Share our experiences, powerful tools and proven direction

January 28–31, 2014     Miami

**Software**  ...........................................  January 28-29, 2014
Issues, Contracts, Negotiations

**Legacy Software Maintenance**  ...........January 30-31, 2014
Minimize Cost & Maximize Performance

SAVE $150 when taking both seminars

*Detailed information about each seminar inside.*
Overview

In recent years, software deals have grown even more complicated and difficult to both understand and manage. This is where ICN steps in. We deliver the latest information you need to know about software issues, contracts and negotiations. This workshop is typically presented by at least one attorney and one procurement executive, both of whom have years of practical experience reviewing and negotiating software deals. As a result, you’ll get valuable insights and tips you can put to use immediately. What you learn at this workshop translates directly into greater protection and more flexibility in every agreement you negotiate.

Benefits

- Understand current market trends
- Learn negotiating tactics you can use
- Learn and understand remedies to use for noncompliance
- Avoid litigation
- Save your assets
- Learn keys to success in development contracts
- Obtain meaningful warranties and remedies
Content Partial Outline

Your Challenge
Customer Environment
1. Less Experience
2. Urgency
3. Less Incentive
4. Relationship
5. Tradition
6. Bad Process/no Process
7. Wired Deals
8. A “Solution” is Acquired
9. Renegade Decision Makers
10. Standardized On One Vendor
11. Don’t Understand How Software is Protected

Our Worthy Opponent
1. Full Time
2. Highly Trained
3. Information Advantage
4. Very Motivated
5. Team Advantage
6. Superior Product Knowledge
7. Changing Pricing and Usage Models

Relationship Dynamics
1. Customer Objectives
2. Vendor Objectives

Risk Allocation
1. Customer
2. Vendor

Defective Process—What’s Wrong?
1. Evaluation
2. Selection
3. Negotiations

The Solution—
The Managed Acquisition Process
1. Form Team
2. Establish Decision Criteria
3. Determine Relationship Architecture
4. Gain Management Approval
5. Develop Contract
6. Issue Request for Proposal
7. Conduct Bidders’ Conference
8. Evaluate Potential Vendors
9. Implement The Zone of Consideration
10. Manage the Contract

How Software Is Protected
1. The Four Key Types of Intellectual Property Law
   a. Copyrights
      • What They Protect
      • Protection Requirements
      • When Protection Attaches
      • Protection Duration
      • Copyright Holder’s Rights
      • Other Information
         - Assignments
         - Berne Convention
         - First Sale Doctrine
         - Work Made for Hire
   b. Patents
      • What They Protect
      • Protection Requirements
      • Patent Holder’s Rights
      • Types of Patents
      • Protection Duration
      • Other Information
         - Assignments
         - Paris Convention
         - First Sale Doctrine
         - No Independent Creation

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c. Trade Secrets
   • Definition
   • Examples
   • Protection Requirements
   • Protection Duration
   • When Protection Attaches

d. Trademarks
   • Definition
   • What They Protect
   • Types

2. Summary

Key Licensing Ingredients
1. Introduction
   a. Identify the Context of the Negotiation
   b. Contracting Principles

2. Issue Spotting and Negotiation Strategies
   a. Parties To the Contract
      • Who is the Licensor?
      • How is Licensee Defined?
   b. Grant of License
      • Do Defined Terms Limit Use?
      • Other Common Restrictions

3. Payment Terms
   • Pay for Performance
   • Acceptance Tests
   • Aggregate Purchases

4. Warranty
   • Do UCC Warranties Matter?
   • What Warranties Should Be Included?

5. Documentation
   • Defining Your Rights to Use/modify
   • Is The Vendor Obligated to Update?

6. Training
   • Included?
   • Hidden Charges
   • Scheduling

7. Maintenance
   • Mandatory?
   • What is Included/excluded?
   • Has the Licensor Subcontracted?
   • Methods of Delivery
   • Levels (Silver, Gold, Platinum)
   • Caps on Increases

8. Indemnification
   • Distinguish Among
      - Indemnify
      - Defend
      - Hold Harmless
   • Who is Protected?
   • What is Excluded?
   • Specific to Intellectual Property
   • Which Versions of the Software Are Covered?

