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Drafting Software Agreement Warranty, Limitation of Liability, and Indemnification Provisions

Negotiating Clauses That Protect Against Service Defects, Limit Potential Damages, and Allocate Risk

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Warranties

Some Foundation

- Customer-oriented discussion
- Concepts apply to a broad range of “technology contracts”
- Representations and Warranties don’t stand alone
- Tie to the limitation of liability
- The importance of planning

Some Foundation, cont'd

Trial v. Warranties v. Acceptance Testing v. Support Obligations

- Overview of relationships
- Understand how these concepts work together
- Understand how they are different
- **None is a substitute for any other**



Drafting Warranties

Initial Considerations

- What is the product and what does it do?
- Is it a critical product/ set of products?
- Magnitude of fees?
- Time to implement/productive use?
- Sensitive data at risk?
- Regulated industry?
- One size fits-all client form agreements

Warranties

Avoid stock warranties of performance in accordance with the “published documentation”

- “Published documentation” is a moving target over which the vendor has complete, unilateral control.
- Control documentation/functionality creep.

Warranties [cont.]

What does the warranty *really* cover?

- Frequently overlooked issue
- Make sure the warranties cover all of the following:
 - Licensed Software
 - Enhancements, releases, and new versions
 - Documentation
 - Hardware
 - Support and other professional services

Warranties [cont.]

What is the warranty period? What triggers the start?
How long does it run?

- Thirty days from initial delivery
- How long to implement?
- Greater of one year from Acceptance or the period in which support is purchased
- Cloud engagements
- Getting around the revenue recognition argument - bolster support.

Warranties [cont.]

Exclusive remedies should be avoided

- Does the remedy even make sense (e.g., anti-virus, failure to comply with law)?
- Time period for fix
- Tolling of other remedies, but no waiver

Warranties [cont.]

Vendor Example: In the event of a breach of the foregoing warranties, Customer's sole and exclusive remedy and Vendor's sole and exclusive liability shall be for Vendor to use reasonable efforts to repair or replace the defective software.

Warranties [cont.]

Response: *In the event of a breach of [reference warranty of non-conformance only], Customer shall afford Vendor [thirty days] to remedy the breach before pursuing any other remedies hereunder.*

Warranties [cont.]

Types of warranties

- Performance (Specifications, Service Levels)
- Intellectual Property Infringement
 - Why is this important if you have an indemnity?
 - What is reasonable?
- Services (professional and support)
 - General standard: professional, workmanlike, timely
 - Industry standard
 - Contractual standard: Statements of work and other specifications

Warranties [cont.]

Types of warranties

- Legal compliance
 - Means to educate vendors
- Privacy Laws and Regulations
- Viruses and Disabling and Phone-Home Mechanisms
 - Understand these are three different protections.

Warranties [cont.]

Types of warranties

- Offshoring of data
 - Why do we care?
 - Intellectual property
 - Personal data
- Pass through of third party warranties
 - Seldom applies

Warranties [cont.]

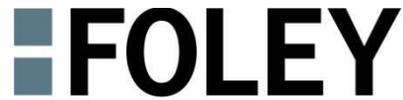
Types of warranties

- Open source/Third party software
 - Understanding open source
 - Know when it is relevant - Distribution?
 - Open source v. proprietary licenses
 - Beware proprietary licenses
 - Beware future product updates with new licenses

Warranties [cont.]

Types of warranties

- Known performance issues
 - Anticipate vendor pushback
- Authority
- Changes in functionality
- Documentation
- Secure software development



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Warranties [cont.]

Types of warranties

- Secure software development
 - Orphan code
 - Application development: Development environment represents best practices for assessing and testing security (e.g., Certified Secure Software Lifecycle Professional (CSSLP) or GIAC Secure Software Programmer certification)
 - Vulnerability testing: Check against most common security vulnerabilities (e.g., OWASP Top 10 Vulnerabilities; CWE/SANS Top 25 vulnerabilities)

Warranties [cont.]

Performance Warranty

Vendor Example: *For a period of thirty days from the Effective Date, the Software will materially conform to its then current Documentation.*

Warranties [cont.]

Performance Warranty

Response: *For the greater of six months or the period during which Customer purchases Support Services, the Software will materially conform to the requirements of this Agreement, including any statements of work, and, to the extent not inconsistent with the foregoing, the Documentation.*

Warranties [cont.]

