fresh with someone new.

But before you do, consider this cautionary tale of a small biotech firm in the Rocky Mountains that decided to dump its IT consultant. When the consultant got wind he was about to be canned, he installed a script that automatically blind-copied him on all e-mails to or from the company's top executives. He quickly discovered that the firm's lead scientist was having an affair. On the day the consultant was to be fired, he zipped up 500 racy e-mails and, using another executive's account, forwarded them to the scientist's wife.

"It was worse than a soap opera, and very tragic for the client," says Patty Laushman, president of Uptime Group, an IT shop asked to perform computer forensics to prove that the firm's IT vendor was behind the scheme. (Uptime ultimately took on the biotech firm's IT business.) "Had we known how unhappy they were with their current vendor, we would have coached them on how to safely make the switch."

Of course, not all jilted vendors turn into Glenn Close in "Fatal Attraction."

Dear _____ :

As you know, our companies have enjoyed a long and mutually beneficial relationship over the years. But we think it's time we started to see other vendors.

It's not about you, it's about us. Really. We think you're great — too good for us, in fact. But we've changed.

We aren't the same, carefree little startup anymore. Not to say we've outgrown you ... it's just that, well, you no longer meet our needs. There's no other way to put it.

We need a company that can be there for us over the long haul. One that can satisfy our user base, handle larger and larger volumes of data, and leave our clients deeply fulfilled.

Please, don't cry. Let's part the way we started — as friends.

Love always,

PS: Please sign attached separation documents and return them to our attorneys ASAP.

Most vendors who feel wronged will just sue you. But with easy access to your most confidential information and core business systems, the risks from a bad breakup with IT outsourcers are especially high. The industry is rife with horror stories of companies that terminated relationships only to find that they're locked out of their own networks or their ERP systems suddenly stopped working; some even discover that they don't actually own the code they use to run their business and have to go crawling back to the developer to get it.

Hell hath no fury like a vendor scorned.

Fortunately, you don't have to suffer through an ugly divorce — provided you go about it the right way.

Two Words: "Pre-Nup"

Before you ax your current vendor, you must secure a replacement. But as one particularly unlucky biotech exec can tell you, you don't necessarily want the vendor to know too soon — especially if the vendor has people working at your offices.

Laushman advises companies to avoid using internal e-mail or IM to discuss potential changes. She meets prospective customers in coffee shops or other off-site locales, and has her staff audit a potential client's systems at night

and on weekends to avoid suspicion and make sure Uptime has all the info it needs for a smooth transition.

Although sneaking around on your vendor may be necessary (not to mention fun), it's more important to anticipate breakups from the start, and bake provisions into your service contract that protect you if things get ugly. In business arrangements, as in marriage, nothing beats a solid prenup.

For example, a key part of any contract is termination rights, such as nonperformance. That means both parties must agree on a way to grade the vendor's performance and schedule periodic reviews, says Jon Piot, co-author of "The Executive's Guide to Information Technology," and president of Technisource Solutions Group, a division of Technisource.

"If the vendor isn't earning a good

“The times I’ve seen it get real ugly is when there’s no measurement in place and issues are not discussed.”

— Jon Piot, Technisource Solutions Group



grade, it gives you an opportunity to raise issues and work through them,” Piot says. “If they can’t improve and it’s time to fire the vendor, then at least it’s not a surprise. The times I’ve seen it get real ugly is when there’s no measurement in place and issues are not discussed. That can descend into mutual destructiveness.”

Equally important, companies should specify what happens when the contract

is terminated — such as how long the vendor should continue to provide service (and get paid) while the transition is underway.

“It’s in your best interests to have a transition plan,” says attorney Richard Neff, who heads the intellectual property and technology practice for the law firm Greenberg Glusker. “If it’s a mission-critical Net application, you’d want at least 90 days, and with

some types of software up to a year.”

It also helps to pay attention to the fine print. In 2001, a midsize networking company in the Northeast contracted with a major Web host to migrate its site to new servers. Six

Dumping Your Vendor? Let Reason Prevail

5 Good Reasons to Divorce Your Vendor

1 It can’t provide the service you need. When it takes three phone calls to get a response or three repairs to get something working right, it’s time to get out, says the Uptime Group’s Patty Laushman. “If you’re paying the vendor, they should know what they’re doing. You shouldn’t have to call three times to fix the same problem.”

2 It can’t scale. If the vendors you started with can’t keep up with your company’s growth, it’s time to move on. “When you’re a small company, you want to deal with vendors that understand your needs,” says USAS Technologies’ Seth Hishmeh. “Once you’ve grown from, say, 20 to 100 employees, you may need a different kind of company.”

