

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

ReedSmith
Driving progress
through partnership

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
32nd Annual Technology Law Conference session
"Risk Allocation in Technology and Commercial Transactions"