TECHNOLOGY TRANSACTIONS

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TECHNOLOGY TRANSACTIONS

A Practical Guide to Drafting and Negotiating Commercial Agreements

Mark G. Malven

Incorporating Release #4
May 2019
#266676

Practising Law Institute
New York City
#61199

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LCCN: 2014958833

ISBN: 978-1-4024-2370-3

To Tara, my Queen,

and

Sarah, my Princess

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Preface

This treatise is written primarily for practitioners who may not be experts in technology transactions—to empower them to draft, review, and negotiate technology transaction agreements with the confidence that they are properly addressing the most important issues. The contents have been provided in a streamlined fashion with an eye toward the transactions that an in-house counsel or a traditional IP or general practitioner is frequently asked to handle. The author believes this treatise will also be a helpful resource for vendor contracts management personnel, and as a training resource for any of the foregoing. It perhaps goes without saying, but if your transaction is mission-critical or particularly high-stakes, you may want to consult with a full-time practitioner in the area of technology transactions.

Each of the first ten chapters addresses a discrete type of technology transaction agreement. The intention is that a practitioner be able to use the applicable chapter as a checklist each time he or she is handling that type of transaction. For a transaction involving a combination of elements (for example, software licensing and software development), the practitioner can use more than one chapter (for example, chapter 1 and chapter 2, respectively) in this fashion. The remaining chapters cover certain areas of knowledge that should inform the drafting or review of technology transaction documents generally.

The allocation of information among the chapters is by necessity somewhat arbitrary, but the overriding goal is ease of use for the practitioner. To that end, similar material may be included in more than one chapter. In this way, the reader may find answers quickly and need not hunt through a cascading series of cross-references or footnotes. This material will, however, contain refinements tailored to the agreement at hand, so readers should take care to consult the chapter for the specific agreement in question.

Lastly, the chapters in this treatise reflect the author's views on what contract provisions are key, and in some cases what is (or should be) the right approach to those provisions. The author personally dislikes legal resource books that delve into endless case law or unlikely scenarios that impair, rather than help, the efforts of the busy practitioner—and that will not be found here.