

# Effective Negotiation Strategies for Information Resource Contracts

SARC – Williamsburg – Virginia

Presented by: Joanie Olivier  
September 29, 2005

# Consistent Concern Areas

---

- User Lists
- Contractual terms
- Usage requirements Vs contract value

# Preparing for the Renewal - Review

---

- Individual, Departmental or Company wide access
- What are the competitive products? Are you already subscribing to a similar product and are there any financial advantages to be gained from reviewing alternative sources?
- Do multiple contracts for the same service exist across the organization and is there any financial gain to consolidate?

## Why Consolidate?

- elimination of open or unassigned seats
- maximization of contract allocation
- consistency of contractual language
- controllable renewal environment, one contract, one start and end date

# The 6 Step Renewal Process

---

- Step 1: Develop a need assessment document
- Step 2: Usage Analysis
- Step 3: Competitive Review
- Step 4: Contract Review
- Step 5: Create the negotiation strategy
- Step 6: Create implementation Strategy

# Step 1: Develop a need assessment document - Overview

---

- Who
- What
- Why
- How
  - Access
  - Internal or external distribution
- How much (determine per user cost)

# Step 1: Develop a need assessment document - Overview

---

- Create user/s profiling document
  - Confirm internal information requirements for renewal
- Create or update user list
- Determine how the invoice will be paid:
  - Centralized budget
  - Charge back to groups or customers
  - Invoice procedures
- Contact user/s to ensure participation on contract moving forward
  - Agree to renewal
  - Agree to per user cost
- Understanding User requirements:
  - Copy
  - Redistribution
  - Archival
  - Derogative work
  - Quotes from articles, etc.
- What access is required (online, hard copy)
- Data coverage: current, archival or both
- Frequency of use: concurrent users or per seat allocation

## Step 2: Usage Analysis - Overview

---

- Usage by user (Rank based on power, active or ad hoc users)
- Usage by file (Apply ranking system)
- Usage by user by month (Look for special projects or anomalies usage)
- Usage influencers:
  - Deleted id's
  - New id's added
  - Special projects
  - New user training

# Step 2: Usage Analysis - Overview

---

- Conduct detailed usage review
- Create user ranking system
  - Power user: access daily, usage is high
  - Active user: access frequently, usage is medium to high
  - Ad hoc: access infrequent (per user cost can be higher than usage consumption)
- Create file ranking system, prioritize based on usage
  - Priority 1: Highest usage consumption
  - Priority 5: Lowest usage consumption
- Outline Usage Statistics/Reporting requirements
- How will you track usage: monthly, quarterly or bi-annually
- Managing user id's and passwords: Keeping track of job changes, resignations or terminations
- Support requirements: training, new user request, user id cancellation procedures

# Step 3: Competitive Review

---

- What are the competitive products to the product in review?
- How do they compliment or compete?
- Will users be willing to change if you can not agree on terms and conditions?
- Do you have a print version that can be cancelled if available online through service under review?
- Based on file analysis is there ad hoc file usage that can be substituted for hard copy or alternative service?

## Step 4: Contract Review – Legal Terms

---

- MSA (Master Service Agreement/Terms and Conditions)
  - Legal
  - Commercial Terms
- Schedule/Content License
  - Flat Fee, Transaction or site license (file or location)
- Aggregator Vs Content Owner
- Flat Fee Vs Transaction or Site
- Pricing considerations

# Step 4: Contract Review – Legal Terms

---

- Legal Terms – Definition

Contractual language that should be reviewed by a lawyer to ensure they are in line with company policies as well as to ensure that company can commit to these terms.

# Step 4: Contract Review – Legal Terms

---

- Parties to contract (ensure the company name is identified correctly on the contract)
- Definitions
- Rights granted:
  - Sublicensing allowed, Assignment or Transfer rights
- Intellectual Property Right
- Governing Law
- Notice's
- Warranties
- Limitation of Liability (Indemnity and Limitations of Liability), etc.