3 It can’t meet your security requirements. Developers don’t always build robust security into their apps, says Bruce Eissner, CEO of Polar Cove, a consultancy that specializes in information security. “We sometimes find those applications don’t provide the level of assurance our clients need,” he says.

4 It can’t meet compliance standards. If the vendor fails to meet Sarbanes-Oxley, SAS70, HIPAA, or other federally mandated guidelines, you’ll still be held responsible, Eissner says. “You can’t say, ‘I asked them to do this and trusted what they told me.’ Ignorance is no defense.”

5 It is in financial trouble. The last thing you want is the vendor’s disgruntled employees with their hands on your IT systems, and this can happen if the vendor skips payrolls, says Technisource’s Jon Piot. Ask your service provider for financials, check its Dunn & Bradstreet scores, and listen to what its own employees are saying, Piot advises, as “that will give you a pretty good idea of what’s going on.”

5 Bad Reasons to Divorce Your Vendor

1 You’re angry. “It’s the ace No. 1 bad reason to fire somebody,” says consultant Rick Brenner. “If you’re talking to the vendor on the phone and you look down and see your fists are clenched, hang up and go for a walk. Nothing good is going to happen if you keep talking.”

2 Your brother-in-law can do it cheaper. “Getting out of an existing contract is difficult enough,” says Polar Cove’s Eissner. “Saying that you might reassign the work to your nephew is indefensible.”

3 You’re new and you want new blood. Newly hired managers often want to ax vendors hired by their predecessors and bring in familiar partners, says Technisource’s Jon Piot. Evaluate vendors honestly. If they are doing a good job, it’s a bad idea to fire them.

4 You have unrealistic expectations. “In IT, nothing is ever done quickly enough,” says USAS Technologies’ Seth Hishmeh. “Customers need to ask, ‘Are they really providing feedback and information to the vendor to enable them to do a good job?’ ”

5 You’re in financial trouble. Struggling firms sometimes make up reasons to get out of costly contracts. But if you can’t keep up with the payments, don’t be surprised if the vendor decides to fire you. — D.T.



“In many cases, customers are surprised to find out that the vendor owns the intellectual property ...”

— Seth Hishmeh, USAS Technologies

months later the site hadn't budgeted, so the company pulled the plug and did the migration in-house. It also stopped paying the host's \$60,000 monthly fee, says the firm's CIO, who asked that the parties involved not be identified.

But according to the hosting contract, the company had to send a certified letter to the host giving it 30 days to correct the problems — e-mail and phone calls didn't count.

“It was one of those stupid semantic things,” the CIO says. “They said we needed to keep paying them. We said we're not paying \$60,000 a month for

of the apps, content, or systems their now ex-vendor has created. They end up with apps that can't be upgraded or systems no one else can use.

“In many cases, customers are surprised to find out that the vendor owns the intellectual property for work the customer has paid the vendor to perform,” says Seth Hishmeh, COO of USAS Technologies, a multinational IT consulting and professional services company. Hishmeh says a small manufacturing firm once asked USAS to take over development of an unfinished back-office application, only to find out the firm didn't own the rights to the app's source code.

“It would be like trying to finish a house without access to the architectural drawings or floor plans,” Hishmeh says. “There was nothing we

total knowledge of a business-critical system, with no paper trail for anyone else to follow.

“One guy had been our client's sole custom developer for 10 years, with zero documentation,” Laushman says. “We met with the company and said we need to figure out how to get some documentation without arousing his suspicions. Otherwise it was going to cost them a lot of money while we figured out how everything worked. Most network and system admins hate doing doc work, but you have to insist they provide it along the way. Every piece of documentation will save you money down the line.”

Can This Union Be Saved?

Before you file the divorce papers, it's a good idea to pull back from the brink and ask whether your own actions

“It's your Web site; you need to obtain the rights for all work done for it.”

— Richard Neff, Greenberg Glusker



nothing. They sued us, we countersued them, and we ended up settling out of court.”

These days, he says, his firm insists on the right to terminate contracts for any reason with 30 days' notice, as well as a 90-day transition period to a new vendor.

Custody Battles

Another big mistake is becoming too dependent on a single vendor or outsourcer. Small firms in particular often fail to obtain full-time custody

could do. They had to work it out with their old vendor.”

Attorney Neff says he's witnessed a few horror stories about Web site developers who retained rights to their clients' content long after their relationship was kaput. “It's your Web site,” he says. “You need to obtain the rights for all work done for it.”

