

# Technology Contracting in the Health Care Industry

Health care is one of the most dynamic and rapidly changing sectors of our economy. In order to compete, health care companies (including hospitals, medical groups, health insurers, pharmacy benefit managers and managed care organizations) must adopt and rely on information technology and technology-enabled products to deliver care and services to their patients and customers. The acquisition and implementation of these technology-based solutions is critical to the success of health care companies.



The International Association of Outsourcing Professionals (IAOP) consistently includes Pillsbury in its annual Global Outsourcing 100 list as one of the world's best outsourcing service providers and advisors.

Pillsbury's Global Sourcing & Technology Transactions Practice is a leader in designing, negotiating and documenting complex technology-based contracts. Our attorneys and consultants have been at the forefront of technology contracting for three decades. Over the last 30 years, Pillsbury has advised on more than 1,000 technology transactions totaling more than \$500 billion in cumulative contract value.

We have extensive experience representing health care companies in technology-related contracts. No other law firm has a longer or more extensive track record, particularly in the areas of:

- Software licensing
- Software development contracts
- ASP agreements
- Systems integration agreements
- Web site and Internet-based contracts
- Information technology outsourcing transactions
- Business process outsourcing transactions

Our mission is to assist clients worldwide with the planning, execution and management of complex technology transactions. In addition to our premier legal talent, our practice includes many senior consultants with experience in the technical, financial and business aspects of technology-related transactions. This enables us to advise on the full life-cycle of technology contracting activities.

Pillsbury is uniquely qualified to represent health care companies entering into the following types of technology contracts:

### **Software License and Maintenance Agreements**

Health care companies frequently turn to third-party software packages to improve productivity in areas such as billing and customer care. While software vendors rely heavily on form agreements, knowledgeable counsel can add substantial value to these transactions. For example, parties to licensing arrangements often fail to adequately describe the software being licensed, ignore potential impacts from changes in the customer's organization and business, or overlook unresolved rights with respect to future developments or enhancements to the software.

We assist our clients in structuring relationships that avoid negative consequences as their business changes. Our experience ranges from large, enterprisewide licensing agreements with the major software suppliers (Microsoft, Oracle, IBM and SAP) to smaller agreements with niche health-care vendors licensing software products such as electronic billing. The increasing use of open-source software also places a premium on the use of experienced counsel to address the full spectrum of issues raised by open-source software.

### **Software Development and Systems Integration Agreements**

Pillsbury has one of the world's leading systems integration practices, including licensing and implementing arrangements for Enterprise Resource Planning software. We have structured and negotiated hundreds of large systems integration, development and implementation transactions—many valued in excess of \$100 million. In the health care area, we have advised clients contracting for the development and integration of next-generation health care claims processing systems, as well as for software systems that manage the membership and billing functions. We understand the protections that customers must have regarding data conversion, testing and acceptance of the software system.

Our experience covers every phase of the software development and systems integration process:

- Identifying business and technical objectives and requirements
- Preparing requests for proposals
- Assisting clients in evaluating and selecting suppliers
- Structuring the development, integration and testing process
- Drafting and negotiating contracts
- Resolving disputes

Large-scale Enterprise Resource Planning implementations pose the greatest risk of all systems integration projects. With long lead times and costs often exceeding tens or hundreds of millions of dollars, these transactions can have significant impact on our clients' business operations. The dominant suppliers in this market (e.g., SAP and Oracle) are knowledgeable and experienced in structuring and pricing ERP transactions in a way that protects their interests. Our extensive experience with these suppliers enables us to level the playing field for our clients, close the transactions quickly and efficiently, protect our clients' interests in receiving high-quality services and operations, and negotiate fair, market-competitive prices.

### **ASP Agreements**

Health care software is frequently made available to customers on an "application service provider" (ASP) model, in which the vendor is responsible for operating the software and the customer purchases a right to use the software rather than a license and copy of the software. Health care companies that utilize software on this basis must be aware of issues that arise out of this model. For example, many claims processing systems vendors offer their software on both a licensed basis and an ASP basis, and each of these approaches carries with it its own set of business, technological and legal issues.

Outsourcing is the delegation of a significant business function to a third party. It has become a well-accepted mechanism for adding business value and meeting the challenges of our global economy. Long before outsourcing became widespread, Pillsbury was assisting clients with complex outsourcing arrangements.

