

IT PROCUREMENT PLAYBOOK

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Solving the Procurement Puzzle

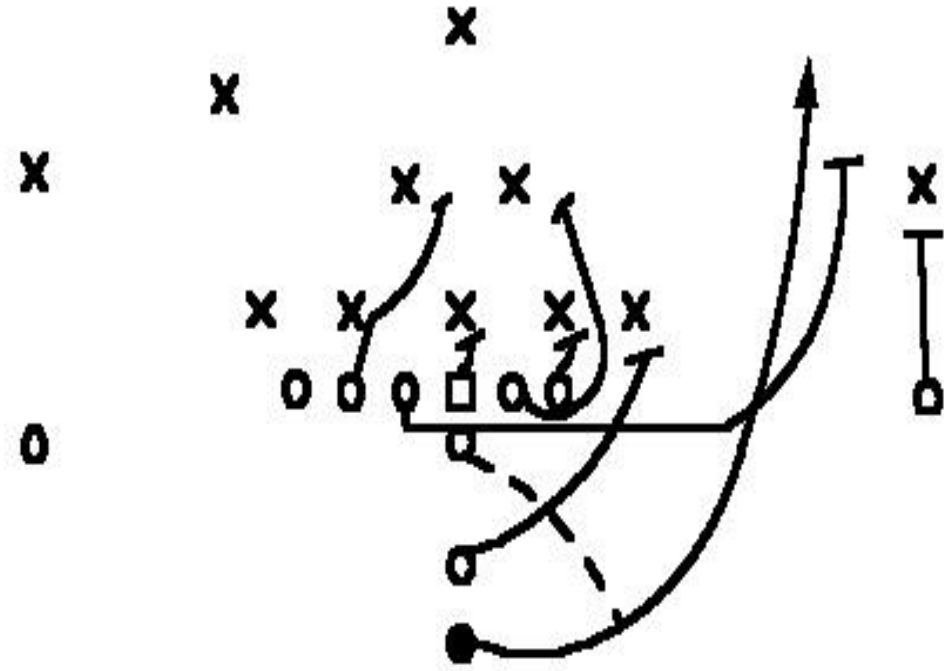


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Agenda

- Background, Need
- Plays on Offense
- Plays on Defense
- Extra Points
- Wrap Up



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Background, Need

- In early 2016, the National Association of State Procurement Officials (NASPO) and the National Association of State Chief Information Officers (NASCIO) teamed up to call for IT procurement reform
- Five major areas of reform were:
 1. Remove unlimited liability clauses in state terms and conditions
 2. Introduce more flexible terms and conditions
 3. Don't require performance bonds from vendors
 4. Leverage enterprise architecture for improved IT procurement
 5. Improve the Negotiations Process

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Background, Need

- In the 2015 state CIO survey, The Value Equation, roughly one half (47%) of state CIOs expressed negative outlooks on IT procurement processes.
- Problem statements in the survey and call to reform stem from common themes:
 - Procurement doesn't move fast enough to keep pace with IT
 - Terms and conditions applied in general goods/services procurement are not appropriate for IT
 - Procurement doesn't involve IT staff enough in the negotiation and decision making process
 - Lack of flexibility in applying standard policies and procedures don't fit IT acquisitions

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Background, Need

- You have a play book as a reference tool for this presentation
- You'll notice a team theme throughout these concepts, so let's be a team--share your stories, insights and questions
- The original playbook is organized by when the play is employed during a procurement process
 - This presentation categorizes the plays based on how they are employed—Plays on Offense or Plays on Defense

Let's get started!

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Plays on Offense (“the O’s”): Strategy

01**Play #1: Shift Your Perspective**

Put yourself in a vendor’s shoes

05**Play #5: Sharing is Caring...When Done Strategically**

Think critically about what and when we share

08**Play #8: Karma Chameleon**

Play multiple roles for your customers

012**Play #12: The Best Defense is a Good Offense**

Set the foundation

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Plays on Offense



Play #1: Shift Your Perspective

- In development, ask yourself:
 - Will these requirements decrease cor
 - Will any of these requirements increase the cost to respond?
 - Is there language in this bid that is not familiar to the industry?
 - Does the cost structure align with the market?
- Consider the motivations or position of the likely vendor pool
 - Are they small or a niche player that is likely to be purchased by a larger company?
 - Are they a young company that may be looking to strike a good deal just for the opportunity?
 - Are they a company that is new to government business and may need more explanation as to how agencies purchase?