Besides code and content, organizations must own the knowledge of how their IT systems work, Laushman says. The last thing you want is a situation in which a single person has

have contributed to the problem, and if it's not too late to make things right.

“Usually both parties to a conflict contribute something,” says Rick Brenner, principal at Chaco Canyon Consulting. “Before taking any action, check that you've done everything you can to straighten things out on your side of the fence.”

“At the end of a successful mediation both parties walk away happy.”

— Ethan Katsh, Center for Information Technology and Dispute Resolution



For example, there may be conflicts between your employees and the vendor staff. You may have done a poor job communicating what you want, or have had unrealistic expectations about what the vendor can really deliver.

Problems often arise when dealing with small vendors or solo practitioners, who may possess valuable expertise but might just be overloaded from time to time, Brenner says.

“It’s very similar to having your bathroom redone,” Brenner adds. “I think every project manager should have to have part of his house remodeled. It would teach them a lot.”

The key to relatively painless parting is to avoid making the conflict personal, which is easier said than done.

“We don’t live in an entirely rational world,” Neff says. “People tend to get emotionally involved. It usually happens when one side isn’t getting what they want and refuses to pay. The other side cuts off service, and they end up in court.” He estimates that 95 percent of disputes settle before they ever get to court, mostly due to the prohibitive costs of litigation.

A better alternative to lawsuits is building a dispute resolution mechanism such as mediation or arbitration into the service agreement, says Ethan Katsh, director of the Center for Information Technology and Dispute Resolution at the University of Massachusetts Amherst.

With mediation, a neutral third

party works with the parties to find a mutually satisfactory outcome. In arbitration a third party decides who’s right, and the disputants are legally bound to honor the decision.

“Mediation has a significant advantage because if any outcome is reached it’s because both parties wanted it,” Katsh says. “At the end of a successful mediation both parties walk away happy.”

The advantage of arbitration is that you know you’ll end up with a resolution, although you may not like the results.

Managed well, the dissolution could enable you and your vendor to work together again in the future. But don’t count on it.

You should always try to treat vendors as valued partners, Piot suggests. But if things get problematic and heated, “It’s best to cut the ties and get it over with as quickly and cleanly as possible. Usually there’s something fundamentally wrong there that can’t be fixed. Trying to turn around and bring the vendor back in after firing them for good reason is just asking for trouble.”

Resources for Resolving Vendor Disputes

▶ American Arbitration Association (adr.org)

The uber-organization for dispute resolution provides access to more than 8,000 neutral parties who handle all manner of disputes, including commercial ones. The site is packed with FAQs, guidelines, and forms you can submit to commence arbitration proceedings.

▶ Center for Information Technology and Dispute Resolution (odr.info)

This clearinghouse is dedicated to resolving disputes that arise online, as well as developing online tools such as Web conferencing and chat to mediate any type of conflicts. The site links to more than 50 ODR (online dispute resolution) providers worldwide.

▶ International Institute for Conflict Prevention & Resolution (cpradr.org)

CPR’s site offers step-by-step guidance in finding the right “neutral” for resolving business-related disputes. The group also offers dispute-resolution training (including online courses) for corporate counsel or other legal professionals.

▶ Mediate.com (mediate.com)

This directory lets you search for mediators by state, practice area, or level of experience. The site also serves up easily digestible articles on topics such as negotiating strategies or how to resolve internal business conflicts.

Apply online at: <http://subscribe.infoworld.com>

PRIORITY CODE: WW5PDF

I wish to receive a free subscription to **InfoWorld**.
 Yes **No**

SIGNATURE _____ DATE _____

A. MAILING ADDRESS

Publisher reserves the right to limit the number of complimentary subscriptions. Free subscriptions available in the U.S. (including APO and FPO) and Canada

NAME _____

TITLE _____

COMPANY NAME _____

DIVISION / DEPT. / MAIL STOP _____

MAILING ADDRESS _____

CITY / STATE / ZIP / POSTAL CODE _____

Is the above address a home address? 1. Yes 0. No

E-MAIL ADDRESS _____

BUSINESS PHONE (INCLUDING AREA CODE) _____ BUSINESS FAX NO. (INCLUDING AREA CODE) _____

1. Over the course of one year, do you buy, specify, recommend, or approve the purchase of the following products or services worth:

Please include amounts for all locations of your organization. Consultants: please include what you recommend for your clients as well as what you buy for your own business.