### Privacy and Data Protection

The safekeeping of patient and employee information is fundamental to the well being of health care organizations today. HIPAA and other privacy laws in the U.S. and around the world are complex, and new laws are enacted frequently. Consumer focus and media scrutiny of privacy issues makes this a very visible and high-risk area for most health care companies.

Pillsbury advises a large range of health care companies on legal issues relating to privacy, data collection and information management. Pillsbury attorneys provide assessments of our clients' privacy, information collection and sharing practices. We implement or revise privacy policies and disclosures, draft and provide training in privacy policies and procedures, prepare appropriate contract provisions, identify and address specific privacy and information collection and sharing issues, and handle privacy-related litigation matters. We frequently advise clients on the risks that they may face from particular information collection and sharing practices, and help them with privacy issues that relate to marketing, data modeling and the transfer of data to others.

### Outsourcing

Because of our experience, we are able to help our clients shorten the sourcing cycle, speed the realization of benefits, and design lasting solutions that effectively support their strategic and operational objectives. Pillsbury professionals have an unsurpassed depth of onshore, offshore, domestic and global experience and have negotiated the full range of strategic outsourcing transactions, including:

**Information Technology Outsourcing (ITO)**, including infrastructure management, applications development and maintenance, data center and desktop outsourcing, and managed network services. We invented the contract model for ITO and have led the industry in evolving that model to meet current needs. Our ValueChain methodology and the use of Visual Sourcing and Visual Contracting paradigms are redefining the outsourcing model. From the first large-scale ITO transaction ever to recent high-profile transactions for Blue Cross Blue Shield companies, the firm has been both a thought-leader and driving force for structuring and delivering high-value, strategic outsourcing relationships.

**Business Transformation Outsourcing (BTO) and Business Process Outsourcing (BPO)**, including human resources, finance and accounting, facilities management, procurement and supply chain functions. We have worked on a number of landmark transactions that have helped shape and define this emerging market. These include transactions in the following areas: human resources, supply chain outsourcing, procurement, customer contact call centers, back office financial processing, data acquisition and entry, and transaction processing.

**Offshore Outsourcing of Applications Development and Maintenance (AD/M)**, call center functions, and various back office activities to India, Eastern Europe and the Caribbean for numerous Fortune 100 clients. Our work in this area involves helping our clients assess and evaluate the risks associated with offshore sourcing and balance them against the economic and delivery benefits these relationships provide. We have structured offshore relationships for our clients with most of the major Indian suppliers (including Tata, Infosys, Satyam, Wipro and Cognizant), as well as with the major multi-national suppliers (including Accenture, IBM, EDS, CSC, ACS and HP).

The attorneys in Pillsbury's Health Law practice group advise health care entities (including managed care companies, hospitals, medical groups, e-health companies, insurance companies, pharmacy benefit managers, vision centers, practice management companies, ambulatory centers and other facilities) with respect to legal issues specific to the health care industry.

### Health Law Practice

We provide counsel on all aspects of health law, including fraud and abuse, corporate practice of medicine, government regulation and privacy. We counsel clients on HIPAA compliance as well as federal and state laws regulating managed care, Medicare and Medicaid. The firm also counsels and represents clients on matters related to compliance with anti-kickback statutes, self-referral legislation (the Stark Law), and defense against False Claims Act actions. Our attorneys advise health care clients with respect to antitrust issues inherent in such matters as preferred provider organizations, joint venture arrangements and mergers and acquisitions.

In addition, the Health Law practice provides guidance to insurance carriers and employers on health benefit plans. We work closely with our employee benefits practice group to assist in the design of managed care mechanisms for employers and negotiations with direct contracting providers. The group also provides advice and counsel on the new DOL claims regulations. Our attorneys routinely advise with respect to the laws relating to tax-exempt institutions. The firm also advises clients on the management and expenditure of endowment and restricted funds, and government investigations with respect to such funds.

Pillsbury has devoted significant resources to working with developing companies, including those which provide support to health care delivery through such products as medical devices or computer software, as well as companies involved with diagnostic and therapeutic medical technology and biotechnology. The firm has been involved in public offerings of numerous major health care companies, representing both issuers and underwriters.

### About Pillsbury

Pillsbury Winthrop Shaw Pittman LLP is an international law firm with offices around the world, and a particular focus on the technology, energy & natural resources, financial services, real estate & construction, and travel & hospitality sectors. Recognized by legal research firm BTI as one of the top 20 firms for client service, Pillsbury and its lawyers are highly regarded for their forward-thinking approach, their enthusiasm for collaborating across disciplines and their unsurpassed commercial awareness.

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