IP Alert: Don't Forget the IT Agreement

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The Healthcare.gov and MNsure websites are recent examples of the challenges of implementing complex information technology projects. Virtually every organization or business, large or small, will acquire new technology or replace existing technology as necessary to run its business or deliver services. These projects often result in dissatisfaction on the customer side, which can be avoided in part by better attention paid to the legal agreements with those who will be delivering the software, system, services, or related technology.

To help avoid potential legal pitfalls in such transactions, there are many questions to consider, including:

- Will you have an opportunity to perform testing to make sure the technology meets your specifications and requirements?
- Are there any hidden costs in the implementation such as costs for installation, data conversion, configuration or integration with existing system, training, modifications, etc.?
- Do you have adequate internal staff in place to manage the project?
- Have you reserved some payment until after final acceptance or otherwise have a progressive payment schedule tied to performance?
- Is the scope of use appropriate so you are not restricted in how your business or organization grows or uses new technology?
- What is the total investment including ongoing support and maintenance?
- Consider what remedies you have for non-performance—most vendor agreements have limited warranties, if any, and damages are often limited in scope.

With proper planning, acquiring new technology should result in a more efficiently run business or service. However, the contracts that govern the development and acquisition of technology should not be treated as an afterthought. These agreements should be fair in the allocation of risks and liabilities, should serve as an accurate reflection of the parties' expectations and responsibilities, and be clearly written and understandable. A properly drafted agreement can save you money, avoid unnecessary risks, and provide assurance that the technology will either work or will be made to work.

For more information on how to manage these projects please refer to the **Legal Guide to Technology Transactions**, a collaborative effort of the Minnesota Department of Employment and Economic

Development and Gray Plant Mooty. A free copy of the guide can be downloaded from the Gray Plant Mooty or the Minnesota Department of Employment and Economic Development web site.

Contact Michael R. Cohen if you have any questions or need assistance with a technology transaction.

This article is provided for general informational purposes only and should not be construed as legal advice or legal opinion on any specific facts or circumstances. You are urged to consult a lawyer concerning any specific legal questions you may have.