

# ReedSmith

## Risk Allocation in Technology and Commercial Transactions

32nd Annual University of Texas Technology Law Conference

Presented by Bart Huffman (Reed Smith), Bert Kaminski (ServiceMax)

May 2019



1

## 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



2

# 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

3 Reed Smith

3

# 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

4 Reed Smith

4

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

## Title search: Risk Allocation in Technology and Commercial Transactions

Also available as part of the eCourse  
[2019 Technology Law eConference](#)

First appeared as part of the conference materials for the  
32<sup>nd</sup> Annual Technology Law Conference session  
"Risk Allocation in Technology and Commercial Transactions"