# Step 4: Contract Review – Legal Terms

---

## ■ Definitions:

- “Subsidiaries or Affiliate” refers to any person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by Customer. (a) the legal or beneficial ownership of (i) fifty percent (50%) or more of the outstanding voting stock of a corporation, (ii) fifty percent (50%) or more of the equity of a limited liability company, partnership, or joint venture or (iii) a general partnership interest in a partnership or joint venture; or (b) the power to exercise a controlling influence over the management or policies of a legal entity.
- “Site” means a location in use by Customer or its Affiliates, including remote access by Subscribers or Affiliates assigned to that Site.
- “Subscriber Network” means the Customer, it’s Affiliates and their respective Contractors; or the Customer, its Selected Affiliates and their respective Contractors.

# Step 4: Contract Review – Legal Terms

---

- **Rights Granted:**

The license granted hereby may not be assigned, transferred or sublicensed without the prior written consent of content provider.

Change to:

The license granted hereby may not be assigned, transferred or sublicensed **outside of the subscribers network** without the prior written consent of content provider.

# Step 4: Contract Review – Legal Terms

---

- License/Authorized Use
  - Can the user/s save a copy?
  - Can they forward, redistribute within a group or department?
  - Stipulation about unauthorized users?

# Step 4: Contract Review – Legal Terms

---

## ■ Governing Law

- **Governing Law and Severability:** Any questions concerning the validity, construction, or performance of this agreement shall be governed by the State of \_\_\_\_\_.
- UCITA – Uniform Computer Information Transactions Act in the United States adopted by 2 states Maryland and Virginia

# Step 4: Contract Review – Legal Terms

---

## ■ Limited Warranties/Disclaimer of Warranties

- CONTENT PROVIDER MAKES NO WARRANTY, EXPRESS OR IMPLIED, AS TO RESULTS TO BE OBTAINED BY ANY PERSON OR ENTITY FROM THE USE OF THE SERVICES OR CONTENTS,
- OR THAT THE RESULTS OBTAINED WILL BE SUCCESSFUL, MEET SUBSCRIBER'S REQUIREMENTS,
- OR THAT USE OF THE SERVICES OR CONTENTS WILL BE ACCURATE, COMPLETE; ERROR, DEFECT OR VIRUS FREE; UNINTERRUPTED, OR SECURE. THE SERVICES AND CONTENTS ARE PROVIDED "AS IS".
- Recommendation: ...if the quality of the information or lack of service has a significant negative impact on subscribers business, subscriber will have the right to cancel without penalty by giving x days notice.....

# Step 4: Contract Review – Legal Terms

---

## ■ Indemnification and Liability:

Licensee will indemnify, defend and hold Information Provider harmless from any claim, demands, liabilities, suits or expenses of any kind arising out of Licensee's breach of its obligations hereunder that protect Information Providers intellectual property rights, including without limitation, the License terms and restrictions.

### Add in:

Each party will indemnify, defend and hold the other harmless from any claim, demands, liabilities, suits or expenses of any kind for personal injury or property damage to the extent arising from its negligence or willful misconduct."

**Should always be mutual, make sure it indemnifies against claims from third parties as well.**

# Step 4: Contract Review – Commercial Terms

---

## Commercial Terms – Definition

Contractual language that will have an impact on users and use of content. Usually a business group or unit decision.

# Step 4: Contract Review – Commercial Terms

---

- Term
  - 1 or 2 years – any discounts associated with longer term commitment
  - Start and end date
- Payment requirements and penalties on late payment
  - net 30? Due upon receipt or receipt of correct invoice
  - What is the penalties regarding late payments?
- Commitment level (contract value)
- User requirements and contract re-assignment
- Renewal and Cancellation stipulations and requirements
  - Auto renewal notice – review notice clause
  - 30, 60 or 90 day cancellation notice clause

## Step 4: Contract Review – Commercial Terms

---

- Auto Renewal/Cancellation Clause:
  - What is the notice period?
  - What action is required to cancel
  - Do your contract include a notice section
    - Notices:
      - Notice requirements:
        - Fedex, certified mail or return receipt
      - What address is given for all notices?