Infringement Warranty

Vendor Example: No proposal

Response #1: *The Software will not infringe the intellectual property rights of any third party.*

Warranties [cont.]

Infringement Warranty

Response #2: To the best of Vendor's knowledge as of the Effective Date, Customer's licensed use of the Software will not infringe the intellectual property rights of any third party.

Warranties [cont.]

Service Warranty

Vendor Example: *The Services will be performed in material accordance with this Agreement.*

Response #1: *The Services will be performed in material accordance with this Agreement and in a timely, workmanlike manner.*

Warranties [cont.]

Service Warranty

Response #2: The Services will be performed in (i) material accordance with this Agreement, (ii) a timely, workmanlike manner, and (iii) in accordance with industry best practices for services of this kind.

Warranties [cont.]

Legal Compliance Warranty

Vendor Example: *Vendor will comply with all laws and regulations applicable to its business in the performance of the Agreement.*

Warranties [cont.]

Legal Compliance Warranty

Response: *Vendor will comply and will ensure its Software and Services comply with all applicable laws and regulations. Vendor shall, at no additional charge, promptly furnish all updates to the Software necessary for compliance with any change in laws or regulation during the term of this Agreement.*

Warranties [cont.]

Legal Compliance Warranty

Example general warranty: *Vendor further represents and warrants it shall, in connection with its performance hereunder, comply with all applicable laws, ordinances, rules, regulations, building codes, electrical codes, business licenses, visas, work permits, court orders, and governmental or regulatory agency orders (collectively, “Laws”), including, without limitation, laws relating to non-discrimination, human rights, child labor, and other employment and labor laws and applicable foreign export laws, and laws pertaining to health, safety, the environment, and hazardous materials.*

Warranties [cont.]

Privacy Laws and Regulations

Vendor represents and warrants that at all times during and after the term of the Agreement it will comply, at its sole expense, with all applicable local, state, federal, and international privacy, confidentiality, consumer protection, advertising, electronic mail, data security, data destruction, and other similar laws, rules, and regulations, whether in effect now or in the future, including, but not limited to the Gramm-Leach Bliley Act and its implementing regulations (all of the foregoing will be collectively referred to as the “Privacy and Security Requirements”). Vendor acknowledges that it alone is responsible for identifying, understanding, and complying with its obligations under the Privacy and Security Requirements as they apply to its performance of this Agreement and possession of the Personal Information.

Warranties [cont.]

Anti-Virus Warranty

Basic Version: *Vendor shall use industry practices to scan and remove from the Software all viruses, Trojan horses, worms, key loggers, and other similar code.*

Alternate: *Vendor has taken every commercially reasonable precaution to ensure and to the best of Vendor's knowledge, the Software does not contain any virus or similar code that may destroy, modify, alter, or cause the destruction, modification or alteration, in whole or in part, of any of Customer's, data, equipment, devices, networks, or software.*

Warranties [cont.]

Anti-Virus/Disabling Mech. Warranty

Extended Version: *Vendor shall not insert into any Software any Destructive Mechanisms, as defined below, and shall use industry best practices to scan and remove any such mechanisms created by third parties from the Software. Vendor shall not invoke such mechanisms at any time, including upon expiration or termination of this Agreement for any reason.*



Warranties [cont.]

Anti-Virus/Disabling Mech. Warranty

“**Destructive Mechanisms**” means computer code that: (i) is designed to disrupt, disable, harm, or otherwise impede in any manner, including aesthetic disruptions or distortions, the operation of the Software or any other software, firmware, hardware, computer system or network (sometimes referred to as “viruses” or “worms”); (ii) would disable or impair the Software or any other software, firmware, hardware, computer systems or networks in any way where such disablement or impairment is caused by the passage of time, exceeding an authorized number of copies, advancement to a particular date or other numeral (sometimes referred to as “time bombs,” “time locks” or “drop dead” devices); [cont’d]

Warranties [cont.]

Anti-Virus Warranty

(iii) would permit Vendor to access the Software or any other software, firmware, hardware, computer systems or networks to cause such disablement or impairment (sometimes referred to as “traps,” “access codes” or “trap door” devices); or (iv) which contains any other similar harmful, malicious or hidden procedures, routines or mechanisms which would cause such programs to cease functioning or to damage or corrupt data, storage media, programs, equipment or communications or otherwise interfere with operations.

