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To create a win-win relationship, both parties must gain something from the partnership agreement

How to forge a genuine vendor-buyer partnership

While radiology vendors like to talk about partnerships with the people who buy their equipment, and claim to believe in them, why are true partnerships so rare? They can and should exist, but need time and trust to develop. Productive, mutually beneficial relationships don't just happen overnight.

In truth, most so-called partnership relationships are strictly transactional agreements. Instead of establishing "win-win or no deal" agreements, as defined by Steven Covey in *The Seven Habits of Highly Effective People*, most partnership agreements have little substance. They are based on a win-win relationship unless something changes, and then it's the hospital that usually loses.

A true partnership cannot be rushed. It requires two parties getting to know one another and developing a knowledge and understanding of each other's culture, goals, ethics, and ways of doing business.

For example, your vendor's local sales representative may know you and your facility, but does anyone else in the regional or national sales organization? To develop rapport, you should invite key leaders from the company to visit your site and provide them with a presentation (hat includes items such as the number of patients served each year, the source

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of your patients, and how they may have special needs or may be different from those served by others. You should also include a description of any medical research and educational programs, a list of all of the vendor's equipment at your facility and affiliated facilities, and a photographic tour of the premises.

It may be beneficial to present this information at the vendor's corporate headquarters to the CEO and key executives, so that more of the decision-makers within the company can benefit from it. This provides an excellent forum to discuss their views of medical imaging and where they are taking their company over the next five to 10 years. One of the key barriers that must be faced, however, is that to develop a true partnership relationship with someone, you must be able to share confidential information with each other—and this must go both ways. This is typically one of the greatest hurdles in forming a true partnership between a vendor and buyer.

To create a win-win relationship. both parties must come away knowing that they are gaining something from the partnership agreement.

These objectives should be spelled out in the agreement—specific issues as well as higher-level concepts. For example. the vendor may offer special pricing and preferentially consider research proposals for funding. Meanwhile, the customer should provide more value than just agreeing to purchase a given amount or percentage of its imaging equipment from the vendor. The hospital may agree to host visits to demonstrate and promote the equipment. Or the customer may do clinical research with the equipment and provide the data to the vendor, attempt to publish the results in a peer-reviewed journal, or speak about the studies at various forums.

COMING TO AGREEMENT

Four basic concerns should be addressed in a partnership agreement. The first deals with the issues to be included within the scope of the partnership relationship. The second is what each party's expectations are of each issue. Third is what recourse will occur if—or more likely, when— either party's expectations are not met. Fourth. and most important, is who determines when the recourse is due, should expectations not be met.

• *What issues should be included in the agreement?* Not all issues can be foreseen. A partnership must be developed on trust and have some give and take associated with it.

• *What are each party's expectations?* A partnership should include a definition of both parties' expectations as well as contingencies. For example, while it is very common to have a guarantee that the equipment will be installed within a certain number of weeks or there will be a monetary penalty per day until it is installed, rarely are the official beginning and ending times of the installation period clearly defined. We typically state that the clock starts when the vendor officially agrees to begin installation—something that is put in writing, not to trap someone but instead to make sure all parties are in agreement.

The completion of the installation is defined as occurring when the owner officially accepts the system according to the criteria in the final contract. There may be various types of system-acceptance criteria, such as one month's operation with no major problems. At the Mayo Clinic, the following clause is used: "The system must perform to the satisfaction of the clinical staff, radiologists, medical physicists and engineers. Also, the equipment is to perform equivalent to or better than the system viewed at [name of site where equipment was observed] and operate properly." This last phrase, "operate properly." covers issues such as unacceptable noise as the equipment angulates or other miscellaneous issues that are not covered within the specifications ions.

A much trickier issue to deal with is obsolescence. While it is common for companies to guarantee that your equipment will he state—ol—the—art. this is often something that varies considerably in the eyes of the beholder. This is a key area where a partnership relationship is typically tested.