# Step 4: Contract Review – Commercial Terms

---

- Authorized use
  - Concurrent or single id assignment
- Delivery or access method
  - Online – authentication required?
  - Installed on company equipment?
  - System or compatibility requirements
- Support included or in addition to
  - Any fees associated with requesting online training
- **Change of circumstances clause**
  - Can you get out of contract or can contract be reassigned

## Step 4: Contract Review – Commercial Terms

---

- a) Content provider reserves the right to add to or remove any part of the Services at any time without prior notice.

**Add: If the removal of content has a significant impact on the value of service to subscriber, subscriber will have the right to terminate this agreement by providing 30 (thirty) days written notice to the content provider. No cancellation penalties will apply.**

- a) Audit: can you comply with stipulation usually 24 to 36 hour notice
- b) Information Provider may refer to Subscriber as a customer or user of the Services in its marketing and other public announcements.

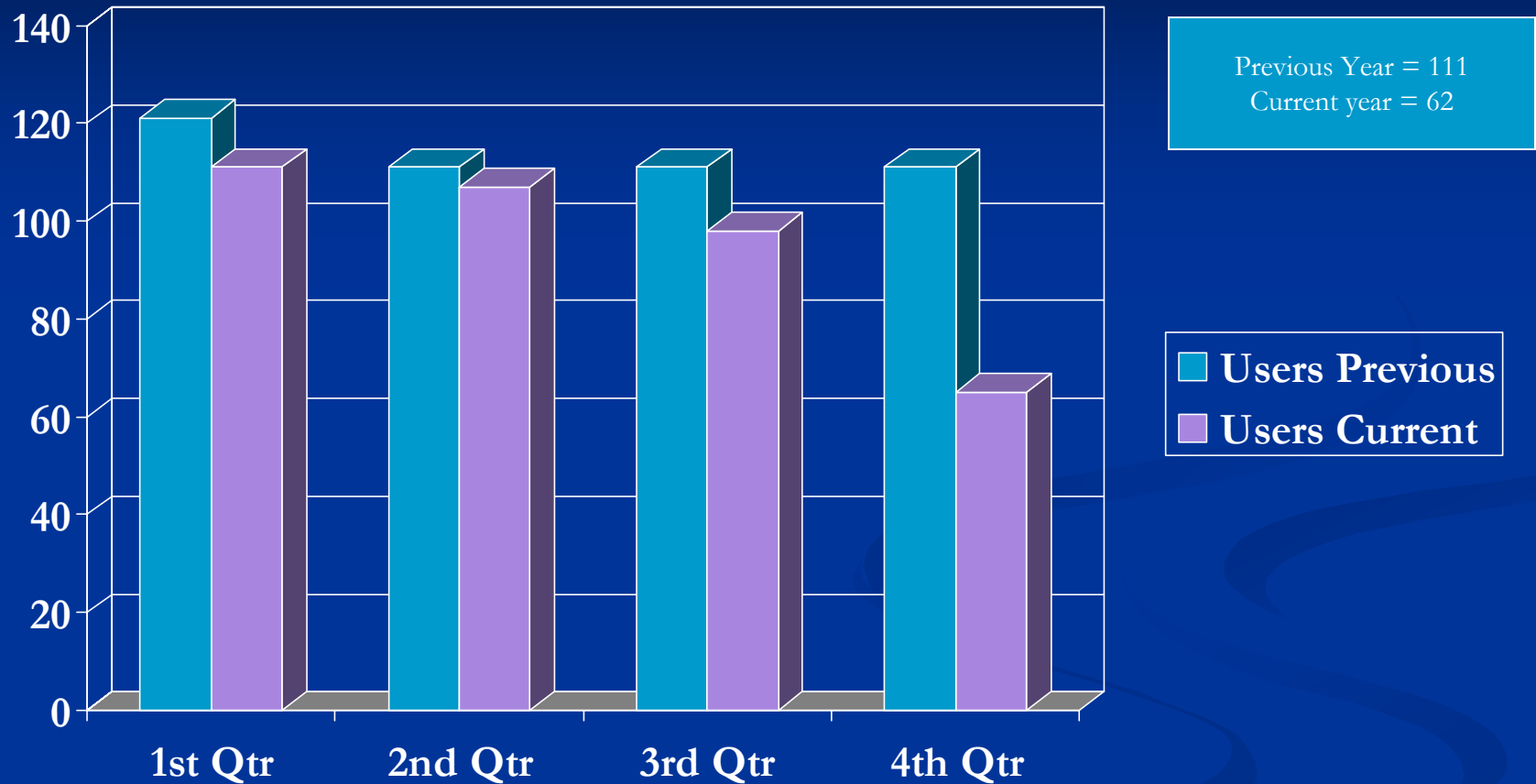
# Step 5: Create the strategy - Overview