Warranties [cont.]

Phone Home Functionality

Example: The Software will not contain any “phone-home,” metering, or other feature designed to periodically transmit usage, statistical or other data to Licensor. Licensee may prevent access to the internet with regard to any such features or functionality and doing so will not adversely impact operation of the Software.

Warranties [cont.]

Offshoring of Data

Example: All Services shall be performed and rendered within the continental United States; and Vendor shall not transmit or make available any Customer Confidential Information, including Personal Data, to any entity or individual outside the continental United States.

Warranties [cont.]

Open Source and Third Party Software

Example: *Vendor represents and warrants that it shall not deliver to Customer any third party software, including open source software, that would require Customer to accept and be bound by any third party terms and conditions, except to the extent such terms and conditions are expressly identified in and attached to Exhibit A. Except as provided in Exhibit A, Customer hereby rejects all such third party terms and conditions.*

Warranties [cont.]

Pass-Through Warranties

Example: *Vendor shall assign and pass-through to Customer all representations, warranties, and indemnities provided to Vendor in its contracts with third party licensors and suppliers relating to the Software.*

Warranties [cont.]

Known Performance Issues

Example: There is no existing pattern or repetition of customer complaints regarding the Software, including functionality or performance issues, and that Vendor's engineers have not currently identified any repeating adverse impact on the Software, including functionality or performance, for which the root cause is believed to be a flaw or defect in the Software.

Warranties [cont.]

Authority

Example: *Vendor has the full power, capacity and authority to enter into and perform this Agreement and to make the grant of rights contained herein, including without limitation, the right to license any ancillary or third party programs licensed to Customer under this Agreement, and Vendor's performance of this Agreement does not violate or conflict with any agreement to which Vendor is a party; Vendor further represents that there is no pending or threatened litigation that would have a material adverse impact on its performance under this Agreement.*

Warranties [cont.]

Changes in Functionality

Example: *Vendor shall not modify or change the Software to reflect a material diminution in the form, features or functionality of the Software from that existing as of the Effective Date, and, accordingly, Vendor shall not change the form, features or functionality of the Software in any material adverse manner from that originally licensed under this Agreement.*

Warranties [cont.]

Documentation

Example: *The Documentation shall be complete and accurate so as to enable a reasonably skilled Customer user to effectively use all of its features and functions without assistance from Vendor and, on each date on which Vendor delivers it to Customer, the Documentation is Vendor's most current version thereof.*

Warranties [cont.]

Be mindful of broad disclaimers that could override specific warranties (“as-is”; no liability for errors; not interrupted or error-free)

Search for any other qualifications or limitations on warranty obligations.

Warranties [cont.]

Beware of extensive customer warranties

Use as leverage for greater vendor warranties

Disclaim all other warranties of the customer

- Where appropriate, disclaim representations, warranties, and **guarantees as to vendor revenue** (e.g., in processing or other transaction agreements)



Summary

- Plan your approach. Think about all potential areas of concern and address them.
- Understand the interplay of trials/acceptance testing/warranties/support.
- Beware floating contract terms.
- Understand the deal.
- Ensure warranties and indemnities are drafted to reflect relative risk of the engagement.
- Avoid excessive and vague client warranties and indemnities.

Indemnification

Indemnification

- What is the purpose of it?
 - (1) provides a contract remedy to supplement other remedies, including any tort or common law remedies;
 - (2) can be used to shift the risks;
 - (3) allows for the recovery of reasonable attorneys fees, defense costs, investigation expenses, discovery costs and court costs.

Scope of Indemnity — What is the difference between “defend customer, through final judgment or settlement” and “indemnify and hold them harmless”?

- What does “defend” mean?
- What does “indemnify” mean?
 - Payment by way of compensation
- When do the duties of defend and indemnify arise?
- What does “hold harmless” mean?
 - FL and CA - Holding the other party without any responsibility for damage or other liability arising out of the transaction involved.
 - IL – No distinction between defend and indemnify and hold harmless
 - PA, DE and NY – there is a difference but have yet to determine the precise nature of the distinction

- Different jurisdictions may have differences in their rules on these obligations
- Key differences between “defend” and “indemnify” are in scope and the points at which they trigger → the obligation to defend is broader (i.e. the duty to defend contingent on allegations of complaint v. the duty to indemnify triggering on final judgment or the actual loss).

