

DEMARCATATION AND OTHER IP-RELATED CLAIMS, INCLUDING IPR

TYPE:	PRODUCT ANALYSIS
REQUEST:	IDENTIFY POTENTIAL IP-RELATED CLAIMS AND CLAIMANTS
TIMING	INSTANT; REAL TIME

A. EXAMPLE REQUEST: Review the Disputed Language and identify all potential Stakeholders, including possible Claims, Claimants, and Parties, no matter how remote.

Vendor	Type	Industry	Document Type:	URL	Potential Stakeholders	Level of Confidence
EY	Firm	Consulting	Software & Services Agreement (SaaS)	View	R1 Institutions (2), HBCU (2), insurance defense litigation firm (1), cities (2), Members of Congress (2), House Committees (4), Agencies (FCC, NTIA, DIA), banks (1), corporations (C&W plc, Motorola); telecom providers (AT&T, Verizon, Cable & Wireless USA, C&W plc); insurance companies (KP, AIG, CIGNA); cloud-based providers offering SaaS, PaaS, IaaS, UCaaS.	100%

DISPUTED LANGUAGE
(VERBATIM)

The language identified below is the focus of several disputes. Instruments containing such language have been flagged as a potential source of uninsurable risk.

1. Intellectual Property Rights

1. EY acknowledges and agrees that all Licensor IP is vested and will remain vested in Licensor. Licensor acknowledges and agrees that all EY IP is vested and will remain vested in EY or the relevant other Network Member.
2. All Foreground IP shall vest in EY upon creation. Licensor assigns, and shall ensure that its Subcontractors assign, to EY with full title guarantee (by way of present assignment of future rights) the Foreground IP, together with the right to sue for and recover damages or other relief in respect of the infringement of Foreground IP, and at EY's request, Licensor shall take any action necessary to perfect such rights.
3. Licensor assigns, and shall ensure that its Subcontractors assign, to EY with full title guarantee (by way of present assignment of future rights) the Deliverables.
4. Licensor grants to EY for the benefit of EY Personnel (or shall ensure the direct grant of) a fully paid-up, worldwide, non-exclusive, royalty-free, perpetual and irrevocable license to use, copy, modify sub-license, distribute, display, and otherwise engage Licensor IP contained in any Deliverables and any Licensor IP reasonably necessary for the use of the Deliverables to enable the full use and benefit of the Services and Deliverables.
5. Licensor grants to EY a fully paid-up, worldwide, non-exclusive, royalty-free, irrevocable, and perpetual license for the benefit of EY and EY Personnel to use and copy the Documentation.
6. Nothing in this Agreement shall be deemed to transfer any rights of use or ownership of the EY Trade Marks. Licensor is not permitted to use, reproduce, or allow anyone to use or reproduce any EY Trade Mark without EY's prior written consent, which consent shall be given at the sole discretion of EY.
7. Licensor shall take the steps and execute the requisite documents as may be necessary to give effect to this Clause 9.

2. IPR Indemnity

1. Licensor shall defend, indemnify, and keep indemnified the Indemnified Parties from and against any Losses, however remote, suffered or incurred by the Indemnified Parties or awarded by a court of competent jurisdiction against or agreed to be paid by the Indemnified Parties, as a result of or in connection with any IPR Claims except to the extent that such IPR Claim is caused by any use of the Software, Deliverables or Services by or on behalf of that Indemnified Party in combination with any item not supplied or recommended by Licensor under this Agreement or for a purpose not reasonably inferred from this Agreement.
2. Subject to Licensor's continuing to indemnify the Indemnified Parties under Clause 10.1, EY shall allow Licensor, at its own cost, to conduct all negotiations and proceedings and to settle the IPR Claim, provided that Licensor shall obtain EY's prior approval of any settlement terms, such approval not to be unreasonably withheld. Licensor shall not, without EY's express prior written consent, enter into any settlement that (1) assigns, imparts or imputes fault or responsibility to EY or other Network Members, (2) includes a consent to an injunction or similar relief binding upon EY or other Network Members, (3) fails to contain reasonable confidentiality obligations protecting the confidentiality of the settlement, (4) provides for relief other than monetary damages that Licensor solely bears, or (5) does not include a full release of EY's liability regarding the alleged infringement.
3. If any IPR Claim is made or, in the reasonable opinion of either EY or Licensor, is likely to be made against the Indemnified Parties, Licensor will, without prejudice to the indemnity set out in Clause 10.1 above and with minimum disruption to EY, at EY's option, promptly and at its own expense either:
 1. procure for EY and the other Network Members the right to continue using the Software or continue to receive the Services; or