9. Assignment
   • Consent Required?
   • What Are Each Party’s Interests?

10. Source Code Escrow
    • Limitations
    • Usefulness
    • Rights
    • Under Seal Agreement

11. Termination
    • Who Can?
    • When?

12. Limitation of Liability
    • Carve-Outs
    • Reasonableness of the Limit

13. Confidentiality
    • What Should Be Protected?
    • Reasonable Duration
    • What Should Be Disclosed?
Software Development

1. Why Have Software Developed? — *Five Reasons, Including:*
   a. Want Ownership
   b. Don’t Have Expertise In-house
2. What Does Software Development Encompass?
   a. New Software
   b. Customization of Your Software
   c. Customization of the Vendor’s Software
3. Decide Results or Resources Deal
   a. Determining Responsibility
      • For the Outcomes
      • For the Project Management
4. Other Important Issues—*Fourteen Key Considerations, Including:*
   a. Payment Triggers
   b. Acceptance Testing
   c. Infringement Protection
   d. Remedies

Pricing Models and Strategies

1. Pricing Models
   a. Power
   b. Value
   c. Production
   d. Device/site
   e. Duration of License
   f. Volume of Purchases
   g. Number of Users/devices
   h. Other Emerging Models
2. Strategies
   a. Bundled Pricing
   b. Long-Term Commitments
   c. Control of Price Increases
   d. Defining Terms
   e. Forced Upgrades
   f. Archaic Pricing Structures
   g. Other Common Vendor Ploys

Avoiding Litigation

1. Reviewing Rights
2. Understanding Applicable Laws
   Such as UCITA
3. Defining Terms Appropriately
4. Determining Scope of Use
5. Identifying Potential Users
6. Recognizing Hidden Pitfalls
7. Establishing Audit Provision Limitations
What is it about?

This class focuses on developing alternatives and strategies for your legacy software maintenance agreements. Whether your total software maintenance spend is in the millions or hundreds of millions of dollars annually, it’s never too late to improve vendor performance, lower your software maintenance bill, consider your alternatives, and break the cycle of despair. This class provides you with the tools and information necessary to improve your position and better navigate through the Legacy Software Maintenance Process.

Valuable Takeaways

- Software license agreement with maintenance services exhibit
- SaaS agreement with support services and service level agreements exhibits
- Issues list for 37 common software maintenance agreement provisions
- Gap analysis and root cause analysis white paper
- Software maintenance checklist with more than 55 potential pitfalls to avoid
- Process checklist for the legacy software maintenance process
- Contracting Philosophies for Negotiating Software Maintenance Agreements
- Strategies to Maximize Negotiation Leverage When Dealing with Legacy Software Maintenance Situations
- Sample RACI Chart for Software Maintenance Situations

Why Legacy Software Maintenance workshop?

Many organizations are locked into a cycle of despair with their legacy software maintenance agreements. At the end of the term, the agreement is automatically renewed, often at a higher price. Although there is some internal grumbling, if the money has been budgeted, the renewal becomes a formality: you pay the single-line invoice that reads, “Standard software maintenance…$X00,000.” However, you do have options!
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Content Partial Outline

Level Setting
What Is Software Maintenance (SMX)?
- The Purpose of SMX
- Services often bundled as SMX
  - Support
  - Fixes, patches and new releases
  - Upgrade protection
- Vendors will offer SMX in lieu of performance warranties
  - Is this good for the vendors?
  - Is this good for the customers?
- The Technical Scope of SMX
- SMX is NOT
  - Insurance
  - An annuity
- How is SMX like an IT service project?

SMX Challenges
- How do you discover SMX issues? — 5 key ways, including
  - Financial complaints
  - Performance complaints
- Common SMX challenges — 15 considerations, including
  - Cost increases
  - The renewal process
  - Poor SMX service during the warranty period
  - SMX is not available for past versions

SMX Solution Overview
- The Legacy Software Maintenance Process — a 6-Step Process
  - Organize
  - Analyze
  - Evaluate
  - Plan
  - Implement
  - Manage
- Certain criteria are applicable to most SMX deals — 10 key issues, including
  - Customer data
  - Performance accountability
  - SMX service levels

Workshop Length: 2 Days
- SMX was originally designed to provide three critical elements
- Software changes over time — 7 key ways
- How vendors promote SMX as “indispensably necessary”
- The salesperson’s incentive to sell SMX
- The math behind getting a new client versus keeping an existing client

Customer Environment
- Minimal resources are available
- SMX is not a priority
- There is no independent review
- We don’t understand that we have options
- We don’t understand our contractual and intellectual property
- We don’t manage the contract and relationship properly