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Plays on Offense

Play #5: Sharing is Caring...When Done Strategically

- There are many tools we can use to learn about products, services and markets before going to bid
 - Trial Agreements/Demonstration Equipment
 - Request for Information (RFI)
 - Draft RFP for comment
 - Pilots/Proof of Value for Software
- However you obtain information from vendors, resist the urge for reciprocity
 - Unless you share information equally...
 - And it's in your best interest to share

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Plays on Offense

Play #8: Karma Chameleon

- Play the role your customers require
 - Bid/RFP Manager
 - Mediator
 - Protector of Information
 - Facilitator
 - Researcher
 - Service Provider
- Don't make them afraid to come to you, and be responsive to their needs
 - Be a better strategic partner to your internal customers than your vendor can be



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Plays on Offense

Play #12: Best Defense is a Good Offense

- Use your paper! Always include your form contract in all solicitations
 - Instruct vendors on how to respond to those terms as part of their proposal or bid
 - Disallow any replacement of your contract with theirs
 - Require all binding contract documents that they expect you to consider to be included as part of their proposal
- When an additional vendor document must be included...
 - Watch for conflicting and overlapping terms with the language of your form contract
 - Use the “say it once” principle
 - Stay on top of the order of precedence (literally)

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Plays on Offense: Communication

Play #2: Talk to Your Customers Early and Often

- Planning is everything in IT procurement
- Ask your customers to involve you in planning when a purchase is a possibility or set standing meetings
- Ask to be involved, or to be the central POC, for all vendor interaction
 - Set parameters and clear roles
 - Provide templates, examples
 - Set deadlines for yourself (and them)
 - Assuage concerns about who is responsible for what components of the process

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Plays on Offense

Play #4: There's No "I" in Team

- Try to approach every procurement project with a well balanced team
 - From the State Bureau of Procurement "Negotiations" class:
 - **T**echnical or program staff
 - **E**xpert on procurement/purchasing
 - **A**ttorney
 - **M**anagement of program
- Benefits of a team approach:
 - Diverse perspectives and expertise
 - Understand all needs for the contract
 - Delegate work to streamline development
 - Balance of approaches to negotiation, preparing for a successful contract



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Plays on Offense: Negotiation

O10: Keep a Watchful Eye

The power of observation

**O20: Not All Plays
are Created Equal**

You can't always get
what you want

**O15: Momentum
Matters**

Steady wins the race

Negotiation

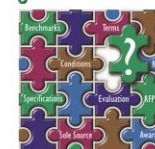
**O19: A Rose by Any
Other Name**

The right words matter

**O18: Huddle Up on
Statements of Work**

Leverage your experts

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Plays on Offense

Play #10: Keep a Watchful Eye

- During any vendor meeting or demonstration during a bid process, observe more than what is being said
 - Look for what each person on the team is doing
 - Take notes in a pad with a cover
 - You write the script, ask for vendors to send people that can answer technical questions
- Keep your team on the same page
 - No side conversations
 - No intros
 - No business cards

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Plays on Offense

Play #15: Momentum Matters

- The pace of a negotiation can be just as important as the commitment you're making or your anticipated volume
 - Vendor quarter-close or year-end timing
 - Critical service, avoid disruption
- Try to remove all unnecessary barriers to making steady, consistent progress to a final agreement
 - No "hurry up and wait"
 - Set a target date to complete
 - Follow up, don't let it rest
 - Expect curve balls (e.g. "that would set a precedent", "sounds good to me, but I can't make any commitments")

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Plays on Offense

Play #18: Huddle Up on Statements of Work

- More than most other documents, the SOW is critical to your internal customer. If they haven't been engaged in negotiation of any other terms, they have to be brought in now
 - How are the vendor's people going to work with yours?
 - Who's responsible for what?
 - Specific work rules? Staff availability concerns? Only they will know.
- Special teams' strategies:
 - Establish clear goals, pay on deliverable when you can
 - Benchmark against other market indices on hourly rate
 - Avoid paying upfront
 - Don't pay maintenance until after the software is implemented
 - Requirements, SLAs of a procurement are reflected in the final contract

