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## **WARNING! TECHNOLOGY FIRMS WHO FAIL TO INCLUDE IMPORTANT CONTRACT PROVISIONS ARE AT RISK of Being Sued By Their Own Clients AND Not Being Covered By Their Insurance Policy!**

The recovery of the technology industry has generated renewed attention by technology-based firms toward their own service contracts and agreements.

It is widely recognized that only with guidance from counsel knowledgeable in technology business issues and similarly trained risk management professionals, can a tech-based firm adequately protect 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.

**Indemnification** - Sometimes also referred to as "hold harmless agreements," these clauses describe the areas where action will not be taken against the other parties.

**Scope of Services** – Many claims are the result of miscommunication between the client and the customer who is not knowledgeable in the development process. Clear written descriptions of services as well as acceptance points throughout the development process often clarify the issues.

**Stated Payment Requirements** – Similar to Scope of Service issues, payment disagreements, (often as the result of miscommunication with regard to the project) result in legal action on the part of the client. Consistent and timely billing terms should always be incorporated in the contract or service agreement.

**Force Majeure** - These clauses limit your liability for losses or breaches resulting from external forces such as hurricanes, tornadoes, floods or other natural events or Acts of God, including events such as war or riots. Such a clause may be particularly important to vendors who utilize the communications infrastructure, a common victim of natural disasters. You should specifically list the items you believe to be out of your firm's 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 less 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 on 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 advice.

*As a guiding principle*, legal counsel knowledgeable in the unique issues faced by technology companies should review all contracts, purchase orders and license and service agreements, to include those with subcontractors.

*As a rule*, the standard and unendorsed "General Liability" insurance policy will not respond to areas which are deemed to be professional liability. Specific insurance policies are required.