

technology report

VICTOR O. SCHINNERER & COMPANY, INC.

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Information and Risk Management Ideas for Technology Professionals

PROFESSIONAL PROTECTION

Safeguarding your business can save you time and money

WHILE A GREAT contract is no guarantee you won't get sued by a disgruntled client, well-crafted clauses and a little upfront work can go a long way toward mitigating your risk of landing on the wrong side of a big monetary settlement or a nasty jury verdict.

All businesses face risk, and technology firms are no exception. A key problem, according to Mike George, vice president and primary claims manager for XL Reinsurance America, is managing expectations. "You may think your product is the greatest thing since sliced bread, but you need to be upfront about what it can and cannot do."

George recommends "technology companies sit down with their potential clients beforehand to make sure they understand the services you are offering and what you're not saying you can do." Then put everything in writing.

Whether you provide custom programming, data processing, system design, web design, or some other technology service, it's important you draft an agreement that spells out the scope of work and includes some protections in cases of dispute. While the average contract has many clauses, here are four key ones to keep in mind the next time you're hammering out terms with a potential client.

Scope of Services

The scope of services spells out each party's expectations. It details

who's responsible for what task. "The description of services tells your client exactly what you're going to do so there's no miscommunication," says Joe Jones, vice president of risk management services for Victor O. Schinnerer's program for architects and engineers. "Put in as much detail as possible."

George notes that projects are often "works in progress," with the scope of work evolving over time as clients change their minds about what they want or seek additional items. These changes should also be captured—most likely in a contract addendum or change order. Changes generally mean revised budgets and timelines, so spell those revisions out as well.

Limitation of Liability

Limitation of liability clauses are just that—they limit your liability, often to the cost of actual damages, the total cost of the project, or perhaps the maximum insurance in place at the time the contract was executed. In essence, they put a cap on a technology company's potential exposure.

Jones cautions these clauses are not a cure-all and the courts look very carefully at the formula used to determine the cap amount. He also warns that states vary on what constitutes an acceptable limitation of liability clause, so it's important to have a local attorney review yours.

Hold Harmless Clauses

A hold harmless clause is your indemnification provision, and its aim

is to allocate risk or liability between the two parties. A well-written contract includes mutual indemnification, so that each party protects the other from problems resulting from one party's actions.

Say, for example, your firm provides system design services for RZ Corporation. RZ's customers, in turn, use the company's web site to place orders and to download real-time information for tracking the status of their goods. RZ subsequently decides to tweak their new system, resulting in a design glitch that causes their customers' systems to go down. The customers sue both parties. Because you have a mutual indemnification clause that protects you from RZ's actions, you're off the hook.

Integration

An integration clause is designed to avoid disputes and, in worst-case scenarios, prevent casual conversations and extraneous documents from making their way into a courtroom. Often known as the "entire agreement" clause, integration simply states that nothing outside the contract exists and that any changes or addendums must be put in writing and signed by both parties. This means if there's a disagreement, you and your client need to look only at your written contract for resolution. This is just one more reason why it's critical to design and execute a well-written contract from the very start. ♦

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