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Plays on Offense

Play #19: A Rose By Any Other Name

- These are contract documents, the only tools you have if there is a dispute of any kind—make it count by using the right words
 - Use binding, clear and consistent language

Words that Commit	Words that Circumvent
Deliver	Endeavour
Agree	Assist
Provide	Target
Warrant	Aid
Will	Support
Represent	Attempt
Create	Facilitate
Shall	Help

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Plays on Offense

Play #20: Not All Plays Are Created Equal

- You can't always get what you want, so there are some things that are more important to get than others
- Naturally anything you have to have because of the law (common examples):
 - Nondiscrimination in Employment
 - Non-Appropriation
 - Applicable Law - Choice and Venue
 - Contract survives acquisition by Third Party
 - Arbitration Provisions
 - Customer Indemnifying Vendor
 - Disclosure, Public Records Issues
 - Payment Turnaround


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Questions?



Before we jump into Plays on Defense, what questions, comments or observations do you have?



Application in your agency?

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Plays on Defense (“the X’s”): Strategy

Get Ahead of the Competition

Respond to real (customer) demands

X3

Send a Message

We like competition in Wisconsin

X7

Don't Let the Anchor Drag You Down

You don't have to take the first offer

X13

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Plays on Defense

Play #3: Get Ahead of the Competition

- Vendors are our customers, but they can also be our competition when setting expectations with our internal stakeholders
 - Vendor-generated demand
 - Focus on the facts—who's asking for this?
- Common for vendors to push for the use of an existing contract in another jurisdiction, or any other alternative to an RFP
 - Research consortium contracts
 - Vet proposed alternatives quickly and share results with customers
 - Explain the benefits of bidding

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Plays on Defense

Play #7: Send a Message

- Competition is a very good thing
 - Maintains fairness
 - Opens up opportunities for all businesses
 - Keeps incumbents honest
- Let everyone know that you will do what it takes to maintain this balance
 - Transition Service language in contracts
 - Negotiation time clock in RFP, going to next bidder
 - Don't auto renew contracts
 - Stay sharp on alternatives
 - Publicize a mission statement, expressing how important competition is to your business



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Plays on Defense

Play #13: Don't Let the Anchor Drag You Down

- The first offer or proposal, especially when it's your lowest bid, can be a powerful anchor in determining the final price you end up with in the contract
- Do the research
 - Is even my lowest bid fair?
 - Best I can get for my volume?
 - Better than similar governmental entities?
- If a vendor had more information about your budget than they should have going in, their proposal will be bracketed based on that number
 - So will the way they frame how great of a deal you're getting

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Plays on Defense: Communication

Play #6: Recognize Divide and Conquer

- Vendors are never just in the neighborhood
 - Require appointments
 - Require agendas for any discussions
 - Anyone that may be a bidder commits all questions to writing
- Explain to your internal customers the importance of not having any discussions with vendors about a solicitation while it's in progress
 - This is for your protection, and that of all vendors
- Answer shopping
 - Be consistent and make no exceptions

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Plays on Defense

Play #14: The Element of Surprise

- No one likes unpleasant surprises, which is what a “forgotten” term, condition or caveat is when introduced into the negotiation process
- Combat this with education on the original requirements from your solicitation
- If you have no choice but to consider a new document (revised terms for a new product, statement of work (SOW)), never allow any repetition or conflict with what you’ve already agreed to
 - New sales reps have to honor the word of their predecessor
 - Sales and a vendor’s legal counsel are representing the same company, so they should be agreeing to the same things
- In this case, reciprocity is important
 - Don’t introduce brand new contractual terms to the vendor that weren’t in the original solicitation