2. modify or replace the infringing part of the Software (without prejudice to the representations and warranties made as to such Software and without diminishing the performance or functionality of the Software) so as to avoid the infringement or alleged infringement.
4. In the event that EY is not reasonably satisfied with any modification or replacement software or procurement of the Services provided by Licensor pursuant to Clause 10.3 or the IPR Claim prevents the use by EY or the Authorized Users of the Software or the Services, or any part thereof, EY may terminate this Agreement by notice to Licensor with immediate effect, and without prejudice to its other rights and remedies, EY will be refunded all sums which it has paid to Licensor.
5. Licensor shall take such steps and execute such documents as may be necessary to give effect to this Clause.

3. **Limitation of Liability**

1. Notwithstanding any contrary provision in this Agreement, neither Party limits nor excludes its liability in respect of:
 1. death or personal injury caused by its negligence;
 2. any fraud, gross negligence, or fraudulent misrepresentation; or
 3. any other liability which cannot be excluded or limited under Applicable Law.
2. Nothing in this Agreement shall limit or exclude Licensor's liability:
 1. for any breach of Clauses 7.1.3, 13 (Confidentiality), or 14 (Anti-Corruption); or
 2. under Clause 10 (IPR Indemnity).
3. Subject to Clauses 11.1 and 11.2, in no event will either Party be liable to the other Party whether in contract, tort (including negligence), breach of statutory duty, or otherwise for any indirect or consequential loss arising under or in connection with this Agreement, whether or not that Party had been informed of or made aware that there was a serious possibility of such loss. The Parties agree that the following will be considered damages recoverable by EY, and Licensor will not assert that they are excluded under this Clause 11.3:
 1. costs and expenses of recreating, restoring or reloading any lost, stolen or damaged data;
 2. costs and expenses of replacing lost, stolen or damaged equipment, software and other materials;
 3. the costs and expenses incurred to procure or implement replacement Services or corrected Services or Deliverables from an alternate source, to the extent in excess of Licensor's charges under this Agreement for such affected Services and Deliverables; and
 4. straight time, overtime, or related expenses incurred by EY, including overhead allocations for employees, wages and salaries of additional employees, travel expenses, overtime expenses, telecommunication charges and similar charges which are directly related to performing or rectifying Services or providing alternative services or Deliverables, due to failure of Licensor to perform in accordance with this Agreement; and
 5. fines, penalties, or other monetary amounts imposed by a regulator or other government body.

4. Insurance

1. Licensor shall carry insurance, which shall include, at a minimum, all of the following coverage:

- Workers' Compensation Insurance per the statutory limits;
- Contractual Liability Insurance of one million dollars (\$1,000,000.00) per occurrence;
- Automobile Liability Insurance of one million dollars (\$1,000,000.00) per occurrence;
- Professional Liability/Errors and Omissions of two million dollars (\$2,000,000.00) per occurrence;
- Product Liability Insurance of two million dollars (\$2,000,000.00) per occurrence;
- Commercial General Liability Insurance of five million dollars (\$5,000,000.00);
- Umbrella Liability Insurance of five million dollars (\$5,000,000.00);
- Information Security / Cyber Insurance / Technology Errors and Omissions insurance, in an amount not less than five million dollars (\$5,000,000.00) per claim and ten million dollars (\$10,000,000.00) the aggregate covering Licensor for claims and losses with respect to network risks (such as data breaches, unauthorized access/use, ID theft, invasion of privacy, damage/loss/theft of data, degradation, downtime, failures in electronic and physical security, and breaches of confidentiality).

