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The dangers of legal contracts not being able to keep pace with the speed of technology advances

By **Miles Robinson** and **Jonathan Cohen**

As the digital revolution continues to boom and businesses continue to invest heavily in new technology to improve their efficiency and productivity, it is increasingly important that contracts are drafted in a way that addresses what is to happen as technology evolves and develops during the life of the contract.

Whilst most technology contracts will include mechanisms which address technology changes over the life of the contract, these are likely to be more frequently tested as customers seek to ensure that they have the most up-to-date software and technology available to them. This is particularly true in an increasingly challenging commercial environment in which businesses are operating to ever tighter margins where efficiency is key. There is therefore a growing trend towards more smaller scale and flexible technology contracts, which provide for the type of flexibility that businesses now require in order to remain “current” in an ever-changing environment.

However, when a business begins to believe that their reliance on a specific technology is having a detrimental impact on their ability to remain competitive, there is

inevitably going to be an examination of what rights the business has under the contract and what can be done to change the situation. Of course, when parties do fall out in relation to the scope or scale of the contract in the context of incorporating new technology, it will inevitably have an impact upon the relationship between the customer and the vendor and may lead to disruption in respect of both parties’ underlying businesses. It is, however, relatively rare for these types of disagreements to result in full-blown litigation and is more likely to result in a renegotiation of the contract.

Businesses therefore need to be careful with regard to how their technology contracts address technological developments in order to ensure that their contractual arrangements are as “future-proofed” as possible. Whilst it may be possible to draft the contract in a way which adequately provides for the integration of new technology over the lifespan of the contract, other approaches we are seeing include providing for more contractual flexibility to access technology from a range of vendors (i.e., multi-sourcing) or the ability to change vendor altogether without significant disruption to the business.



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Consequently, whilst rapidly developing technology does pose challenges to businesses (particularly those businesses which are heavily reliant on technology), these challenges are surmountable provided sufficient consideration has been given at the time of contracting to how such problems should be addressed by the parties when they arise – which is ultimately in the best interests of both the client and the vendor.

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