

Raymond D. Aller, MD, and Hal Weiner

LIS purchase contracts: a bore you can't ignore

Admit it: even the mere thought of reading a purchase contract for a laboratory information system makes your eyes glaze over. Turgid legalese aside, the sheer length and level of detail of the document makes the process painful, said Alexis B. Carter, MD, director of pathology informatics in the Department of Pathology and Laboratory Medicine, Emory University Hospital System, Atlanta. Nevertheless, she said, "With contracts, the devil really is in the details, and I can't stress enough that if you're not going to read it yourself, you need to have someone do it who understands your day-to-day needs." And that someone, she added, should provide feedback to the attorney who will represent the pathology department in negotiations with the vendor.

In a presentation at the 2012 Association of Pathology Informatics conference last fall and in a recent interview with CAP TODAY, Dr. Carter discussed the process of reviewing an LIS contract and highlighted some contract tips and traps.

Table of contents. It may be tedious to slog through a contract that's 75 to 100 pages long, but it's essential to make sure that everything listed in the table of contents is covered in the contract, including appendices. "I have yet to get a single contract where all the pieces were included," said Dr. Carter. "If you don't look, your CIO could end up signing a contract with unreviewed pieces in it [or missing pieces]."

Compliance with regulations and standards. Does the contract state that the software is compliant with federal regulations, such as HIPAA and CLIA? Dr. Carter said she's encountered software vendors who were not compliant with federal law "by the way that they were managing their data, and you find out pretty quickly when you ask them to put it [their level of compliance] in writing and they refuse."

Scope of work. Establishing which party is responsible for specific tasks, making sure all your sites are covered by the contract, and setting clear deadlines for your institution and the vendor ensures "complete clarity once the contract is signed—then you don't have issues with that later," Dr. Carter said.

Term and termination. Don't assume that the term of the contract, or the length of time the contract is valid, is set in stone. "Some vendors require some type of annual activity—certification or upgrade—to prevent the contract from expiring," Dr. Carter noted. And some vendors have even wanted their clients to upgrade software every three months for the contract to remain in effect. "Laboratories usually have many pieces of software, and rigorous testing of each software upgrade is required prior to implementation," she said. "This usually means that you can't and shouldn't agree to routine maintenance upgrades that are more frequent than once per year unless there is an unusual mitigating factor." And don't hesitate to broach the subject of what would happen to your system if the vendor went out of business, which can occur with little warning. Request that the contract stipulate that the source code for the application be released to your institution should the vendor close its doors.

Uptime The amount of time a lab system should be functioning, without downtime, is typically expressed as a percentage by day, week, or month, and it's a factor that may not get enough attention during contract negotiations, Dr. Carter said. "Most contracts that I've seen require 99 percent uptime per month," she noted. If a percentage is not written into the contract, "you can be in a situation where your application is working 80 percent of the time and you don't have any legal recourse." If the uptime falls below what the vendor has promised, "you should be given the option to terminate the contract," she added.

Support and maintenance. Pathology departments typically need 24-hour a day support every day, said Dr. Carter, so make sure customer support and maintenance hours are listed in the contract. Besides detailing customer support availability, the contract should delineate turnaround time for support, type of support (for

example, phone, e-mail, site visits), and how frequently the lab will be required to install software updates.

Data migration. If the lab needs to move data from an old system to the new one, make sure that fact is noted in the contract and nail down the date for migration. “If it’s not going to be migrated by the day of go-live, you have to figure out how people are going to get access to the old data,” said Dr. Carter, adding that anatomic pathology staff, for example, need to quickly access historical data at frozen section.

Non-disclosure clauses. Companies need to protect their proprietary software, so it’s common for contracts to include clauses that state that “there are certain things that you can’t tell people outside of your institution about your information system or the company could come after you,” Dr. Carter said. By the same token, the contract should stipulate that the vendor won’t disclose information about your institution or your patients “because they will have access to your patient data and you need to make sure they keep it secure.” If the software application contains patient data, she added, the contract should include a HIPAA business associate agreement.