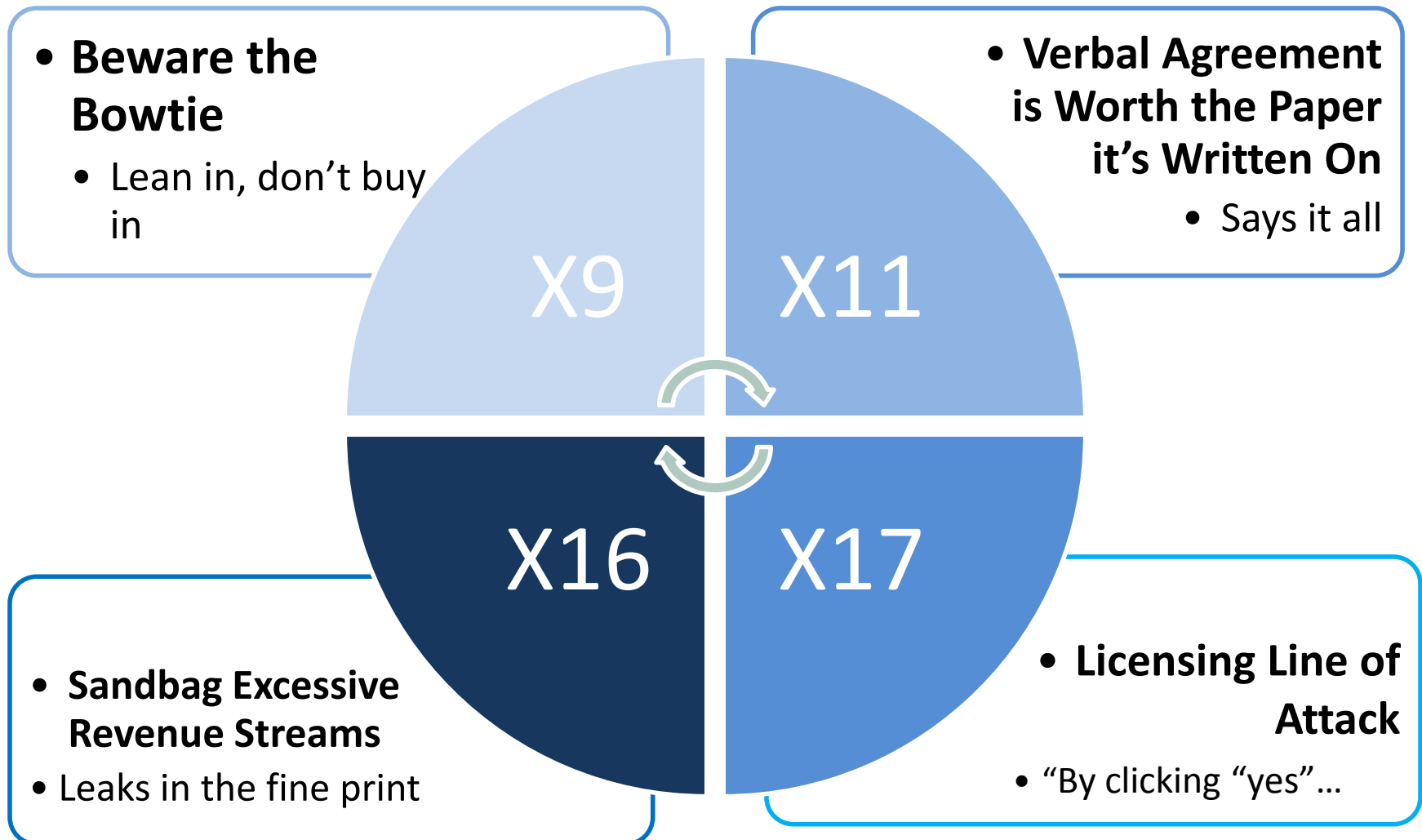
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Plays on Defense: Negotiation



Plays on Defense

Play #9: Beware the Bowtie

- Many systems and software procurements involve vendor demonstrations of how the solution works
- Remind your teams that you aren't buying the salesperson
 - Maintain objectivity
 - Stick to the script
- Watch out for red flag statements
 - “This is just a test environment, but the production system works the way you’ve specified, trust us”
 - “We’re planning to release that function with the next version, just in time for when this contract will be getting awarded”
- Get the presentation in hard copy

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```
11 int main(int argc, char *argv[])
12
13 Assembly
00401000:00000073 30 00       jmp     mov     3005,hal
00401004:00000073 4b 00 00 00 jmp     callq  0x10000015a
00401008:00000073 80 45 e8    jmp     mov     hexx,-8c18(%rip)
0040100c:00000073 80 45 e8    jmp     mov     -8c14(%rip),hexx
00401010:00000073 01 88 00 00 jmp     add     88(%rip),hexx
00401014:00000073 89 45 e8    jmp     mov     hexx,-8c14(%rip)
00401018:00000073 e5 c4 ff ff jmp     jmp     0x100000c76 ;ifun=22b
0040101c:00000073 40 03 c4 20 jmp     add     30c28,%rip
00401020:00000073 5c         jmp     pop     %rip
00401024:00000073 c3         jmp     retq

