



# Introduction

- What do we mean by “Holding your Data Hostage”?
- The Risk of Data Lock-In
- Working with your procurement and contracts team
- Things to keep in mind



# The Risk of Data Lock-In

---

- Some supplier contracts may be designed to limit your access to data
- Some supplier contracts may inadvertently result in limitation of access to data
- Without proper procurement requirements and contract clauses, government agencies may face high fees or legal hurdles to retrieve their own data.
- Clear procurement requirements and contract terms can prevent these issue.

# Real World Examples of Data Lock-In

---

- Limited access to important data
- Extra costs for data retrieval or migration
- Legal or Operational setbacks





## Working with your Procurement and Legal Team

---

- Who are we?
- When should procurement and contracts be brought into the discussion?
- What can we do to help?

# Opportunities to be involved in the procurement process



- Stage 1: Need Identification

- Stage 2: Pre-Solicitation

- Stage 3: Solicitation Preparation

- Stage 4: Solicitation Process

- Stage 5: Evaluation Process

- Stage 6: Award Process

- Stage 7: Contract Process

- Operational



# System Integration and Operability

- Ensuring compatibility with government systems
- Avoiding supplier lock-in
  - Require vendors to use open standards to ensure compatibility.
  - Specify that data should be exportable in widely used formats (e.g., CSV, JSON).
  - Avoid vendor lock-in by requiring APIs and documentation.

# Data Portability & Exit Strategies

- Require suppliers to return data in a usable format upon contract termination.
- Define clear transition plans for switching suppliers, including responsibilities of both the agency and the supplier for transferring data.
  - Feasibility?
- Specify the format, structure, and timeline for data handover to avoid delays and disruptions
- Include provisions for data migration assistance, ensuring the agency can successfully reintegrate the data into a new platform.
- Ensure that vendors provide reasonable and transparent pricing for data extraction and transfer, preventing excessive costs that could hinder data portability.
  - Feasibility?



## What types of clauses relating to data do we typically see in contracts?

- Data ownership
- Data location and access
- Data breach notification, response, and remedies
- Data back up & recovery
- Data retention and deletion
- Audit & monitoring rights
- Subcontractor restrictions
- Performance metrics & SLA's
- Termination & data transition assistance



# Example of Supplier Language

---

Agency Access. Agency may access and copy any Agency Content in Contractor's possession at any time. Contractor shall reasonably facilitate such access and copying promptly after Agency's request, provided Contractor may charge its reasonable then-standard fees for any such access and copying or for any related deconversion of data.



# Examples of Clauses: Data and Network Security

3. Data and Network Security. The terms of this Section 3 shall apply to the extent Contractor (including its agents, employees, or direct or indirect subcontractors or vendors) in connection with Products or Services it provides pursuant to a Procurement Order (a) collects, stores, processes, creates, or transmits State Data, (b) accesses State Data in the course of providing such Products or Services, or (c) is given access to Systems of the State that collect, store, process, create, or transmit State Data, whether in person or electronically. For purposes of this Agreement, "State Data" means any data, information, or material provided, submitted, or made available by State to Contractor and data, information or material created or derived by Contractor using the foregoing data, information or material in the operation of the Products or pursuant to the Services. Notwithstanding any other provision of this Agreement or an SOW, State will retain all ownership of State Data and all modifications and improvements made by or on behalf of State that State submits to Contractor in the connection with the Services.

\*Always seek guidance from your legal counsel- these clauses are simply examples.

# Examples of Clauses

6. Retention; Turnover of State Data. Subject to State's retention or deletion requirements as established for applicable Services by agreement of the parties in an applicable SOW, Contractor may retain State Data received in connection with the Services provided under an SOW for a period of one (1) year after termination of that SOW. State may request that Contractor conduct an export of State Data, and unless the export is already included in ordinary terms of Service, Contractor agrees to provide such export Services at its then current rates on a time and materials basis. Contractor shall permanently delete State Data when no longer in use and upon termination of the Services promptly upon State's request, and Contractor will certify to State promptly after such deletion is completed. If so requested by State at any time before or after termination of this Agreement, Contractor shall provide copies of the State Data in Contractor's possession to State in such form as State may reasonably request together with such tables and instructions as State may require to extract or convert the information.

