

Contract Drafting Final Project

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1. BACKGROUND.

BC makes the “121” software. Customers obtain 121 to build and operate e-commerce websites. 121 offers several advantages for its customers:

- 121 allows customers to launch their websites quickly.
- 121’s various components are integrated. To replicate this functionality, customers would need to spend significant time and money to find, license and integrate the components.
- 121 facilitates website customization for each visitor. For example, using the 121 tools, a company can deliver “targeted offers” to its visitors. In theory, this targeting capability helps customers make more money from their website.
- BC has a large base of independent programmers available to help customers customize 121 for their specific needs.
- 121 has industrial-strength security to protect e-commerce transactions.

121 contains three discrete software components:

- *Development Software.* This provides customers with tools to customize their implementation of 121, including an API (consisting of limited source code that customers can edit to make incremental changes and a set of instructions to write compatible software).
- *Deployment Software.* This is the server software that runs the customer’s website.
- *DCCs.* A DCC is “client-side” software (i.e., installed on employee desktop computers) that employees use to create and deliver targeted offers to website visitors.

2. INSTRUCTIONS.

Question #1 (approximately 30% of grade): Review the contract from BC’s perspective. Write a memo identifying things you would like to change in BC’s form. Explain each issue, how you propose to fix it and the issue’s importance. You should prioritize your list. You may not exceed 1,500 words for this question.

Question #2 (approximately 20% of grade): From BC’s perspective, redraft (a) Section 1 of the main agreement (the “License” section) and Attachment A (at minimum, to integrate them), and (b) Section 8 of the main agreement (the “Confidentiality” section). Annotate your changes to explain your thinking. Your redraft should consider the following objectives (plus any others you think appropriate):

- reduce word count
- improve grammar
- reflect the facts given in the Background above
- increase contract “sellability”
- address/correct any inconsistencies (consider Sections 4(A) and 10(B) as well)
- make any corrections necessary or advisable from a compliance/regulatory standpoint

You do not need to show your changes via a redline; at minimum, your integration of Section 1 and Attachment A would make such redlines confusing.

Question #3 (approximately 50% of grade): Assume that BC is negotiating a software license with a large consumer-oriented e-commerce website. (If you need an example as a reference point, consider Gap.com). The customer will hire BC to do \$100,000 of custom software programming (referred to as “professional services” in the agreement) to prepare 121 for the customer’s specific needs before launching the website. In the future, the customer may hire independent contractors to do additional 121-related programming from time to time. The customer expects to pay approximately \$500,000 of license fees upon signing and, over time, another \$500,000 for additional DCC installations and profiled users. In connection with the 121 acquisition, the customer will hire several new software engineers and procure (from third parties) new computers to operate the software.

Review the contract from the customer’s perspective. Write a memo identifying the 8-12 most important changes you would want to make to the contract. Explain each issue and how you propose to fix it. You should prioritize your issues. You may not exceed 2,500 words for this question.

Note: the agreement contemplates that separate documents (like a purchase order) will contain specifically-negotiated terms like payment and descriptions of the professional services requested by the customer. Don’t worry about the apparent lack of documentation about this.

REMINDER: For all questions, consider what’s missing from the contract, not just what’s there!

3. ADMINISTRATION.

Written Answer

Your answer is due May 12 at 5:00:00 pm Central and must be typed. Time.gov provides the official time for this project. Turn in your answer to my mailbox in Room 109 (no email submissions). I may subject a late submission to extreme grading penalties or refuse to review it altogether.

Oral Exam

You have the option to do an oral exam instead of writing your answer. To choose this option, notify me by EOD April 29. We must schedule the exam prior to May 12 at 5 pm. I expect the exam to last 60-90 minutes, but it will go as long as necessary. If you want to do an oral exam, please prepare the edits for Question #2 but you can walk me through your annotations orally.

General Rules

This is not a collaborative project; you may not work with your peers or get advice from any third person. Whether you write your answer or take the oral exam, you may freely consult your notes/reader plus any other published material, but you need to identify/cite any external sources that affect your answer.

If you have a question about this assignment, email me (no in-person/phone call questions, please). If I answer your question, I will post it and my answer to TWEN so that everyone has the same information.