

# IT Outsourcing Agreements

**Key provisions and achieving  
success**

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# Intellectual Property (Customer Approach)

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- ▶ Intellectual property is inherent in every outsourcing deal
- ▶ What is the objective of the deal.
- ▶ Understand what ownership rights you will need and how you need to protect yourselves for the future
  - Do you need ownership, a perpetual license or a fixed term license
  - What usage, reproduction, modification rights are required
- ▶ Supplier owns the copyright in what they write, not sufficient to say “work made for hire”
- ▶ Protection
  - Seek indemnity for any claim of infringement or misappropriation
  - Acceptable carve outs
    - modifications not made by supplier, combination or use with items supplier did not supply
  - Control of Indemnification, license, replacement of infringing items, refund

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# Intellectual Property (Customer Approach)

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## ► Open Source

- Embedded in the Deliverable or used as a tool to deliver the service
- Type of license
  - Copyleft
  - Open source licenses incorporating the concept of Copyleft include GNU General Public license, Mozilla Public License, Common Development and Distribution License
- Protection
  - Seek a warranty that Open source license requirements (including CopyLeft) have been complied with
  - Approval

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# Privacy and Data Security (Customer Approach)

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## ► Privacy

- Ask the right questions
  - Will the supplier have access or process ( collection, use, transmission etc) personal information
  - Jurisdiction
  - GDPR
- US approach much more sector driven
  - Health (HIPAA), Financial ( Gramm-Leach-Bliley Act, Fair Credit reporting Act)
  - State laws
- GDPR
  - Replaces EU Data Protection Directive
  - Now covers companies based outside of the EU if they are offering goods or services in EU
  - Broader Scope, Stricter consent rules, new rights, new compliance obligations

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# Privacy and Data Security (Customer Approach)

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- ▶ Data Security
  - Security measures
    - Adherence to industry standards
    - Compliance with customer policies
  - Notice of breach
    - Expand notice requirements
    - Notice to be provided immediately
  - Protection
    - Contractual provisions (EU model, BCR, country specific)
    - Indemnity
    - Data retention and destruction
    - Audit

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# Successful Negotiations

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## ▶ Success

- Not about winning, good business on acceptable terms
  - Supplier is able to achieve successful delivery
  - Profitable for the Supplier
  - Durable relationship with the prospect of continuation and expansion
  - Reasonably balanced terms to protect both parties legitimate interests

## ▶ Achieving Success

- Set the right tone
- Involve key decision-makers to ensure efficiency in negotiation
- understand market realities
- understand practical risk specific to the services
- Ensure long term goal is achieved