- | | | |
|----------------------------------|--------------------------------|----------------------------|
| 01. \$100 million or more | 06. \$5,000,000 to \$9,999,999 | 11. \$100,000 to \$399,999 |
| 02. \$50,000,000 to \$99,999,999 | 07. \$2,500,000 to \$4,999,999 | 12. \$50,000 to \$99,999 |
| 03. \$30,000,000 to \$49,999,999 | 08. \$1,000,000 to \$2,499,999 | 13. Less than \$49,999 |
| 04. \$20,000,000 to \$29,999,999 | 09. \$600,000 to \$999,999 | 14. None |
| 05. \$10,000,000 to \$19,999,999 | 10. \$400,000 to \$599,999 | |

Product category	Write code in box
Large systems	<input type="text"/>
Client computers	<input type="text"/>
Networking / Telecom (including servers)	<input type="text"/>
Wireless	<input type="text"/>
Internet / Intranet / Extranet	<input type="text"/>
Security	<input type="text"/>
Storage	<input type="text"/>
Peripheral equipment	<input type="text"/>
Software	<input type="text"/>
Service/Support / Outsourcing	<input type="text"/>

2. What is your primary job title? (PLEASE CHECK ONE ONLY)

- | | |
|-----------------------------------------------------------------------|-------------------------------------------------------------------------|
| IT / Technology Management | <input type="checkbox"/> 10. IT Staff |
| <input type="checkbox"/> 01. CTO, CIO, CSO, Vice President | <input type="checkbox"/> 11. Other IT Professional |
| <input type="checkbox"/> 02. Director | Corporate / Business Management |
| <input type="checkbox"/> 03. Manager / Supervisor | <input type="checkbox"/> 12. CEO, COO, President, Owner, Vice President |
| <input type="checkbox"/> 04. Network Manager / Director | <input type="checkbox"/> 13. CFO, Controller, Treasurer |
| <input type="checkbox"/> 05. Engineer | <input type="checkbox"/> 14. Director |
| <input type="checkbox"/> 06. Systems Analyst / Programmer / Architect | <input type="checkbox"/> 15. Manager / Supervisor |
| <input type="checkbox"/> 07. Other IT Management | <input type="checkbox"/> 16. Other Business Management Title |
| IT / Technology Professional | |
| <input type="checkbox"/> 08. Consultant / Integrator | <input type="checkbox"/> 98. Other Title |
| <input type="checkbox"/> 09. Developer | (specify) _____ |

3. Please indicate your job function(s)? (PLEASE CHECK ALL THAT APPLY):

- | | |
|------------------------------------------------------------------------------------------|----------------------------------------------------------------|
| IT / Technology Functions | Corporate / Business Functions |
| <input type="checkbox"/> 01. Executive | <input type="checkbox"/> 09. Executive |
| <input type="checkbox"/> 02. Department Management - IT | <input type="checkbox"/> 10. Department Management - Business |
| <input type="checkbox"/> 03. Networks / Systems Management | <input type="checkbox"/> 11. Financial / Accounting Management |
| <input type="checkbox"/> 04. Applications Development | <input type="checkbox"/> 12. Research / Development Management |
| <input type="checkbox"/> 05. Management of Enterprise Applications (CRM, ERP, SCM, etc.) | <input type="checkbox"/> 13. Sales / Marketing Management |
| <input type="checkbox"/> 06. Research / Development Management | <input type="checkbox"/> 14. Other Business Functions |
| <input type="checkbox"/> 07. Consultant / Integrator | <input type="checkbox"/> 98. Other Functions |
| <input type="checkbox"/> 08. Other IT Functions | (specify) _____ |

4. Are you involved in buying, specifying, recommending or approving the following IT products / services?

(PLEASE CHECK ALL THAT APPLY):