---

- **Review User requirements and # of users**
  - **What about Ad Hoc users?**
    - **Is the per user cost higher than the usage on the system**
- Review Alternative options (competitive options)
- Review Usage statistics
- Determine Legal contract change requirements and implement
- Determine Commercial contract requirements and implement
- Determine plan type: flat fee vs. transactional
- Determine contract value based on access, content and user requirements
- Confirm support requirements
- Start negotiations

# Step 5: Create the strategy – Overview

## User Requirements



- Added 12 new years
- Deleted 42 due to resignations, terminations or job changes
- Power user count = 25, Active user count = 25, Ad Hoc user count = 12

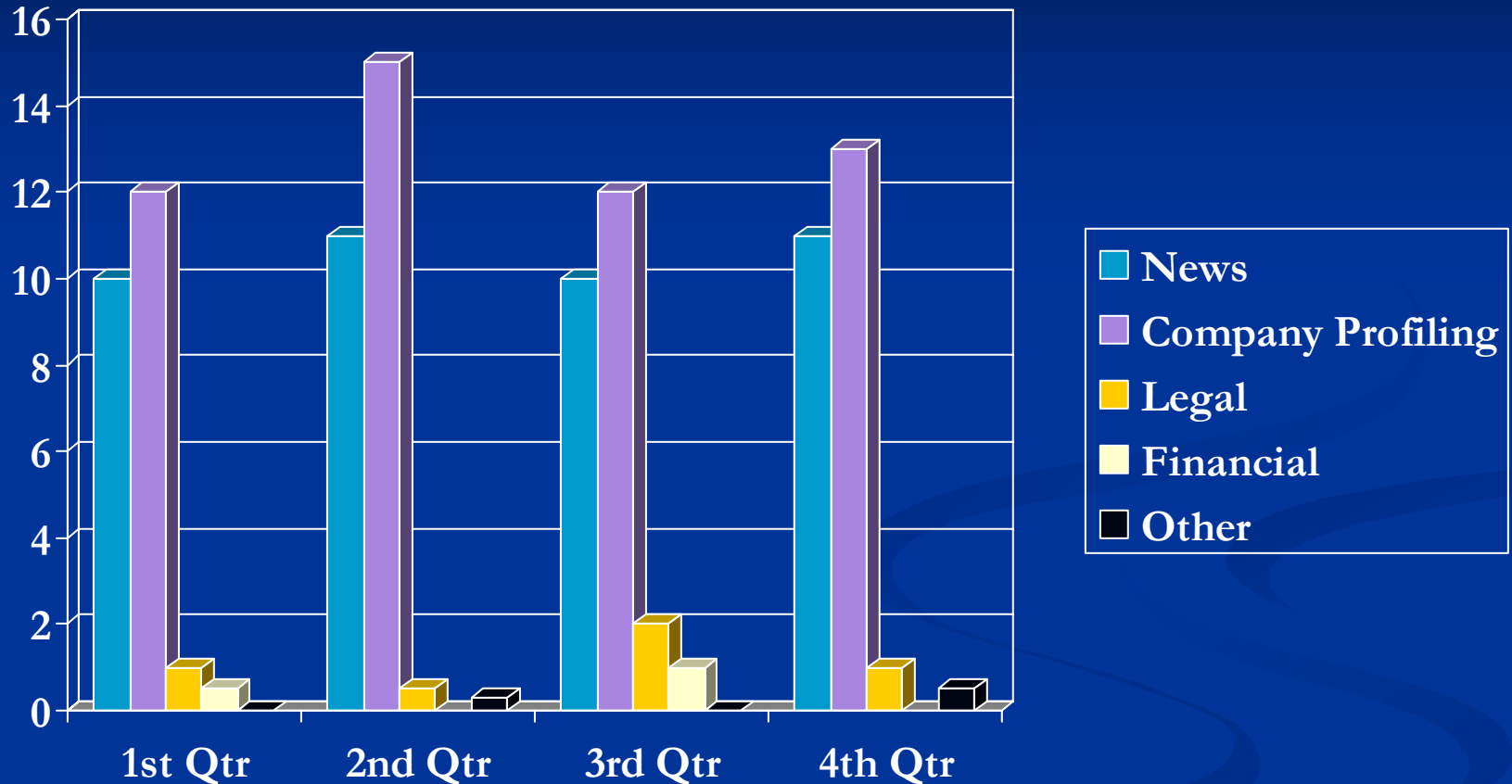
# Step 5: Create the strategy - Overview