In an article written some time ago that is still quite pertinent today, Dr. William Brody said, "When buying imaging equipment, hospitals are faced with the task of either accepting a manufacturer's legal terms and conditions or negotiating a contract based on the needs and desires of both parties. My experience with the latter approach has led to much frustration." (See "Why don't they treat me as a customer?" August 1990, page *59.)*

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The terms and conditions (T&Cs) are usually printed on the back of the vendor's quotation form, and most purchasers generally don't read them. Just because they are printed on the form, however, doesn't mean that they can't be modified. The purchasing institution can develop its own T&Cs, which become part of the purchase order.

• *What recourse is there if either party's expectations are not met?* Note the word "either." A true partnership must go both ways; the customer has rights and so does the vendor. For example. if the site is not properly prepared at the designated time, it is not realistic to expect the vendor to compensate for this. Also, if a vendor shares its research work with you. keep in mind that not all products make it to the market—even if they would have great value to you.

If the vendor does not complete the installation within the specified time, we find a much more effective incentive than a financial penalty is to have the warranty extended one month for every additional week—or in some cases, every additional day—that the installation extends beyond the guaranteed time period. That way, the service organization that has the greatest impact on expediting the successful completion of the installation has the greatest incentive to perform. Financial penalties may affect the sales organization and, as a result, create a disincentive for the service organization.

Financial penalties in a purchase agreement are often simply compensated for by raising the bid price. If the vendor raises its price to cover the risk of a penalty clause, you are not developing a partnership relationship, but are only engaging in a transaction. It is essential to have the service organization involved when developing a partnership agreement, as it is the group that will have to honor many of the commitments that are made.

On the other hand, there should be rewards for the installation crew if they finish early. If you do something for the installation and service people, your overall quality of service will skyrocket.

• *Who should decide when recourse is due?* While in some cases it is acceptable to state that the owner will determine when recourse is due, we recommend that a third party acceptable to both the owner and the vendor be identified to serve as an arbitrator if they cannot agree whether a term of the agreement is being met. The typical wording that we have found to be acceptable is as follows: "Should this arbitrator need to become involved in deciding an issue, the losing party will pay their fee." While we have rarely had to use an arbitrator, we feel strongly that identifying one and inserting his or her name and this clause into a partnership agreement is crucial to a successful outcome.

DODGING TRAPS

Most partnerships fail because many real - world issues are either underem phasized or overlooked during the formation of the agreement. If prospective partners can talk through more scenarios than could possibly occur and agree on how they would be dealt with, they are well on their way to a successful partnership. We call these the "what ifs": "What if the magnet quenches?" "What if downtime is 10%?" and so on.

Many purchase agreements are based on unrealistic expectations. For example, one of the most common means for justifying new purchases is to claim that the equipment will improve productivity, lower costs, and increase revenue. A sales representative may state that the new system will increase productivity by 50%. In most cases, this means that the new system or upgrade offers the potential to reduce the data acquisition component of the procedure by ***50%,*** if you are capable of using this feature. Data acquisition is only one component of the exam cycle, however, and often a small contributor to actual throughput. As a result, reducing the data acquisition time by *50%* may result in only a 10% throughput increase at best.

Another disappointment is the typical "guaranteed uptime penalty clause." While this clause is touted as providing real protection to the owner, in most contracts it is absurd. To pay a premium price for service and receive a rebate toward your future service contract only if the equipment is down more than 10% of the time is inconceivable. If you had a car that failed to start one out of 10 times, would you be satisfied with a token rebate on your next service bill? To us, this type of performance falls within the lemon clause: repair, replace, or take the equipment out and refund all money (and possibly additional penalties) at the owners discretion.

While we encourage as many issues as possible to be addressed in developing a partnership agreement, one must also establish a means for handling the unexpected. What happens when things develop that were not considered when the agreement was negotiated? These situations will arise. In today's society, while partnerships are truly needed, few have the time and ability to commit to making them work. All too often when unexpected issues develop, the partnership crumbles.

A true partnership involves give and take. Determining how both expected and unexpected issues will be dealt with throughout the life of the partnership is the key to development of a long-term, successful relationship that will benefit all parties.