\*Always seek guidance from your legal counsel- these clauses are simply examples.

# Examples of Clauses

7. Unlimited Use of State Data and Output by State. State and its designees are free to extract, aggregate, use, store, modify, compile, retransmit, and distribute the State Data, including all Output, in any manner and for any purpose that State may desire, without being subject to any restriction on doing so that may be associated with the Contractor applications or any other Contractor Products. State may install and use its own or third-party providers' equipment and software to do so, and State may create and install its own or third-party providers' APIs to access and collect any of the State Data or applicable files at State's premises in such manner as State chooses.

\*Always seek guidance from your legal counsel- these clauses are simply examples.

# Examples of Clauses: Transition and Termination Assistance

9.6 Transition and Termination Assistance. In case of any termination of any Procurement Order, and subject to State's payment of all undisputed payments for any continuing Services requested from Contractor, Contractor will continue to provide Services and assist in wind-up and transition activities in accordance with this Section 9.6.

\*Always seek guidance from your legal counsel- these clauses are simply examples.

# Examples of Clauses: Transition Assistance Period

## 9.6.2 Transition Assistance Period.

(a) Upon the expiration or earlier termination of this Agreement or any Procurement Order, the State may elect, by providing written notice to Contractor within thirty (30) days of such expiration or termination, to continue this Agreement or such Procurement Order for up to twenty-four (24) months (measured from the date of such expiration or termination) (the "**Transition Assistance Period**"). Such Transition Assistance Period shall continue for the State's requested duration unless extended by request of the State prior to the end of the Transition Assistance Period or terminated by the State with at least ninety (90) days' prior notice. During the Transition Assistance Period Contractor shall: (i) continue to provide the Services or such portion thereof as may be requested by the State (the "**Continued Services**") and (ii) perform or provide to the State such other Services, including consulting services (to be compensated at contract rates then in effect), as reasonably requested by the State and described in a statement of work, to complete its transition and/or exit to another supplier of products and services similar to the products and Services (the "**Transition Assistance Services**").

(b) The Transition Assistance Services shall be considered "Services" for purposes of this Agreement and shall, at all times during the Transition Assistance Period, be performed in accordance with this Agreement. The Continued Services shall be provided during the Transition Assistance Period and delivered with the same quality and level of performance as provided by Contractor prior thereto, but not less than as required under this Agreement. Unless otherwise mutually agreed by the Parties, fees for Continued Services shall be the same as those in effect prior to the start of the Transition Assistance Period, and fees for Transition Assistance Services shall be charged at rates consistent with those in effect for similar services prior to the start of the Transition Assistance Period.

(c) At any time during the Transition Assistance Period, the State may terminate any Continued Services, in whole or in part, by providing Contractor with at least thirty (30) days' prior notice of such termination. Contractor shall have the right to require, as a condition to its obligation to provide Transition Assistance Services, that the State pay reasonable out-of-pocket expenses actually incurred in connection with the provision of such Transition Assistance Services.

(d) During the Transition Assistance Period, Contractor shall continue to maintain the Procurements provided by Contractor pursuant to this Agreement in a way that does not result in a material loss or adverse change in support, functionality, features, performance, or interoperability without the State's consent.

\*Always seek guidance from your legal counsel- these clauses are simply examples.

# Examples of Clauses: Transition Assistance Period

(a) Upon the expiration or earlier termination of this Agreement or any Procurement Order, the State may elect, by providing written notice to Contractor within thirty (30) days of such expiration or termination, to continue this Agreement or such Procurement Order for up to twenty-four (24) months (measured from the date of such expiration or termination) (the **"Transition Assistance Period"**). Such Transition Assistance Period shall continue for the State's requested duration unless extended by request of the State prior to the end of the Transition Assistance Period or terminated by the State with at least ninety (90) days' prior notice. During the Transition Assistance Period Contractor shall: (i) continue to provide the Services or such portion thereof as may be requested by the State (the **"Continued Services"**) and (ii) perform or provide to the State such other Services, including consulting services (to be compensated at contract rates then in effect), as reasonably requested by the State and described in a statement of work, to complete its transition and/or exit to another supplier of products and services similar to the products and Services (the **"Transition Assistance Services"**).