---

- Review User requirements and # of users
  - What about Ad Hoc users?
    - Is the per user cost higher than the usage on the system
- Review Alternative options (review file usage and review competitive options)
- Review Usage statistics
- Determine Legal contract change requirements and implement
- Determine Commercial contract requirements and implement
- Determine plan type: flat fee vs. transactional
- Determine contract value based on access, content and user requirements
- Confirm support requirements
- Start negotiations

# Step 5: Create the strategy – Overview

## File Usage



- Alternative sources for Finance
- Alternative for Business

Total usage = \$1,7m

## Step 5: Create the strategy – Overview

### File Usage

---

- News Usage = \$300k – priority 2
- Company Profiling = \$1,3m - priority 1
- Legal/Finance/Other = \$100k - priority 3

What else are you using, can you migrate users to other services and save the \$100k?

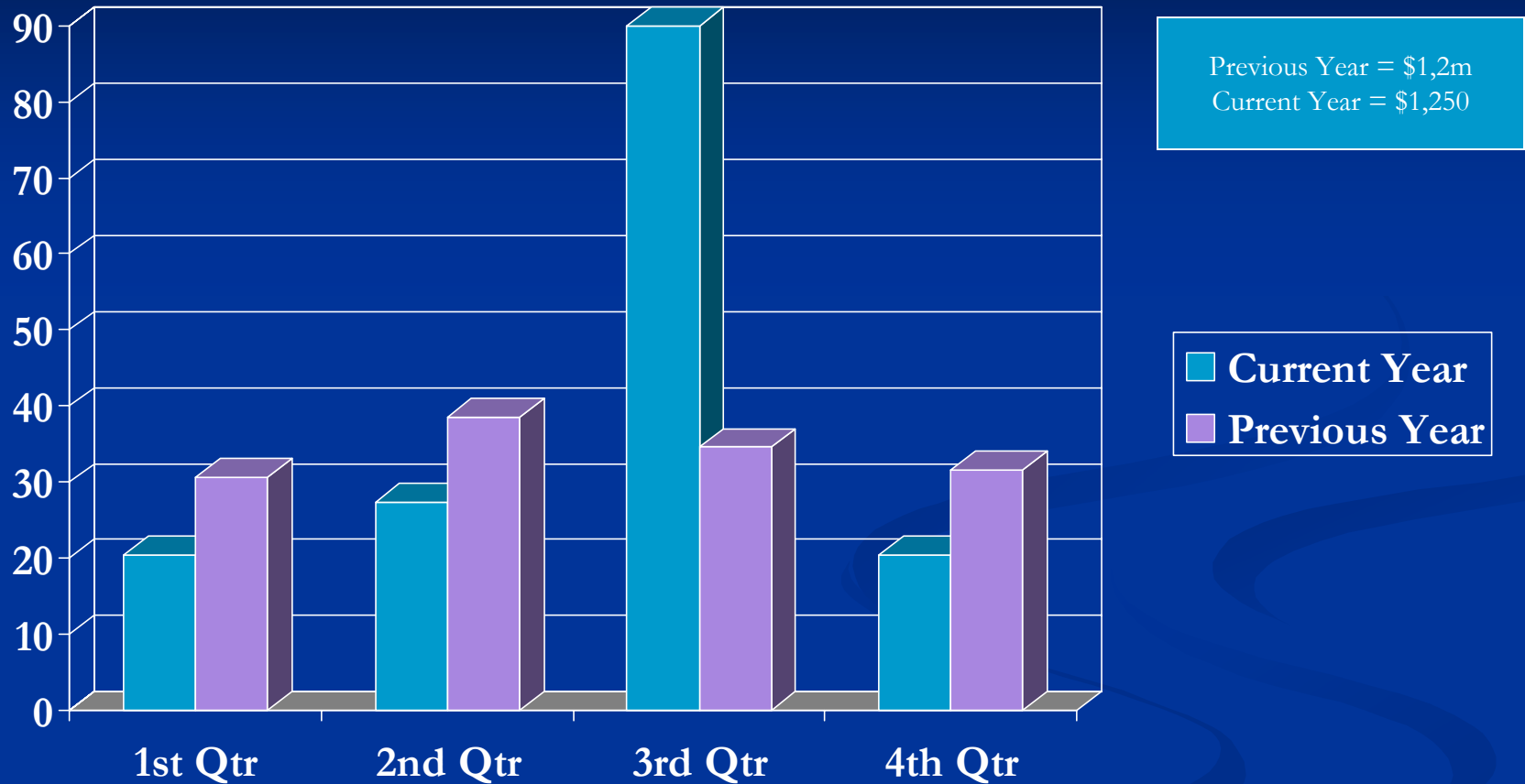
# Step 5: Create the strategy - Overview