Threads
[1] id 4355 from 00401000:00000073a (in funT4E) at scrvt.c:7
Stack
[0] from 00401000:00000073a (in funT4E) at scrvt.c:7
arg  a = 3
arg  data = &C7FF755b7f068
loc  i = 1
[1] from 00401000:00000073a (in funT4E) at scrvt.c:14
arg  argp = 3
arg  argp = &C7FF755b7f068
(lm local)

Registers
rax: 0000000000000000  rdx: 0000000000000000  rcx: 0000000000000000
rip: 0040100000000000  rsi: 0000000000000000  rdi: 0000000000000000
rbp: 0000000000000000  rsp: 0000000000000000  r8: 0000000000000000
r9: 0000000000000000  r10: 0000000000000000  r11: 0000000000000000
r12: 0000000000000000  r13: 0000000000000000  r14: 0000000000000000
r15: 0000000000000000  r16: 0000000000000000  r17: 0000000000000000
cs: 0000000000000000  fs: <unavailable>  gs: <unavailable>
eip: <unavailable>  fs: 00000000  gs: 00000000

Expressions
[1] &C7FF755b7f068 "hello"
Memory
00401000:00000073 01 00 00 00 50 f0 bf 5f ff 7f 00 00 00 00 00 00 .....
```





Plays on Defense

Play #11: Verbal Agreement is Worth the Paper it's Written On

- Live demonstrations, meetings or interviews have the power to change people's minds
- Most vendor licenses and contracts will expressly disclaim the validity of any promises made in conversation, sales brochures, ads, etc
- None of that changes the expectations for your customer
 - Seek out vendor's own words and add into supplement or weave into terms that are being negotiated
 - Take comments in redlines and work them into contract language
 - Summarize meetings in email and request written confirmation of mutual understanding
 - Add language into solicitation that vendor will honor representations made in all forms

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Plays on Defense

Play #16: Sandbag Excessive Revenue Streams

- A good deal is only truly “good” if you can consider all costs
 - Seek out and question all opportunities for additional costs, such as surcharges, penalties, inflated maintenance and support costs
 - Cap all potential price increases on term contracts up front
- In software...
 - Call out charges for reinstatement of software support and maintenance
 - Tying any increases to a then-current list price
 - Amount due after a compliance audit
- In telecommunications...
 - Call out surcharges, loosely tied to their cost to comply with federal and state regulations
 - Try to limit them to only the surcharges in place at the time of the bid, require formal amendment for any new surcharges that are mandated by the government to pass to the customer
 - No charges to recoup the cost of charging you (admin fees)

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Plays on Defense

Play #17: Licensing Line of Attack

- It is difficult to start with your own paper when it comes to a software license
 - Custom to the publisher
 - Custom to the solution
 - Often linked to other terms housed on vendor's site
 - Use of the reasonable person standard
 - Leveling amount of push back with what the business area can stomach
- Where to throw the flag:
 - “Sole” or “exclusive” when pertaining to vendors’ rights
 - One sided clauses that protect, absolve
 - Unclear or missing definitions, express rights of the customer
- On audits...
 - They need to be fair and equitable
 - Performed by the vendor, not their assigned third party


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Questions?



Before we kick the extra points, what questions, comments or observations do you have?



Application in your agency?

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Extra Point: Considerations in the Cloud

- Silence is not golden when it comes to talking about your data
 - Own, protect, and retrieve
- When you negotiate terms for your specific deal, don't chase links to terms on a vendor's site that might override
 - Have the referenced document printed as an exhibit to the contract at the time it's signed
- Don't build Fort Knox to guard a tinker toy
 - Work with your technical staff to truly understand the kind of data that will be floating in the cloud and how much it would harm you if something happened to it.

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Extra Point: Common Irritations

- Contracts in PDF
- Blanket deletions
- Redlines without explanation
- Musical chairs
- Chasing links
- Refusal to engage
- Feigned offense
- The runaround



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Parting Thoughts

- We hope this playbook and its concepts will be of value
- These slides will be made available online after the conference
- Please complete your break out session evaluation before you leave



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