- | | |
|-------------------------------------------------------------------------------------|----------------------------------------------------------------------|
| Software / Products / Technologies | <input type="checkbox"/> 18. Web / Video Conferencing |
| <input type="checkbox"/> 01. Customer Relationship Management | <input type="checkbox"/> 19. Storage |
| <input type="checkbox"/> 02. Enterprise Resource Planning | <input type="checkbox"/> 20. Disaster Recovery |
| <input type="checkbox"/> 03. Business Process Management / Outsourcing | <input type="checkbox"/> 21. Security |
| <input type="checkbox"/> 04. Business Intelligence / Data Mining / Data Warehousing | <input type="checkbox"/> 22. Anti-Virus / Content Filtering |
| <input type="checkbox"/> 05. Portals | <input type="checkbox"/> 23. Firewall |
| <input type="checkbox"/> 06. Financials / Payroll / Billing | <input type="checkbox"/> 24. VPN |
| <input type="checkbox"/> 07. Performance / Application Management | <input type="checkbox"/> 25. Identity Management |
| <input type="checkbox"/> 08. .NET | <input type="checkbox"/> 26. Authentication / Authorization |
| <input type="checkbox"/> 09. Other Software | <input type="checkbox"/> 27. Intrusion Detection & Prevention |
| <input type="checkbox"/> 10. Networking | <input type="checkbox"/> 28. Encryption |
| <input type="checkbox"/> 11. Web Services | <input type="checkbox"/> 29. Other IT Products / Technologies |
| <input type="checkbox"/> 12. Content Delivery Networks | Hardware / Peripherals |
| <input type="checkbox"/> 13. Network and Systems Management | <input type="checkbox"/> 30. Servers |
| <input type="checkbox"/> 14. VoIP (Voice Over IP) | <input type="checkbox"/> 31. Notebooks / Laptops |
| <input type="checkbox"/> 15. Telecommunications | <input type="checkbox"/> 32. PDAs / Handhelds / Pocket PC / Wireless |
| <input type="checkbox"/> 16. Wireless | <input type="checkbox"/> 33. Printers |
| <input type="checkbox"/> 17. Remote Access | <input type="checkbox"/> 34. Other Hardware / Peripherals |

5. What is your organization's primary business activity at this location? (PLEASE CHECK ONE ONLY):

- | | |
|----------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------|
| General Business Industries | Technology Providers |
| <input type="checkbox"/> 01. Defense Contractor / Aerospace | <input type="checkbox"/> 12. Service Provider (MSP, BSP, ISP, ASP, etc.) |
| <input type="checkbox"/> 02. Retail / Wholesale / Distribution (non-computer) | <input type="checkbox"/> 13. Computer / Network Consultant |
| <input type="checkbox"/> 03. Pharmaceutical / Medical / Dental / Healthcare | <input type="checkbox"/> 14. Systems / Network Integrator, VAR / VAD |
| <input type="checkbox"/> 04. Financial Services / Banking | <input type="checkbox"/> 15. Technology Manufacturer (hardware, software, peripherals, etc.) |
| <input type="checkbox"/> 05. Insurance / Real Estate / Legal | <input type="checkbox"/> 16. Technology - Related Retailer / Wholesaler / Distributor |
| <input type="checkbox"/> 06. Transportation / Utilities | Government / Education |
| <input type="checkbox"/> 07. Media (print / electronic) | <input type="checkbox"/> 17. Government: federal (including military) |
| <input type="checkbox"/> 08. Communication Carriers (telecomm, data comm., TV / cable) | <input type="checkbox"/> 18. Government: state or local |
| <input type="checkbox"/> 09. Construction / Architecture / Engineering | <input type="checkbox"/> 19. Education |
| <input type="checkbox"/> 10. Manufacturing & Process Industries (non-computer) | <input type="checkbox"/> 98. Other |
| <input type="checkbox"/> 11. Research / Development | (specify) _____ |

6. How many people are employed at this organization, including all of its branches, divisions and subsidiaries?

(PLEASE CHECK ONE ONLY):

- | | |
|---------------------------------------------|------------------------------------------|
| <input type="checkbox"/> 1. 20,000 or more | <input type="checkbox"/> 5. 500 - 999 |
| <input type="checkbox"/> 2. 10,000 - 19,999 | <input type="checkbox"/> 6. 100 - 499 |
| <input type="checkbox"/> 3. 5,000 - 9,999 | <input type="checkbox"/> 7. 50 - 99 |
| <input type="checkbox"/> 4. 1,000 - 4,999 | <input type="checkbox"/> 8. Less than 49 |

7. Which of the following operating systems are in use or planned for use at this location?

(PLEASE CHECK ALL THAT APPLY):

- | | |
|--------------------------------------------|-----------------------------------------------------|
| <input type="checkbox"/> 01. Windows XP | <input type="checkbox"/> 04. Linux / Unix / Solaris |
| <input type="checkbox"/> 02. Other Windows | <input type="checkbox"/> 05. Other |
| <input type="checkbox"/> 03. Mac | (please specify) _____ |

B. CONTACT PREFERENCES

You may receive a renewal reminder via e-mail. May we send other information about InfoWorld products, services, or research via e-mail? 1. Yes 0. No

We occasionally send our subscribers email messages with news about technology solutions and special offers from qualified third parties. Would you like to receive these messages?
 1. Yes