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Is Your Managed Services Pricing Putting You At Risk?



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Agenda

- ▶ Contractual Obligations
- ▶ Sales Team's Promises vs. contractual obligations
- ▶ Agreements with Customers and Channel Partners
- ▶ License Restrictions
- ▶ Indemnification
- ▶ Limitation of Liability
- ▶ Software License Disputes
- ▶ Software License Audits
- ▶ Questions

Contractual Obligations

- ▶ Contracts should be tailored to fit your needs
- ▶ Understand the obligations you are undertaking
- ▶ Most importantly, understand the potential costs of any risks so that you can minimize those risks, if possible

Sales Team's Promises vs. Contractual Obligations

- ▶ Explain contracts to your team
- ▶ Regularly review the contract to ensure it still works
- ▶ Do not promise something in your customer agreements that you cannot or will not deliver

Agreements with Customers and Channel Partners

- ▶ Clarify ambiguities as much as possible
- ▶ Understand obligations and limitations to each
- ▶ In a dispute even the Boilerplate language is IMPORTANT

License Restrictions

- ▶ 2.2. **Restrictions.** Except as expressly permitted in Section 2.1, Service Provider will not, and will not allow any End User or third party to:
 - ▶ a. rent, lease, sublicense, distribute, transfer, copy, reproduce, display, modify, host or timeshare the Licensed Products or any portion thereof;
 - ▶ b. reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code (unless required by law for interoperability), or structure of the code used, which includes but is not limited to review of data structure, taxonomy, or similar materials within the Licensed Products;
 - ▶ c. allow any third party to use or have Company to the Licensed Products;

Indemnification

- ▶ In addition to, and not in limitation of, disclaimers of liability made by Company for hardware and software damage in any other portion of this agreement, for any hardware or software failure for which a Service Call is made by the Client to Company, which failure has the effect of causing loss to any third party, whether or not by delay, loss or corruption of data, loss or benefit of any contracts, or any other loss, the Client shall indemnify, defend and hold free and harmless Company US from and against any and all claims, judgments, damages, penalties, fines, costs, liabilities and losses (including, without limitation, sums paid in private rights of action or in settlement of claims, legal fees, consultant fees and expert fees) which arise during or after the Term as a result of such failure.

Limitations of Liability

- ▶ **Loss of Data:**
- ▶ The Client represents that it has established and regularly follows procedures for fail-safe backup of the Client's data. The Client further explicitly agrees that Company shall not be responsible for the integrity or existence of any data on the Client's network or any individual computer of the Client; and that the Client will indemnify, defend and hold harmless Company for the corruption or loss of any data of the Client, or of any their parties, whether or not caused by the negligent or intentional conduct of Company.
- ▶ **Generally**
- ▶ The Client explicitly agrees that Company shall not be responsible for incidental or consequential damages arising from the Client's inability to use its network or any individual computer during any service call made by Company or for any loss suffered by the Client as a result of any subsequent equipment failure, without limitation.

Software Licensing Obligations

- ▶ Make sure it is very clear who is responsible for licensing
- ▶ What to do if you find a problem with a client's software licensing
- ▶ Huge source of potential liability if you are reselling a third-party's software

Software Licensing Audits

- ▶ Are you conducting regular internal assessments
- ▶ What to do if your customers get audited
- ▶ What if you are worried that your company has not met all of its obligations

Differentiators

- ▶ Pricing
- ▶ Assumption of Risk
- ▶ Response and Resolution Times
- ▶ Verticals/subject matter expertise

Questions?