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CONTRACT PROVISIONS THAT ARE AN ABSOLUTE REQUIREMENT FOR TECHNOLOGY COMPANIES ... They Could They Save Your Business!

Since the "dot bomb" a few years back, we have witnessed renewed attention by firms in IT services toward their own service contracts. It is now widely recognized that only with input from counsel knowledgeable in IT issues and similarly trained risk management professionals, can an IT firm adequately set the basis for protecting themselves from disaster. Here are some of the clauses common to most, if not all good IT Services contracts and agreements.

Exclusive Remedy - The stated remedy, such as repair or replacement will be the ***only*** remedy.

Liquidated damages - This should clarify that liability should be limited to the cost of the contract or service provided.

Limitation of Liability - This clause should state that you (the vendor) won't be liable for any indirect, special, punitive or consequential damages. Additionally, language should be tailored to the industry and the customer.

Warranty - Warranties should be as specific as possible avoiding general statements, which will be difficult to meet.

Disclaimer of Warranties - This will disclaim express or implied warranties except for the express warranty stated in the contract. The disclaimers may even need to conform to the readability provisions of the Uniform Commercial Code

Conditions Voiding Warranty - Such as alterations and modifications.

Delivery - This deals with delay of delivery of the system and limiting the penalties.

Severability - This clause precludes the other party from negating the entire contract if other contract provisions are unenforceable.

Site Preparation - The contract should detail the requirements of the site, and make them the responsibility of the customer.

Force Majeure - These clauses limit your liability for losses or breaches of resulting from external forces such as hurricanes, tornadoes, floods or other natural events or Acts of God, including events such as war or riots. This clause may be particularly important to vendors who utilize the communications infrastructure, a common victim of natural disasters. This clause should specifically list the items you believe to be out of your control rather than depend on an all-inclusive statement.

Integration - This clause should clarify that all other agreements are superseded by this contract.

Period of Limitation - States how long the customer has to take action against you.

Arbitration - Consider this alternative to litigation as an option in your contract. It is typically a less involved and expensive resolution to disputes.

Attorney's Fees – Clarifies that the prevailing party shall be entitled to reasonable attorney's fees or arbitration fees and costs, including expert witnesses.

Mutual Negotiation – States that both parties have jointly authored each and every provision.

Venue – Clarifies the county and state that will serve as exclusive jurisdiction

Depending upon the nature of your business, some of these provisions will not be as important as others, some may not be needed at all. The above is not legal counsel. As a guiding principle, legal counsel should review all contracts, purchase orders and license and service agreements, to include those with subcontractors.