

Practice Tips for Renegotiating Contracts due to Coronavirus Uncertainty and Changed Business Conditions

If your software company is like many, you are probably already contemplating the renegotiation of certain contracts due to the uncertainty and changed business conditions arising from the coronavirus pandemic.

However, the renegotiation of contracts will inevitably open your software company up to the possibility of having to agree to terms and conditions far less favorable than what you previously agreed to. Furthermore, if not carefully drafted, any modification to an existing agreement could create legal issues that did not previously exist, leaving your software company in a vulnerable position should your company end up in a legal dispute with the other party down the road.

So, what are some practice tips for the successful renegotiation of contracts in a period of economic and business uncertainty?

First and foremost, approach contract re-negotiations as an opportunity to clarify any vague or uncertain terms in the previously executed contract. It is critical in periods of economic and business uncertainty to fully contemplate in the contract the parties' intentions. So, a renegotiation is the perfect time to address any such issues that have come to light with the contract since execution. You definitely do not want to spend the time and money on renegotiating only to leave in the contract all the problems that have previously

come to light with it, any one of which could result in a contract dispute down the road. Also, you want to think through all the possible scenarios that could arise and make certain the contract fully addresses those possibilities. For example, right now, many cities around the world are in lockdown for a period that has been assigned an expected end date. What happens if the date gets pushed back by three months? How does this impact the relationship? What happens if the date gets pushed back by six months? How does this impact the relationship? Thinking through the implications on the contract of potential scenarios and ensuring they are appropriately address in the contract is key.

Second, approach contract renegotiation with the intention of ensuring that the terms will be a “win” for both parties. In other words, both sides of the contract should obtain a benefit from the renegotiation, so that one side is not making all of the concessions on the mere promise of a future relationship. For example, if one side is seeking new payment terms, consider whether the other party would benefit from a longer contractual commitment. Good relationships require mutuality for both sides to remain satisfied with that relationship. If one side feels forced to agree to terms against its interest, then the relationship is likely to be negatively impacted on an ongoing basis.

Third, anticipate the possibility that the contract renegotiation does not truly resolve the issue prompting the renegotiation and develop a fallback solution that will enable the parties to easily go their separate ways without the necessity of further negotiations or proceedings. Contemplate what terms would need to be included that would allow for a clean and painless parting of ways if the issues do not end up being resolved by the modification.

Fourth, make sure you are really contemplating the full impact of the proposed modification(s) on every single clause of the contract, and not a single clause or set of clauses in the

contract. Perhaps the single most common mistake I see with contract modifications is that parties fail to contemplate how a modification affects an entire agreement and draft documents that add a lot of uncertainty into the terms. Even a minor modification has the potential to impact all or nearly all of the clauses in a previously executed document. Thus, make sure you have taken the time to fully contemplate the impact of a proposed modification before agreeing to it.

Fifth, make sure you identify the specific contract you are modifying, and the specific clauses you are modifying, as well as what specific modifications you are making. Also, clearly state what happens specifically to the clauses you are not modifying. The worst contract modifications are unclear as to the contract version being modified and/or the specific clauses being modified, and are not clear as to the effect on other clauses. An effective contract modification is one that does not create new uncertainty.

The bottom line is that even a seemingly simple modification proposal requires careful contemplation beyond just merely the request proposed. While it might be tempting to cut corners with a contract renegotiation in order to save on legal fees or expedite the signing of a contract modification in an uncertain economic climate, such decisions often lead to disputes with previously good relationships that would never have arisen otherwise. It generally pays to take the time do a contract modification the right way.

If you have questions about how to best renegotiate a contract, please schedule a consultation today at <https://calendly.com/prinzlawoffice>.