Payment. Making incremental payments for a lab system based on successful implementation is the best approach, Dr. Carter said. It’s common to pay 40 percent of the overall fee at the time the contract is signed, followed by 30 percent at the time of go-live, and 30 percent once the system is shown to function properly, typically referred to as acceptance of the software application. “I’ve seen some contracts come across my desk where they wanted us to pay 100 percent up front at the time we signed the contract,” she said. “I think this is a notoriously bad idea.”

Calculating cost. Look carefully at any mention of price increases, which are often written into the contract, and make sure there are limits on permissible increases. The vendor “will typically say things like, they can raise your price with 90 days’ notice, three to five percent a year,” Dr. Carter said. In calculating the five-year cost of the system, look at the ongoing costs of support and maintenance as stipulated in the contract, in addition to the implementation cost.

Verifying content. As the contract goes back and forth between the negotiating parties, read each iteration carefully and “get friendly with the ‘compare to the previous version’ function in your word processor,” Dr. Carter advised. “I’ve seen situations where the vendor’s attorneys delete changes you’ve requested, and they don’t advertise that fact.”

The bottom line, she said, is that “what’s included in that contract is just as important as what isn’t included, and you really have to look for the stuff that’s been left out in order to make sure that you don’t get burned.”

For a step-by-step guide to reviewing a lab system purchasing contract, e-mail Dr. Carter at abcart2@emory.edu.

Federal government releases update to Connect software

The federal government has released version 4.0 of the Connect open source platform, which supports the secure electronic exchange of health information.

Users of Connect can securely exchange health data with other users worldwide who have adopted exchange solutions that implement Nationwide Health Information Network specifications and standards. Version 4.0 of the platform offers higher message volumes, with secure health information flows of more than 1,600 messages per minute; the ability to exchange files up to 1 GB in size; additional application servers, such as Glassfish, IBM WebSphere, and Oracle WebLogic; enhanced logging and transaction tracking and analysis functionality; and a smaller server footprint.

Connect 4.0 is available at www.connectopensource.org.

Siemens Healthcare targets uptime with data connection

Siemens Healthcare Diagnostics has integrated Siemens Remote Services into its product service model to maximize uptime for the company's clinical laboratory customers.

Siemens Remote Services provides the company's clients with a bi-directional data connection between several of Siemens' systems and instruments and the vendor's service organization. "Maintenance services that formerly required on-site visits are now possible via data transfer, including error identification and repair," the company reports.

SRS also proactively monitors customers' systems—detecting issues before they interrupt operations—and can be used to initiate remote desktop sharing sessions upon request. In addition, SRS continuously pushes software updates, including anti-virus protection.

[Siemens Healthcare Diagnostics](#), 888-588-3916

Vendors acquire new clients, upgrade software for others

The independent blood center OneBlood has licensed Medware Information Systems' HCLL Transfusion software. OneBlood, Ocala, Fla., was formed last year through the merger of Community Blood Centers of Florida, Florida's Blood Centers, and Florida Blood Services.

[Medware Information Systems](#), 888-633-4927

Pathology Associates Medical Laboratories, LLC, Spokane, Wash., has contracted for Xifin's cloud-based accounts receivable and financial management platform. PAML is owned by Providence Health & Services and Catholic Health Initiatives.

[Xifin](#), 858-793-5700

Collom and Carney Laboratories, Texarkana, Tex., has upgraded to the latest version of Aspyra's clinical lab information system, CyberLab 7.2. The laboratory has also purchased Aspyra's CyberPath anatomic pathology application. Collom and Carney Laboratories has been an Aspyra LIS client since 1997.

[Aspyra](#), 800-437-9000

Apollo has entered into an agreement with Henry Ford Health System, Detroit, to expand the use of its Apollo EPMM clinical multi-media management solution from Henry Ford's pathology department to the entire enterprise. Apollo EPMM (Enterprise Patient Media Manager) brings together all clinical media related to a patient from throughout the institution and makes it immediately and easily accessible to authorized personnel.

[Apollo](#), 703-288-1474

[hr]

Dr. Aller is director of informatics and clinical professor in the Department of Pathology, University of Southern California, Los Angeles. He can be reached at raller@usc.edu. Hal Weiner is president of Weiner Consulting Services, LLC, Florence, Ore. He can be reached at hal@weinerconsulting.com.