Vendor Environment
- The cost of SMX has increased significantly over the years
- Has SMX’s value kept pace?
- There has been a shift from higher license fees to higher maintenance fees
- SMX is very profitable — 3 specific examples
- How SMX is sold
The Legacy Software Maintenance Process

- **Organize**
  - Identify the initial requestors
  - Determine project purpose(s)
  - Clarify project authority
  - Identify people resources
  - Form team(s)
  - Verify our budget
  - Assign responsibilities
  - Gather spend data
  - Collect SMX documents
  - Gather SMX performance information
  - Begin establishing our timeframes

- **Analyze**
  - Determine the customer’s contracted SMX rights
  - Contract terms that can adversely impact customer’s SMX rights — 12 critical provisions?
  - Establish a baseline of actual SMX performance
  - Sample Performance Complaints
  - Conduct gap analysis
    - “Performance gap”
    - Tools
    - Examples
  - Conduct root cause analysis of “performance gap”
    - Common tools
    - Examples
  - Create a description of customer-desired SMX — 9 key elements
  - Conduct gap analysis of “customer-desired SMX gap”
  - Conduct root cause analysis of “customer-desired SMX gap”

- **Evaluate**
  - Review our intellectual property (IP) rights applicable to SMX
    - Governing laws
    - Guiding principles
  - Meet with the vendor
  - Determine options — 10 possibilities, including
    - Let SMX expire
    - Keep status quo
    - Change SMX level
  - Evaluate the impact of each viable option — 6 essential factors, including
    - Cost
    - Risk
    - Politics
  - Rank or categorize options by viability

- **Plan**
  - Establish SMX goals
    - Short-term goals — 4 examples
    - Long-term goal examples — 5 examples
  - Determine negotiation leverage
    - Ours
    - Theirs
  - Develop plans for viable options (as needed) — 5 examples
  - Design a SMX-management plan for the top options
  - Get management approval
• Implement
  • SMX options — 4 in-depth samples, including
    • Keep status quo with better SMX management
    • Negotiate to amend SMX Agreements
    • Review and update the implementation plan as needed
    • If changes are required, get approval

• Manage
  • Five SMX situations to manage
  • Management steps common to most SMX situations
  • Manage the contract and/or new policies and procedures
  • Manage the relationship
  • Manage the updated SMX process
  • Prepare and distribute periodic reports

The Main Ten of Maintenance
Ten things to remember, including
• Take a proactive, strategic, long-term approach
• Document SMX performance and non-performance
• Understand your business needs
At Your Site Seminars

Your Location—Your People—Your Needs

At Your Site Advantages

Convenience—You set the schedule for the training and location.

Economy—Travel budgets are not part of the picture. By bringing the training in-house, you save time, money and aggravation. No plane tickets, hotels or lost travel time.

Productivity—Employees who receive ongoing training are more productive and more loyal.

Synergy—On-site training provides a common ground for coworkers to stimulate ideas and discussions.

Team building—Teamwork is enhanced greatly through a shared learning experience.

Customization—The training provided can be tailored to your specific needs and environment.

Uniformity—Your personnel will get the same information at the same time, so they’ll all be on the same page.

W e’ll train your people to do the best deals possible…and then manage those deals for maximum benefit. For over three decades, ICN’s experience, powerful tools and proven methodology have helped clients Do Better Deals™.

We’ll work with you to customize a training program that satisfies your organization’s needs. You can select one or more of our seminars, or mix modules from any of our offerings. ICN’s on-site training is tailored to your organization’s distinct needs, timeframe and environment.

You can select information from any of ICN’s seminars, products or methodologies…or we’ll customize material to your requirements.
Miami — January 2014


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HOUSTON — March 2014

Legacy Software Maintenance ........................................ March 19–20, 2014
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BOSTON — April 2014

SLA Lab: Results-Based Contracting ............................. April 8–9, 2014

Cloud Contracting: Demystifying the Fog ....................... April 10–11, 2013

Chicago — April/May 2014

RFP Lab: Forms | Training | Templates .......................... April 28–29, 2014

Contracts Lab: Understand Your Rights, Remedies and Flexibilities . April 30–May 1, 2014

Statements of Work That Work ........................................ May 2, 2014

Austin — May 2014

Total Vendor Management: Get What You Pay For ............. May 15–16, 2014

For complete course outlines, please visit DoBetterDeals.com.

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