

Legally Agile

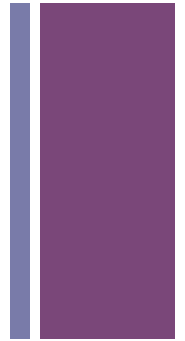
A View From Lady Justice

Bob Schatz, Agile Infusion, CST

Dan Schatz, Esq., CSM

+ Introduction

- Bob Schatz, CST
Owner, Agile Infusion, LLC
 - 26 years developing/leading in enterprise applications organizations as developer, manager, executive
 - Led Primavera's successful adoption of Scrum/XP
 - Work with many companies helping them successfully move to agile
 - Specialize in Agile Project Management, Organizational/Team Dynamics and Change Leadership
- Dan Schatz, Esq., CSM
 - Criminal Defense Attorney in Philadelphia
 - Villanova School of Law



Best son a father could have

+ con · tract

Agile Manifesto:
Customer collaboration
Over
Contract Negotiation

con · tract –noun

1. **an agreement** between two or more parties for the doing or not doing of something specified.
2. **an agreement** enforceable by law.
3. the written form of such **an agreement**.



+ Perceptions of “The Contract” or “Agreement”

- Everyone talks about what “The Contract” said we have to do...
- For internal agreements there is no real Contract
 - This is called Politics
- External contracts often made in bad faith
 - “Just Get the Win and we’ll deal with it later”
 - “We needed the sale to hit our revenue targets”
 - “This is customer we REALLY needed on our side”
 - “If we do what they want, they’ll sign for \$17M”
- Remember...Nobody is **forced to sign** the contract or say “**Yes**” to the agreement



+ A Contract Defined

- “Contract” is not a substitution for “Agreement”
- Offer + Acceptance + Consideration = Contract
- But, more than that...
- Contracts are about
 - People
 - Relationships
 - Both parties bargaining for something they want
 - Establishing TRUST



+ Goals of A Contract

Vendor

- All of the benefits without too much risk
- Profit from the exchange

Customer

- All of the benefits without too much risk
- Value for their money

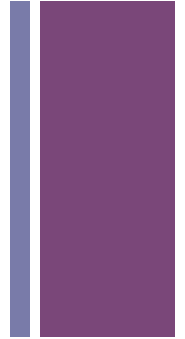
Lawyer

- Predictable
- Protective
- Weapon in holster
- Don't want to end up in litigation
- But if it does, rack up the hours and WIN!



Agreement should be reached between parties **FIRST...THEN** get the lawyers to make it legal

+ Types of Software Contracts



- There are many different types of contracts for various business situations...
 - Standard End-User License
 - Standard Distributor Software License
 - General Software License (Copyright)
 - Software Ownership
 - Professional Services



+ Dissecting a Contract: Identifying the Parts

Recitals

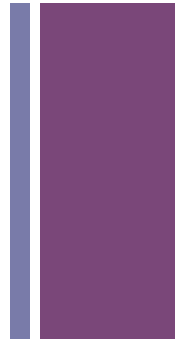
- Really goals, but don't mean anything.
- Not binding, not enforceable.
- Not part of contract.

Body

- Hard, concrete terms.
- Binding. Enforceable.
- Typically, provides no flexibility.
- Protecting intellectual property.
- Remedies.



+ Software Contracts: Risky Business Areas



Limited Warranties

- Short-term “money back guarantee”
- Services will be performed in a professional manner

Disclaimer of Warranties

- Gets vendor off the hook for just about everything
 - Meeting customer function or platform requirements
 - Errors, defects, and correction of such



Limitation of Liability

- Limits liability from any lawsuits brought on customer by any other party related to use of the software

Indemnities

- Asks for customer to defend vendor from lawsuits related to customers use of software

Intellectual Property Rights

- Who owns the product that was produced (Knowledge)

+ Damage Done by Bad Software Contracts

■ The Conditions

- Unclear Vision
- Unclear Project Goals
- Unrealistic Project Constraints
- Unclear “Definition of DONE”

■ The Result

- Project does not meet schedule
- Project costs more than customer values it
- Product contains high number of defects
- Product does not meet needs of customer
- Users are not happy
- Development team is not happy
- Money and Time Wasted
- NOBODY WINS!.....EXCEPT THE LAWYER ☺



+ When Things Go Wrong...

Court Trial

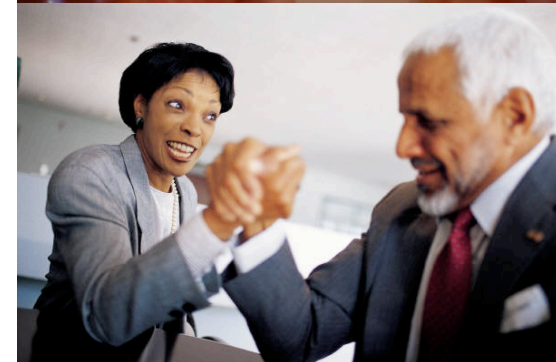
Not likely to see inside of courtroom...