2. All liability insurance shall be in such form, against such risks, and with companies that are authorized to do business under the laws of the state of New York and that have a Best Rating of no less than A- VII. All liability insurance shall provide that losses, if any, shall be payable to EY and its assigns, and all liability insurance shall include EY as an additional insured. Licensor shall pay the premiums for such insurance and deliver to EY satisfactory evidence of the insurance coverage required hereunder. Licensor agrees to give EY and its assigns thirty (30) days prior written notice of the effective date of any alteration or cancellation of any policy. EY is not responsible for the premiums, warranties or representations to underwriters. It is not the responsibility of EY to ascertain the existence or adequacy of insurance.

RECOMMENDATION:

FACTS:

The Disputed Language is subject to multiple competing claims, with significant disputes arising among highly skilled and experienced Professionals, generally serving in an advisory capacity, occupying roles such as lawyer, attorney, accountant, consultant, advisor. Such Professionals are the product of top tier educations and have acquired a long list of credentials. They typically work on behalf of some of the World's top Stakeholders, with extensive connections throughout Financial Markets.

OBSERVATIONS:

Highly Connected Advisors are reaching opposite conclusions regarding key contractual terms arising in contracts and agreements involving cloud-based access to combinations of software, services, platforms, infrastructure, telecommunications, and communications protocols.

Disputes appear to be concentrated at the contract review and negotiation function, with claims arising at the intersection of: (A) intellectual property; and (B) processes variously described as: (1) tech transfer, (2) commercialization, (3) monetization, (4) productization.

These types of contracts and arrangements span multiple roles and functions, including: (1) the General Counsel function (GC); (2) the General Council Office (GCO); (3) cybersecurity; (4) information technology (IT); (5) regulatory compliance; (6) procurement; (7) research and development.

Significant gaps detected at the Federal Research Security Function.

Current arrangements are inconsistent with Open-Source Principles, with negligent adherence to a range of Compliance & Reporting requirements.

Numerous instances of tension, disputes, and gaps surrounding the provision of cloud-based software, services, products, and other solutions.

Using names such as software as a-Service (SaaS), platform as a service (PaaS), infrastructure as a service (IaaS), and involving access to advanced functions and features (e.g., search and find Menu-like Options), algorithmic functions (e.g., custom embedded prompts), and highly specific, detailed, and precise Metadata, the procurement of such products has resulted in the creation of hidden networks, working "around the clock" on behalf of Unscrupulous Individuals and Entities, each requiring Highly Customized Access to the most sensitive personal data and information.

Instances of such Individuals and Entities engaging in conduct that allows them to essentially "lock" unsuspecting Participants within highly Individualized Custom Environments (generally known as "Simulations" with the people occupying such environments referred to as SIMS).

Unfettered access to Human Data, using Hidden and Closed Networks, has resulted in the creation of Undesirable, Uninsurable Risks.

CONCLUSION:

An obviously unsustainable structure, especially for Professional Advisors whose job it is to expose such Fake Environments (thus the name “Iron Man”). (Now, do you See?)

Fair fulfilment of the Disputed Language is impossible and, in fact, directly contravenes Open-Source Principles, Protocols, Standards, and Best Practices (“Open-Source Compliance”).

SOLUTION:

It is proposed that the foregoing Risk Anomaly be resolved through the creation of “Retroactive Risk Mitigation” – an AI-enabled Tool designed to access risks in real time and simultaneously create a product that may be offered as a Solution.

PRODUCT:

“Instant Analysis and Real Time Retroactive Intervention,” designed to facilitate Retroactive Risk Mitigation through instant analysis, assessment, and resolution.

METHOD:

Create and send a “Notice of Highly Disputed Language” to each Potential Stakeholder.

MOST EFFICIENT, EFFECTIVE, AND TIMELY OUTCOME:

Instant invalidation of contracts containing such contractual language and the withholding of any funding authorized through the use of such an Instrument.