

Risk Allocation in Technology and Commercial Transactions

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What transactions?

- Cloud Services
 - SaaS / applications (HR, Finance, Sales, Legal)
- License Agreements
- IT Services
 - Cloud services
 - Hosting / platform / infrastructure
 - Disaster recovery solutions
 - Managed IT / managed IS
 - Backup solutions
 - Consulting / support
 - IT outsourcing
- Mergers and Acquisitions; Financing



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Assessment of risk in technology contracts

- **Payment Risk**
- **Performance Risk**
 - Doesn't work as intended or represented
 - Isn't consistently available for use
- **Legal Matters** (govmt action, 3d-party claims, contract penalties, restrictions on use, ...)
 - Violation of statutes and regulations
 - Tax, employment, ...
 - Privacy laws (TCPA, FCRA, CAN-SPAM, CCPA, FDCPA, ...)
 - Infringement / misappropriation of IP rights
 - Services and/or Deliverables
 - Breach of third-party contract
 - In providing Services/Deliverables,
 - As a result of performance failure
 - Data breach, other privacy harms
 - Personal injury, damage to tangible property

Assessment of risk in technology contracts – Cyber

- Types of incidents
 - Data security incident - acquisition, misuse, damage, loss. Not just personal data – also operational data, proprietary and confidential data (internal and third-party)
 - Systems security incident – unavailability, damage
- Controls for
 - Data
 - Internal systems
 - Third-party systems
 - Software used
 - Software delivered
- Potential impacts
 - Business/operations impact
 - Loss of IP or proprietary/valuable data
 - Reputational impact / lost business opportunities
 - Notification costs
 - Attorneys' fees for responding to incident
 - PR and forensic IT/IS consultants
 - IT remediation expenses
 - Regulatory response and fines
 - Litigation costs
 - Payment card fines
 - Costs of recreating data
 - Stock price

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