Arbitration

- Who is an arbitrator?
- What does arbitration look like?
- Clause in contract
- Opportunity to re-negotiate

Trend

- If software projects continue to fail, may see more of them go to trial...customers have had it...



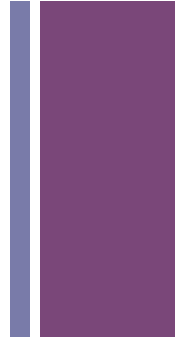
+ Recent Case in 2008: SAP vs. Waste Management



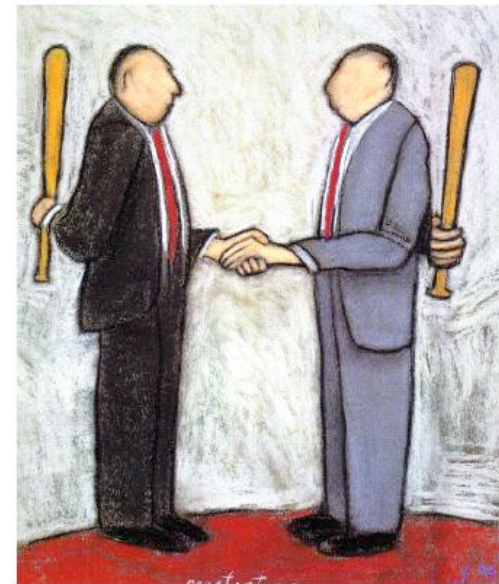
SAP Software a 'Complete Failure,' \$ 100M Lawsuit Claims

- SAP showed it "fake, mock-up simulations" of software with "false functionality" in order to snag a contract to re-haul its revenue management system.
- Waste Management claims SAP duped it into purchasing untested software that wasn't ready to handle the complexities of the U.S. waste hauling market.
- Software was "unable to run [our] most basic revenue management operation."
 - SAP tried to solve the problem by rewriting tens of thousands of lines of core code during the implementation process.

+ The “Art of Negotiation”



- “Getting to Yes” – *Principled Negotiation*
 - Separate the PEOPLE from the Problem
 - Focus on INTERESTS, not Positions
 - Invent OPTIONS for Mutual Gain
 - Insist on Using Objective CRITERIA
- “Getting Past NO” – *Breakthrough Negotiation*
 - Don’t React: Go to the Balcony
 - Don’t Argue: Step to Their Side
 - Don’t Reject: Reframe
 - Don’t Push: Build Them a Golden Bridge
 - Don’t Escalate: Use Power to Educate



+ Alternate Types of Contracts

Time and Materials Contracts

- Require some level of trust

Phased Contracts

- Sprint by sprint
- Initiation and Development



Incentive-based contracts

- Develop carrots and sticks that drive success factors
- Have to be careful with these....when there's a system, people will "Game it"

Goal-Driven Contracts - "Agile Contract"

- Provide more flexibility
- Soften language
- Goal oriented
- Simple contract modifications following each sprint

+ OH NO!

You Already Have a Signed Contract....Now What??



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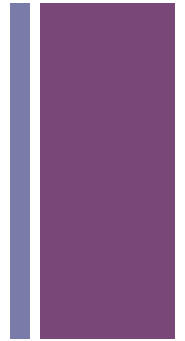
+ OH NO!

You Already Have a Signed Contract....Now What??

- Rule #1: KEEP THAT CONTRACT IN THE LAWYER'S FILE CABINET!
- Don't provide the opportunity for someone to use it as a weapon
- **Work closely with the client** in the spirit of cooperation
- Avoid getting into a “blame game” with the customer
- **Give them options**
- Work towards providing a solution that works in **mutual best interests**, not just yours

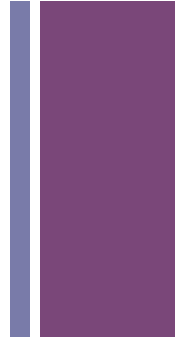


+ References



- Software Agreements: Line by Line Overly & Kalyvas
- Tech Contracts Pocket Guide David W. Tollen
- Getting to Yes Fisher / Ury
- Getting Past No William Ury
- Getting Ready to Negotiate Fisher / Ertel

+ Upcoming Events



- 2-Day Training: Agile Contracts
 - For people involved in contracts in software organizations
 - CFO, Sales, Services, Contract Administrators
 - Introduction to Agile Principles
 - Agile Contracts Workshop
 - Register on Scrum Alliance or Agile University website
- April 2-3 in Philadelphia, PA
- June 1-2 in San Francisco, CA

+ Questions and Comments



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