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TECHNOLOGY

How to Assist Clients With Estimating Expenses

Helpful Tips to Manage the Cost of Annual Budgets and Corporate Transactions

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FOR MANY CORPORATIONS, THE END of the year signifies that it is time to look to the coming year and identify a corporate or department budget for technology expenditures. Additionally, throughout the year, attorneys are often asked to advise clients on potential technology expenses related to acquisitions and divestitures.

Many companies, both within and outside of the legal industry, struggle with allocating funds to technology-related expenses. Identifying the categories of expenses is sometimes half the battle.

TECHNOLOGY PERSONNEL OR OUTSOURCED SERVICES PROVIDERS

Often executives believe it is sufficient to pay in-house or third-party providers to manage the technol-



ogy assets. Careful oversight of the items that are included (and omitted) from the budget can help avoid unwanted surprises later in the year or after the transaction closes.

The first way to avoid budgeting headaches is to ensure that

the company has allocated funds to cover the internal or external personnel responsible for managing the technology environment. For mid-sized companies, this could be 1-2 full-time equivalents. For larger companies, there

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may be multiple global departments and the inquiry into total expenditures on headcount can be complex.

HARDWARE AND SOFTWARE EXPENSES

Whether calculating annual expenses or valuing a business for purchase or sale, companies should have a strategy for how and when they will acquire hardware and software for employees and contractors. Important questions related to software, hardware, and related technology expenses include:

- Will the company have enterprise or site licenses with software vendors?
- Will the manufacturer ship new desktop and server hardware with any preinstalled software?
- Is a service provider or third party taking responsibility for software licenses?
- Who is managing software compliance?
- What happens if a software license subscription expires?
- Will the company be buying any used software or hardware?
- Does the licensee in a corporate transaction have the ability to transfer all software licenses to the purchaser?
- Are there any pending compliance claims related to software licensing?
- Is the company okay with having any of its data in the cloud?

- Will the company be performing its own backups, or will it outsource backup services?
- Does the company need specialized technology insurance?

Failure to examine each of these questions could result in significant unbudgeted expenses. For instance, if a company believes it has outsourced its software licensing or data backup responsibilities, it could cost hundreds of thousands of dollars to

restore data or respond to a software license compliance demand.

AUDITS AND LICENSE INQUIRIES

One of the most significant potential unbudgeted expenses is that related to a demand to remedy unlicensed software. When a licensor determines that a company has a potential compliance issue, the licensor may request an investigation.

Such investigations can take years, can rack up investigative and legal defenses costs, and can ultimately result in a request for the licensee to spend millions of additional dollars to purchase the software necessary to become compliant. A good budgeting exercise will include a review of the budget allocated to soft-

ware expenses to determine if the anticipated expenditures are reasonable in light of the company's size and strategy.

If a company with 1,000 employees budgets a total of \$15,000 per year for software, there is a potential problem that the company should investigate. Companies should also include funds to regularly check all licensable software to identify any possible compliance issues in advance.

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CONCLUSION

It is critical for companies to proactively include discussions about technology expenditures and to regularly evaluate and address risks associated with their hardware and software environments. While the discussions can be difficult, many companies find they are less surprised by unbudgeted technology costs when they take the time to evaluate the crucial questions related to technology management. ■

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