

LMN – Web Services



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Outsourcing – some legal issues

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Legal definition

- 'Outsourcing' not a term of art
- Current usage embraces many types of third party involvement eg:
 - third party services
 - remote hosting
 - off-shoring
- Conventionally – the transfer of certain functions normally carried on internally, combined with:
 - a transfer of title to equipment and/or staff
 - a transfer of risk
 - an exchange of value

Legal issues – before the contract starts

- Adequate preparation and information gathering
- Definition of scope of services to be outsourced and SLAs
- Inventories of equipment and lists of staff
- Risk: of insufficient integration between the ‘legal’ terms and the ‘technical’ schedules
- Existing contracts requiring novation
- Warranties associated with those contracts?
- TUPE – always assume it applies

Legal issues – during the contract

- Overly prescriptive specifications
- Lack of flexibility
- Expect an outsourcing contract to be re-negotiated
- The contract therefore needs to allow for flexibility:
 - Bench-marking mechanisms
 - Change control – does the procedure facilitate discussion or discourage it?
 - Dispute resolution
- Relationship management – who is responsible for what?
- Third party involvement – restrictions on assignment and sub-contracting

Legal issues – at the end of the contract

- Circumstances of termination? Compensation maybe due on early termination unless the contract provided for it
- What happens to equipment and staff at the end of the contract?
- Transfer to another contractor or '(re-)insourcing'?
- Re-capturing staff: TUPE – assume it applies
- Which staff (employed or not employed) are needed back?
- Re-capturing know-how
- Continuing IP licences