Indemnatee Duties – Good Faith etc.

- An indemnitee does not have a separate duty to defend itself to the indemnitor prior to, or absent, an assumption of the defense; however, it may have other duties
 - CA – good faith
 - PA – mitigate damages
 - IL and FL – duty to cooperate – indemnitee would carry the burden of proof to show that it did not breach this duty
 - DE and NY – they do not recognize breach of good faith claims (i.e. may be better jurisdictions for indemnitees)

Indemnatee Duty to Notify

- If there is a duty to notify in the contract, CA, FL, IL, DE and NY require indemnatee to notify indemnitor of a claim, and if indemnatee breaches this duty, it waives its rights to defense and indemnity costs
- For PA, the failure to notify indemnitor is not fatal to the indemnatee's action for defense costs, but the indemnatee will have the burden of justifying the payment of damages or settlement by offering against indemnitor practically the same evidence that the 3rd party relied on to establish its case against the indemnatee in the first action, as well as reasonableness of settlement.
- In FL, IL, DE, NY and PA, if indemnatee notifies the indemnitor of a 3rd party claim and indemnitor refuses to defend, then in the indemnatee's subsequent action seeking defense or settlement costs, indemnitor may raise certain defenses such as untimely or improper notice or that the claim for which the indemnatee incurred defense costs wasn't contemplated under the contract.
- CA → a judgment against the indemnatee is conclusive as against indemnitor if indemnatee properly notified indemnitor of the 3rd party action.

Drafting Tips

- Indemnitee should include “defend”, “indemnify” and hold harmless
- Indemnitor may wish to exclude the term “defend” but if it does, it needs to be clear that this duty will not arise under any circumstances (under the law) and indemnitee will only strictly be entitled to an indemnity and not defense costs, including any attorneys’ fees.
- NY and CA – without an exclusion of defense costs, an indemnitor under a duty to indemnify must pay such costs, including attorneys’ fees, as part of the total indemnity amount
- CA – In the absence of an express agreement to exclude a duty to defend, the term indemnity in and of itself not only includes the payment of defense costs, but the assumption of the defense itself by the indemnitor.
- If duty to indemnify only, indemnitor can narrow responsibility to a final judgment (in which case a court may exclude settlements made by the indemnitee). However, if indemnitee includes the term “loss”, this could include settlements.
- Use of the term “claim” has been interpreted more broadly than the term “suit”
- Best for indemnitor to provide a cut off for time period for indemnitee to provide notice (i.e. 30 days) or address whether it has been prejudiced by a delay in the notice.

Scope of Indemnity

- Vendor should limit its indemnity liability by indemnifying only for third-party claims
- An indemnity for a direct claim essentially says that, if there is a breach, vendor is responsible for both the claim as well as any attorneys' fees and costs of purchaser with respect to the claim
- No indemnification obligation should be outside of the limitation on the type of damages or the cap if it is an indemnification for a claim by the purchaser that is directly against the vendor.

Common Indemnities

- Violation of Law
- Breach of Confidentiality
 - Inadequacies in the physical and data security control systems
- For the above, an indemnification obligation for third-party claims are thought to be a better way to address the actual harm and limit the scope of the vendor's responsibility. In other words, a vendor can be responsible for third-party claims for violation of a statute or a failure to protect any nonpublic personal data, but will not be responsible or have less responsibility for the damages that the buyer itself might incur relating to a breach.

Common Indemnities

- **Bodily Injury/Death**

- Solves the problem of applying the state law of pure and modified contributory negligence type states because it identifies the responsibility.
- Contractually though these indemnities can be drafted so that the party is only responsible for what occurs from its gross negligence or willful misconduct or it is responsible for its negligence but a sentence is added that (i) it will only apply if the other party is not contributing or (ii) the indemnifying party reserves all of its rights or remedies under the law with respect to contribution.

Other Indemnities for Third-Party Claims

- vendor or subcontractor's breach of an agreement between vendor and that subcontractor;
- act or omissions of vendor in its capacity as an employer of a person;
- arising from or related to the inaccuracy, untruthfulness or breach by vendor of any of the representations, warranties or covenants related to (i) ability to perform, (ii) lawsuits to prevent performance; or (iii) fact that it won't stop performing services for any reason other than specifically provided (with provisions in agreement that termination occurs only after certain events).
- Government claims for regulatory fines/penalties

IP Indemnity – Scope and Jurisdiction of the Indemnity Coverage

- Scope – copyrights and trade secrets – a vendor can limit its risk with respect to patent infringement and trademark infringement by doing a search, but for copyrights and trade secrets, there is no ability to search to discover issue.
- Jurisdiction – should be limited to same jurisdiction in which services are performed – In other words, if the services are limited to the US, then it should be limited to the US.