\*Always seek guidance from your legal counsel- these clauses are simply examples.

# Examples of Clauses: Transition Assistance Period

(b) The Transition Assistance Services shall be considered "Services" for purposes of this Agreement and shall, at all times during the Transition Assistance Period, be performed in accordance with this Agreement. The Continued Services shall be provided during the Transition Assistance Period and delivered with the same quality and level of performance as provided by Contractor prior thereto, but not less than as required under this Agreement. Unless otherwise mutually agreed by the Parties, fees for Continued Services shall be the same as those in effect prior to the start of the Transition Assistance Period, and fees for Transition Assistance Services shall be charged at rates consistent with those in effect for similar services prior to the start of the Transition Assistance Period.

\*Always seek guidance from your legal counsel- these clauses are simply examples.

# Examples of Clauses: Transition Assistance Period

(c) At any time during the Transition Assistance Period, the State may terminate any Continued Services, in whole or in part, by providing Contractor with at least thirty (30) days' prior notice of such termination. Contractor shall have the right to require, as a condition to its obligation to provide Transition Assistance Services, that the State pay reasonable out-of-pocket expenses actually incurred in connection with the provision of such Transition Assistance Services.

(d) During the Transition Assistance Period, Contractor shall continue to maintain the Procurements provided by Contractor pursuant to this Agreement in a way that does not result in a material loss or adverse change in support, functionality, features, performance, or interoperability without the State's consent.

\*Always seek guidance from your legal counsel- these clauses are simply examples.

# Examples of Clauses: Cooperation

9.7 Cooperation. In the event of any termination or expiration of this Agreement or any Procurement Order, Contractor and the State shall cooperate with each other to determine timetables, transition procedures, and related consulting requirements, associated with migrating each of the terminated products and Services from, and related delivery and/or conversion of State Data or work files held by, Contractor.

\*Always seek guidance from your legal counsel- these clauses are simply examples.

# Examples of Clauses

9.9 Retention and Retrieval of State Data. Contractor will retain and make State Data available to the State through the Procurement solely for purposes of the State retrieving State Data for a period of up to sixty (60) days after the expiration or earlier termination of the Procurement Order. If, however, State uses the Transition Assistance Period pursuant to Section 9.6.2 above, the retention shall continue for the Transition Assistance Period, and the period for data retrieval will expire sixty (60) days after the end of the Transition Assistance Period (the "State Data Retrieval Period"). State Data made available under this Section will be in an industry standard format (for example, CSV, delimited text or Microsoft Excel). After such State Data Retrieval Period, Contractor will have no obligation to maintain or provide any State Data and shall thereafter, unless legally prohibited, delete all State Data; provided however, that Contractor will not be required to remove copies of the State Data from its backup media and servers until such time as backup copies are scheduled to be deleted, provided, that, in all cases, Contractor will continue to protect the State Data in accordance with this Agreement and will provide notification of deletion to the State. The foregoing deletion obligation will be subject to any retention obligations imposed on Contractor by Applicable Law. Additionally, during the Procurement Order Term, the State may extract State Data using Contractor's standard web services at no additional cost. No State Data will be deleted during the foregoing periods.

\*Always seek guidance from your legal counsel- these clauses are simply examples.

What worked in our  
real-life examples?

---



# In summary....

- Include in vendor contracts from the start.
- Options for data extraction:
  - Custom ETL processes
  - Vendor APIs
  - Vendor willingness to drop files on sftp, dropbox, etc...
- For contract renewals, incorporate data into the renewal.
- Procurement processes and templates could be modified to include suggested language.



# Q&A

---

