



*“The Perfect Fit for
Your Business”™*

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GOIN' TO THE DOGS!

Ivan Petrovich Pavlov, a Russian psychologist, demonstrated that dogs could be conditioned to respond by salivating to the sound of a bell because the dog had been taught to associate the bell with food. From that experiment Pavlov developed his laws of conditioned reflex.

“The Ties That Bind”

Service level agreements (SLAs) are intended to produce similar “conditioned reflexes” like those predicted by Pavlov. A recent article¹ recalls that SLAs are really the heart and soul of any information technology agreement. They are, however, often overlooked or under appreciated. But, when carefully prepared, they should: (1) identify the good or services that will be provided, (2) define product performance standards and (3) establish the effect of failing or exceeding performance standards.

The Essentials

So, when an SLA is poorly written and does not accurately convey an agreement between parties on product, performance and penalty (or bonus), trouble lies ahead for the customer relationship. The contract for sale of a product – any good or services – must clearly describe what the seller is providing. And, it should be the same thing that the purchaser believes she is buying. Simple enough? Not really.

Product Description

A good contract describes the product in a service specification or in product documentation, either of which carefully details the product (including features and

¹ George V. Hulme, *SLAs: The Ties That Bind*, VARBUSINESS 124, Mar. 20, 2006.

functionality), how the product's features and functionality are delivered, and performance standards that the product will observe. With regard to licensed technology or outsourced information technology services that are delivered by specific software, thorough product documentation is critical.

Often, however, the enhancement of a mature technology will have outpaced its documentation. This means that there may be no reference that accurately describes what that technology will do. In such a case, one may be forced to rely on promotional materials; and, those promotional materials should be incorporated into the product's description. After all, one buys software, or services based on software, because it will do what a sales executive has represented.

Performance Standards

Defining clear and quantifiable performance standards or SLAs is even more difficult. Parties must give real thought to the effort. The vendor must promise standards that it can realistically achieve; the buyer must demand standards that are competitive and that will result in end-user satisfaction.

One data center services provider exemplifies "best practices" in contracting for its information technology services. It has carefully crafted SLAs that are very specific. Sure, they talk about network availability and downtime and about how each of those is measured. But, the "best practices" company goes further in defining its product by addressing not only its availability, but also its quality. Using the following definitions, the vendor sets a quantifiable quality performance criterion:

"Network Latency" means the time it takes for an Internet Protocol (IP) packet to cross a network from source to destination and back to the source.

"Network Latency Objective" means the target monthly average amount of allowable Network Latency for the Network, as posted in the "Monthly Statistics" section at our website.

"Packet Loss" means the failure to deliver IP packets.

"Packet Loss Objective" means the target monthly average for allowable Packet Loss, as posted in the "Monthly Statistics" section at our website.

"Performance Problem" means Packet Loss in excess of the Packet Loss Objective and/or Network Latency in excess of the Network Latency Objective.

Service Credits

Monetary penalties for non-performance – the vendor has not delivered what was promised – provide an incentive to ensure product performance. The "best practices" data center and their customers use the following scheme to encourage the negotiated conditioned reflex:

"Service Credit" means an amount equal to the pro-rata monthly recurring connectivity charges (*i.e.*, all monthly recurring bandwidth-related charges) for one (1) day of Service.

For Failure to Meet Latency and Packet Loss Objectives. Customer will receive three (3) Service Credits for each failure to meet either the Network Latency Objective or the Packet Loss Objective in a particular calendar month. Credits not issued due to the limitations will not be

carried over to subsequent calendar months.

Maximum Service Credit. The aggregate maximum number of Service Credits to be issued to Customer under this Service Level Agreement in a single calendar month will not exceed fifteen (15) Service Credits.

The objective in setting service credits is not to provide a customer windfall, but rather to threaten enough pain upon the vendor to influence performance in accordance with expectations, like Pavlov's dog. In certain circumstances, particularly when exceptional performance (in excess of standards) confers an identifiable benefit to the customer, a bonus payment to the vendor may be appropriate.

What about problems that are so serious that they are causing the customer irreparable, or potentially irreparable, damage? A termination option may be appropriate. Here's how the "best practices" company handles that situation:

Termination Option for Chronic Problems.
Customer may terminate this Agreement for cause and without penalty within five (5) days following the end of a calendar month in the event Customer experiences Downtime Periods resulting in a total of more than three (3) hours of Downtime in a calendar month.

Granted, there is a lot more to the "best practices" company's contract that fully implements effective SLAs; but the above quoted provisions set the big picture.

What's a Dog to Do?

This company did not ignore SLAs. They appreciate the standards that best define what their customer wants; and they drafted objective, quantifiable measurements for their customer's expectation.

In the end, the "best practices" company has a contract with their customer that clearly, concisely and completely defines the product. Their contract, the basis upon which the vendor and customer have agreed to do business, will minimize the occurrence of future disputes and will facilitate a true business partnership.

OTHER RESOURCES ON SLAS

Offshore Outsourcing – An Inevitability, the November 2004 client newsletter, suggested that performance criteria must be applied to foreign service providers to manage offshoring risks.

In the July – August 2005 client newsletter, *Ouch!*, which addressed data security, SLAs were offered as a means to measure service quality and, thus, ensure data security.

These client newsletters are available at <http://www.carpenterlaw.net/newsletters/archivednewsletters.html>.

An Australian law firm, Gilbert + Tobin, released 2 of the best articles on SLAs. Although several years old, they are still highly relevant: Anne Caine, *Negotiating an Effective Service Level Agreement*, (May 31, 1997), <http://www.gtlaw.com.au/gt/site/article/IDs/B685FA264603E965CA256D1E000CF754?open&ui=dom&template=domGT&New=1>; John Gray, *Negotiating an Effective Service Level Agreement – II*, (Mar. 14, 2000), <http://www.gtlaw.com.au/gt/site/article/IDs/4315E4487A98C1B9CA256D32001BAD38?open&ui=dom&template=domGT>.

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