IP Indemnity – are there separate third-party IP indemnities for third-party software?

- “are there” v. “should there be”
- Many vendors state that they are not responsible under the IP infringement provision for third-party supplied items
- Other vendors may not have IP indemnities for third-party software, but they do have separate warranties for third-party software.
- A vendor’s IP indemnity provision may say any “Services” without specifically calling out third-party software; however, this doesn’t mean that, for these vendors, a buyer will not try to call out third-party software when third-party software is a part of the service.

Example: Managed Services – Vendor often provides certain third-party software

IP Indemnity – Risks Associated with Broader Coverage than Coverage Vendor has obtained

- Does the vendor have an indemnity from its own third-party software vendor that covers itself and its customers?
 - If yes, then no need to have them be separate
 - If no, then vendor will be responsible to its customer for third-party infringement claims for the software and may find itself exposed (e.g. it will need to pay for its customer's defense when its own defense is being handled by the third-party software vendor).
 - In this respect, vendor should be careful about indemnifying the customer for claims regarding the service itself (because it may not itself have coverage by the third-party vendor for its customers)

IP Indemnity – Exceptions and Cross Indemnity

- Exceptions – Situations where vendor is no longer responsible for providing the customer with an indemnification
- Cross Indemnity – Situations where the Customer itself should now provide vendor with an indemnity
- Example: If Customer modifies the Software and the claim is related to this modification, then vendor should no longer have any indemnification obligation to the Customer. Further, the Customer should now have to indemnify the Vendor for any third-party claim made with respect to the modification made by the Customer.

IP Indemnity – Exceptions

- Use by Customer of the service/software not in compliance with any vendor documents/materials
- Any information or materials that are not provided by the vendor
- Vendor acting in compliance with any Customer specifications
- A modification of any service/software by Customer (or its agents) provided that the third-party claim would not have arisen without the modification
- A combination of any service/software by Customer (or its agents) with products, services or materials not provided by the vendor (provided that the third-party claim would not have arisen without the combination)
- Use of any software other than the most current release
- Any IP right owned and licensed by the Customer other than what is provided by vendor
- Any grossly negligent or willful act or omission by or attributable to Customer.

IP Indemnity – Cross Indemnity

- Customer will indemnify the vendor for any customer IP, specifications, modifications or combinations made by the customer.
 - Customers may request that its indemnity not apply to (i) any vendor modifications made to its IP except to the extent the modification is needed for vendor's performance of the services or the vendor use was known to customer prior to customer providing the IP or (ii) the vendor's use of the customer IP in combination of any materials not approved by customer.
- If Customer does not agree to a cross indemnity, the vendor may reserve its rights and remedies under the law with respect to claims against customer.

Other Indemnity Issues Negotiated

- Effect of Notification Not being prompt → helps bolster indemnitor defense when it has refused to indemnify
- Scope of Control of Defense
 - Non-monetary settlements not adverse to the Indemnified Party (except vendor software use)
 - No judgments entered against Indemnified Party
 - No monetary settlements beyond cap amount of Indemnifying Party
 - Cooperation v. reasonable cooperation
 - The Indemnified Party's Right to Monitor
 - What happens in the case of an injunction? Repair, replace or modify (to substantially the same functionality) or terminate (reimbursement of prepaid fees, but the customer may request more – i.e. service fees)
 - What happens if the Indemnifying Party doesn't defend the third-party claim? Indemnitee may wish to expressly say that it has a right to recover if Indemnitor has not fulfilled its defense obligation.

