

Key Provisions in Technology Services Agreements

By Brian Von Hatten

Technology services companies should ensure that their agreements contain provisions designed to protect them in disputes with their customers.

One important provision is insurance and it actually protects both parties to the transaction. The vendor may file a claim against its professional liability for errors or omissions in its performance of the contract, or the customer of a managed services provider may need a general liability endorsement covering injuries to the vendor's technician who must come on-site to perform work, for example. Furthermore, neither party may have the liquidity to make the other party whole in the event of a situation involving damages to the other party. Careful drafting of insurance provisions is required as one does not want to draft an insurance requirement that cannot actually be met.

Intellectual property rights are another important section to look at it. In technology agreements especially, retaining rights in works you already own is critical to the ongoing success of your business. It is also important for someone who contracts with a firm for creative work to own the rights to the works being created, and particular wording is required to achieve this.

The right to assign or transfer the agreement is another critical section to consider. Many contracts containing software licenses prevent a party from assigning or transferring their rights contained in the agreement, so when it comes time to sell the business, the license holder may have a difficult time transferring the license. It is worth noting that even if they do not attempt to transfer the license, it may happen by operation of law during statutory mergers.

Finally, non-solicitation or "no hire" provisions help the technology services provider protect what is likely its most important asset-its personnel.

Of course, the nuances of each provision will change depending on what side of the bargaining table a party is on, and what the relative bargaining position is between the parties. This article is not meant to imply that other provisions in a technology contract are not worthy of review, but rather that these in particular deserve close attention given the subject matter of a technology contract.



About the author Brian Von Hatten:

Brian represents many large and mid-market organizations on matters related to transactions, software licensing, and disputes. Brian's focus includes substantial attention to complex information technology issues for companies of all sizes.

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