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OVERVIEW

- Part 1: COVID-19 Pandemic Contractual Issues
- Part 2: Lessons Learned
PART ONE: COVID-19 PANDEMIC CONTRACTUAL ISSUES
SUPPLIER RELATED COVID-19 IMPACTS

- Unable to perform as anticipated
  - Delays in implementations and projects
  - Disruptions in supplier’s own supply chain
  - Personnel disruption

- Governmental restrictions
  - Stay-at-home orders
  - Travel restrictions

- Financial instability
CUSTOMER RELATED COVID-19 IMPACTS

- Unable to meet minimum requirements
- No use or need for product or services
- Unable to pay
EFFECTS OF COVID-19 IMPACTS

- Notice of force majeure
- Invoking a business continuity plan
- Unilateral service changes
- Requests for changes and amendments
- Supplier SLA failures
DECLARING FORCE MAJEURE

- What is a force majeure?

- Triggers
  - Pandemic
  - Government orders

- Other related remedies
  - Commercial impracticability (UCC)
  - Frustration of purposes
  - Impossibility

- Benefits and drawbacks to force majeure

- Impact of payment obligations
CHANGES AND AMENDMENTS TO AGREEMENTS

- To comply with applicable law
- To account for restrictions on access to facilities
- To satisfy company initiative to cut expenses
- To relax service levels and credits
CONSIDERATIONS IN AGREEING TO COVID-19 RELATED AMENDMENTS

- Duration
- Scope
- Cost
- Operational impacts
- Risk shifting impacts
- Can the change be rejected?
PART TWO: LESSONS LEARNED

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KEY CONTRACT PROVISIONS

- Business continuity obligations
- Force majeure
- Termination
- Right to procure from alternate sources
KEY CONTRACT PROVISIONS

- Audit rights and ongoing monitoring / oversight
- Source code escrow
- Step-in rights
- Transition services
- Notice of significant and material adverse events
QUESTIONS?

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