Limitations of Liability

Limitations of Liability

- **Purpose:** Limits, defines or excludes damages arising from a party's breach of contract or other conduct in connect in agreement
- Limitations of liability are generally enforceable, except in the case of willful misconduct (e.g., fraud).
- **Categories:**
 - Liability Cap
 - Exclusion of Damages

Liability Cap

- Function: To limit a party's overall amount of monetary liability under the agreement.
- Limitations of liability agreed in a contract are generally enforceable unless unconscionable.
- Failure to include an express liability cap may subject a party to uncapped liability under an agreement.
- Typically varies depending on the value of the contract.
- Sample Liability Cap: *“Provider’s total liability in connection with this Agreement, whether in tort, contract, or otherwise, shall in no event exceed the greater of the total fees paid by Customer during the twelve (12) months preceding the event leading to liability, or \$__.”*

Liability Cap Carve-outs

- Parties may agree to an enhanced liability cap or to exclude certain types of damages from the liability cap.
 - Breaches of a party's confidentiality or data security obligations
 - Notification-related costs resulting from a security breach
 - Indemnities
 - Provider's IP infringement indemnity
 - Failure to comply with laws
 - Customer's payment obligations
 - Customer's breach of license
 - Breaches of Customer's confidentiality obligations
 - Gross negligence or willful misconduct of a party
 - Bodily injury, death or tangible property damage

Liability Cap Carve-outs

(1) Losses resulting from a breach of Provider's data security obligations

versus

(2) Notification-related costs resulting from a security breach, including:

- preparation and mailing of legally required notifications
- establishment of call center
- public relations and other similar crisis management services;
- legal, forensic investigation and consulting fees
- consumer credit reporting services

Liability Cap – Drafting Tips

- Common Customer Pitfalls:
- Including a one-sided liability cap
- Omitting critical carve-outs to the liability cap
- Cap is too narrow
 - Only fees actually paid by Customer
 - Only fees paid for the relevant Service
 - Time period too short
- Agreeing to cap liability to the extent of Provider's insurance coverage

Exclusion of Damages

- Most parties agree to limit the types of damages that a party may recover under an agreement (typically, only “direct damages” are recoverable, except as otherwise provided).
- Sample provision:

“In no event will either party be liable for any indirect, special, incidental, punitive or consequential damages of any kind, including lost profits in connection with this Agreement, regardless of the form of action, whether in contract, tort (including negligence), strict liability or otherwise, even if informed of the possibility of such damages.”

Type of Damages – Direct/General Damages

- **Direct Damages** – Losses that naturally and usually flow from the breach itself.
- **Examples of Direct Damages:**
 - Expenditures incurred before the breach occurred and in reliance on the contractual warranties
 - Cost of corrections
 - Lost Profits (may be direct or consequential, depending on circumstance)

Type of Damages – Consequential Damages

- **Consequential Damages:** Losses that directly arise out of a contract breach, but are not ordinarily predictable
- Whether a particular loss constitutes a “direct damage” versus a “consequential damage” is a question of fact.
- Parties to a contract may generally agree to exclude consequential damages (unless such exclusion is unconscionable).
- Common examples (depending on the particular facts)
 - Lost profits from business interruption
 - Lost use
 - Notification related costs arising from security breach
 - Attorneys’ fees and other expenses
 - Third party claims (in some cases)
 - Government fines or penalties

Type of Damages – Incidental Damages

- **Incidental Damages:** Any commercially reasonable charges, expenses or commissions incurred after the breach has occurred in connection with effecting cover and any other reasonable expense incident to the delay or other breach.

Enforceability Challenges

- No clear bright line test for separating direct damages from consequential damages.
- Due to the lack of clarity, the parties may pre-agree that certain types of damages will always constitute “direct damages”. For example:
 - Reasonable costs for recreating or reloading data that is lost or damages
 - Reasonable costs of implementing a workaround in respect of a failure to provide the services;
 - Reasonable costs of replacing lost or damages equipment, software or materials
 - Reasonable costs and expenses incurred to procure the services from another source.

Limitation of Liability – Drafting Considerations

- Confusing Provisions – If a court finds that a limitation on liability provision is confusing to understand, it might strike it down
- Need to make sure they are clearly drafted
- Be careful when creating double caps
Duty to Mitigate – “Each party has a duty to mitigate damages for which the other party is responsible.”

Issues for Cloud Agreements

- Limitation on Liability Exceptions
 - Negotiation of breach of confidentiality provisions
 - Vendors are much more careful about their own responsibilities regarding this exception
 - Negotiation of abandonment of services and the failure on the part of vendor to perform
 - Specific Provisions
 - Double caps – 2 times or 3 times 12 months for breaches regarding customer data
 - Specific Types of Damages (i.e. cover type damages)

Thank You

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