---

- Review User requirements and # of users \*\*
  - What about Ad Hoc users?
    - Is the per user cost higher than the usage on the system
- Review Alternative options (competitive options)
- Review Usage statistics \*\*
- Determine Legal contract change requirements and implement
- Determine Commercial contract requirements and implement
- Determine plan type: flat fee vs. transactional
- Determine contract value based on access, content and user requirements
- Confirm support requirements
- Start negotiations

# Step 5: Create the strategy – Overview

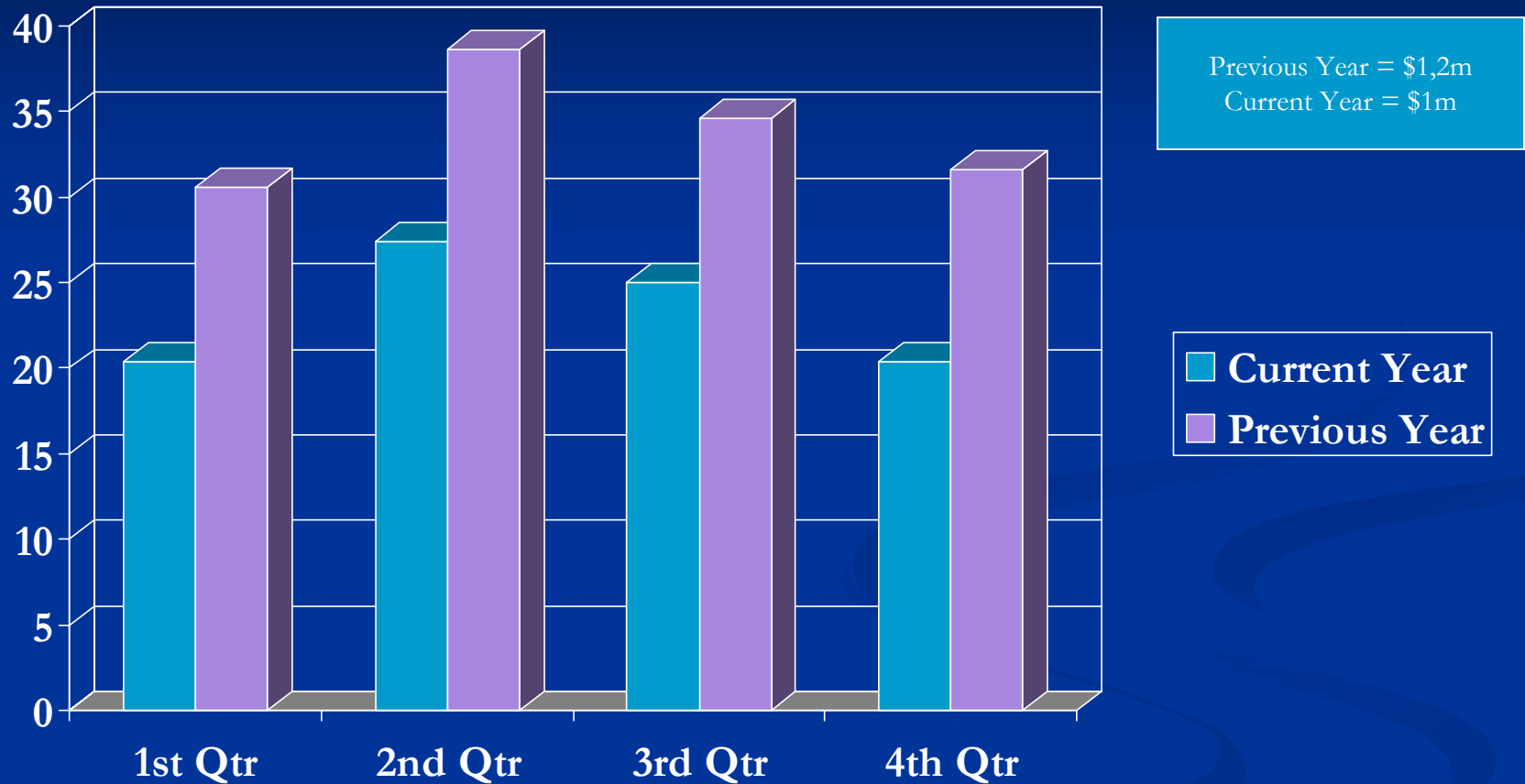
## Total Usage over 2 year period



- Special Project?
- New User Training?
- Ongoing seasonal usage?

# Step 5: Create the strategy – Overview

## Total Usage over 2 year period



- Special Project Usage in Q3
- File access now via alternative source
- Resignations/terminations or job changes – **deleted current awareness profiles**

# Step 5: Create the strategy - Overview

---

- Review User requirements and # of users \*\*
  - What about Ad Hoc users?
    - Is the per user cost higher than the usage on the system
- Review Alternative options (competitive options)
- Review Usage statistics \*\*
- Determine Legal contract change requirements and implement
- Determine Commercial contract requirements and implement
- Determine plan type: flat fee vs. transactional
- Determine contract value based on access, content and user requirements
- Confirm support requirements
- Start negotiations

# Step 6: Implement Strategy - Overview

---

- Execute on Contract
- File user list
- File copy of contract
- **\*\* Identify, Select and Implement usage tracking procedure and systems**
  - **Domain authentication**
  - **Proxy**
  - **Purchase service to assist with this need**
- Set-up training dates
- Create vendor performance review survey:
  - Content
  - Training and Support
  - ID assignment and cancellation requests
  - Invoice response
  - Responsiveness
- Set-up quarterly review meetings to discuss issues
- **Start preparing for next years renewal**
  - **Keep track of user changes**
  - **Keep up with usage**
  - **Manage contract based on contractual terms and stipulations**

# Conclusion

---

- Understand your users, use and usage requirements
- Understand usage trends and consider possible influence factors
- Use renewal analysis data to identify the most optimal solution for the renewal negotiation
- Negotiations is an action not an emotion
- Always create win-win strategies

“Knowledge is Power”

# Questions

---

Thank you for your time.

Iconitel Consulting Services, Inc  
[contact@iconitel.com](mailto:contact@iconitel.com)