

The Fine Art of Negotiation

Making Sure the Deal is a Win-Win



Mega Event, 4/5th November 2015, San Diego





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Building a Successful Card Program Requires a Win-Win

- Our primary objective as an advisor is to help our client build a successful card program
- For a program to succeed, all partners must win
 - When negotiating a deal, all sides should keep in mind that they are constructing a *partnership*
- This premise underlies much of today's discussion



Achieving a Win-Win Deal

- **Business terms should:**
 - Align interests of the parties
 - Not strain a party so much it impacts program's ability to thrive
 - Be constructed in a way that clearly supports and enables the program vision
 - Allow all sides to achieve success if the program works well
 - Enable reasonable and equitable adjustments if aspects of the program fall short of expectations
 - Not contain "gotcha's" designed to trip up one party or another
 - Provide for a reasonable and orderly end to the partnership in which both parties' rights and ability to continue to conduct their business without undue harm are protected



Achieving a Win-Win Deal

- **Attention must be paid to non-financial program elements, not just remuneration**
 - Deal construct and terms should support:
 - Value proposition evolution
 - Delivery mechanisms (marketing, underwriting, servicing, etc.)
 - Ongoing partner interaction / relationship management is critical
- **Lawyers should be an extension of business teams**
 - Ensure attorneys understand the deal and see the big picture, so they help process move forwards rather than backwards
- **Prioritize issues and prepare for some give and take**
 - Not every issue is a must-have; both sides have to compromise



Negotiate the Contract AFTER the RFP

- **Negotiating a contract during RFP:**
 - Puts one party at an inherent disadvantage, which prevents the “win-win” objective described earlier
 - Adds a component that constrains the creativity and financial energy that a good RFP process should elicit
 - Puts the cart before the horse; how can a good contract be negotiated before the program vision is shaped and agreed-upon?
 - Sets up both parties for potential recants later in the process
- **A strong RFP process can capture critical contract components**
- **Negotiate top line terms and conditions prior to full contract process**
 - Ensures both parties on same page and no surprises
 - Enables conversion in parallel to contract negotiations



Win-Win Approach to Sample of Key Contract Terms

- **Value Proposition Creation and Adjustments**
 - Key Challenge: Balance need for flexibility over time with commitment to funding and maintaining program attractiveness
 - Potential Approach:
 - Value Proposition cost ranges to protect funding party
 - Well defined roles and responsibilities for adjusting the offer
 - Steering Committee / arbitration



Win-Win Approach to Sample of Key Contract Terms

- **Marketing Funding and Strategy**
 - Key Challenge: Ensure commitment is in place for parties to drive acquisition and spend
 - Potential Approach:
 - Joint marketing fund based on program success / meeting goals
 - Annual marketing plan jointly developed by both parties and approved by the Steering Committee
 - Pre-defined marketing templates to expedite marketing approval process
 - Definition of specific marketing channels and marketing assets each party will contribute to the program



Win-Win Approach to Sample of Key Contract Terms

- **Program Strategy / Management**
 - Key Challenge: Ensure all parties are engaged and committed to program success
 - Potential Approach:
 - Quarterly planning meetings between brand partners and issuer/network
 - Dedicated staffing program resources from all parties
 - Clearly defined roles and responsibilities for each party
 - A contract that allows parties to adjust and flex in response to program needs over time



Win-Win Approach to Sample of Key Contract Terms

- **Termination Rights – Claw Backs and Penalties**
 - Key Challenge: Ensure each party is performing their obligations and is committed for the entire contract term
 - Potential Approach:
 - Cure period to correct performance issues
 - Penalties/cancellation if ongoing non-performance exists
 - Payments under various exit scenarios (e.g. merger, etc.)
 - A complex issue that needs to be tailored to the specific situation



Win-Win Approach to Sample of Key Contract Terms

- **Portfolio Rights**

- Key Challenge: Differing motivations for each party: incumbent issuer wants to be rewarded for the value it has helped create; brand partner wants to be able to move the program without undue hindrance, and in a manageable timeframe
- Potential Approach:
 - Fair market value; driven by program financials and key metrics
 - Pre-defined and fair appraisal process including averaging multiple appraisals from each party
 - Reasonable and achievable timeframes for the process that reduce the likelihood of either party being able to “run out the clock” in order to exert pressure



Win-Win Approach to Sample of Key Contract Terms

- **Customer Service/Service Level Metrics/Reporting**
 - Key Challenge: Brand partner expectations and requirements vary significantly, while issuers prefer to standardize as much as possible across their card programs
 - Potential Approach:
 - Agreement during the RFP process regarding the exact location from which the issuer will be servicing the card program (U.S. based versus outsourcing any customer interactions)
 - Issuer's reporting tools and brand partner's report requirements identified during the RFP and pre-contract discovery
 - Negotiation of specific service level metrics a brand partner requires for its business
 - Remedies and ultimately penalties if service goals are not consistently being met and causing ongoing program disruption



Q & A

