



# Cloud Contracts – Risks and Mitigation Strategies

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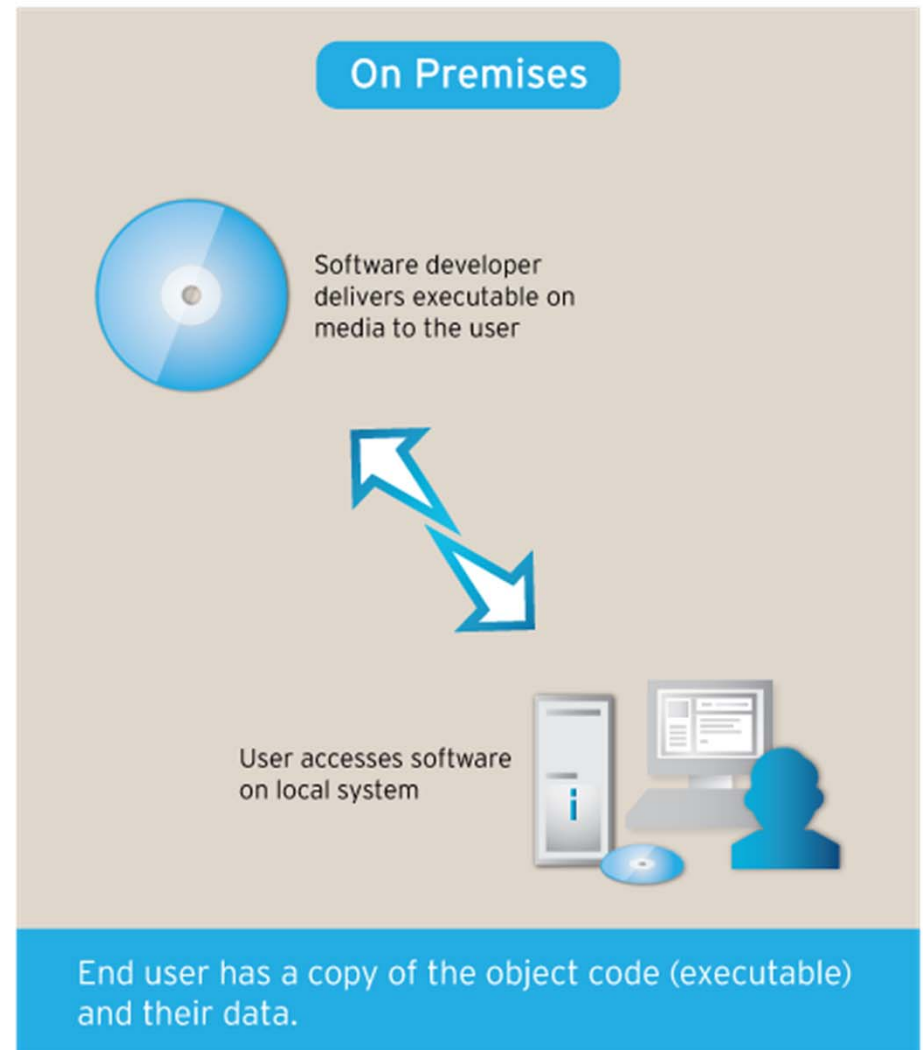
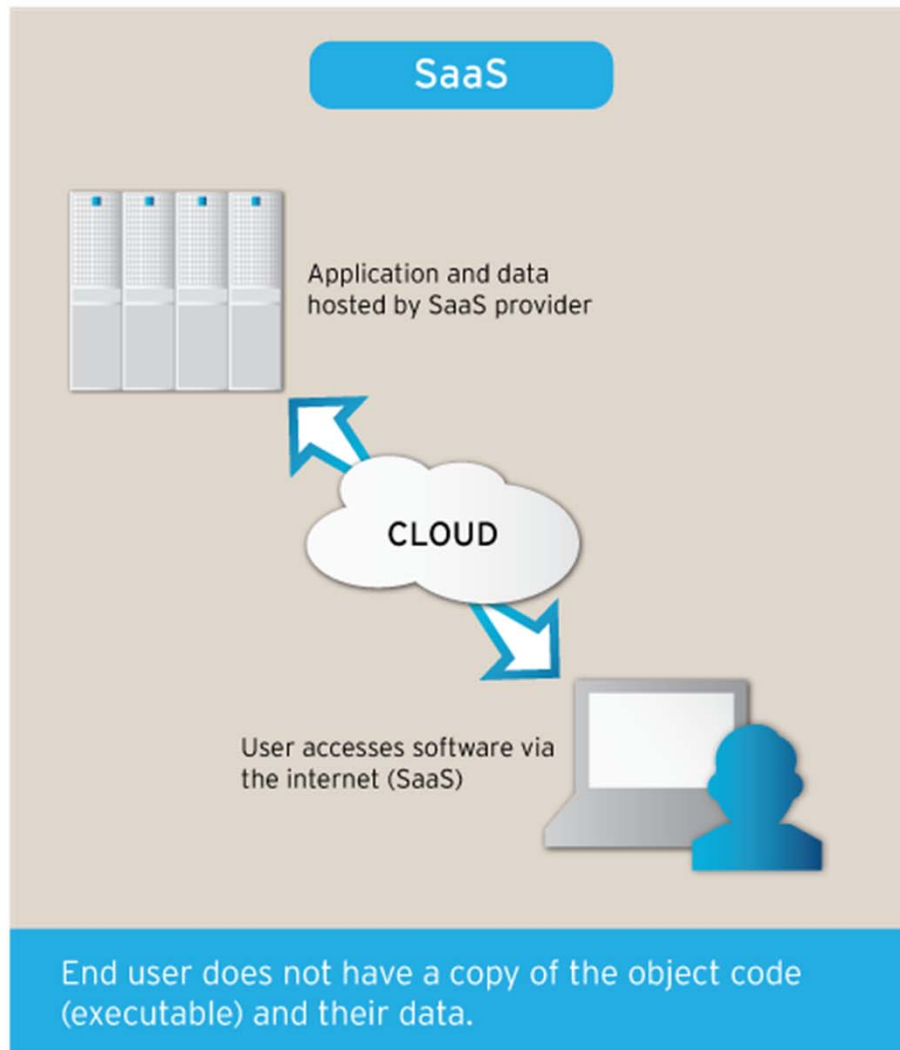


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# Let's Talk About

- The Ever-Changing Cloud Computing Landscape
- Need for Due Diligence – “Governance, Risk & Compliance”
- Risk Assessments – Business Impact from “What-if’s”!
- Practical Strategies for SaaS Contingency Planning
- Enabling Strategies with the Right Contractual Terms
- Security & Privacy
- Business Continuity
- 3<sup>rd</sup> Party Litigation
- Regulation Compliance
- Q&A

# The Tectonic Shift in Tech Delivery





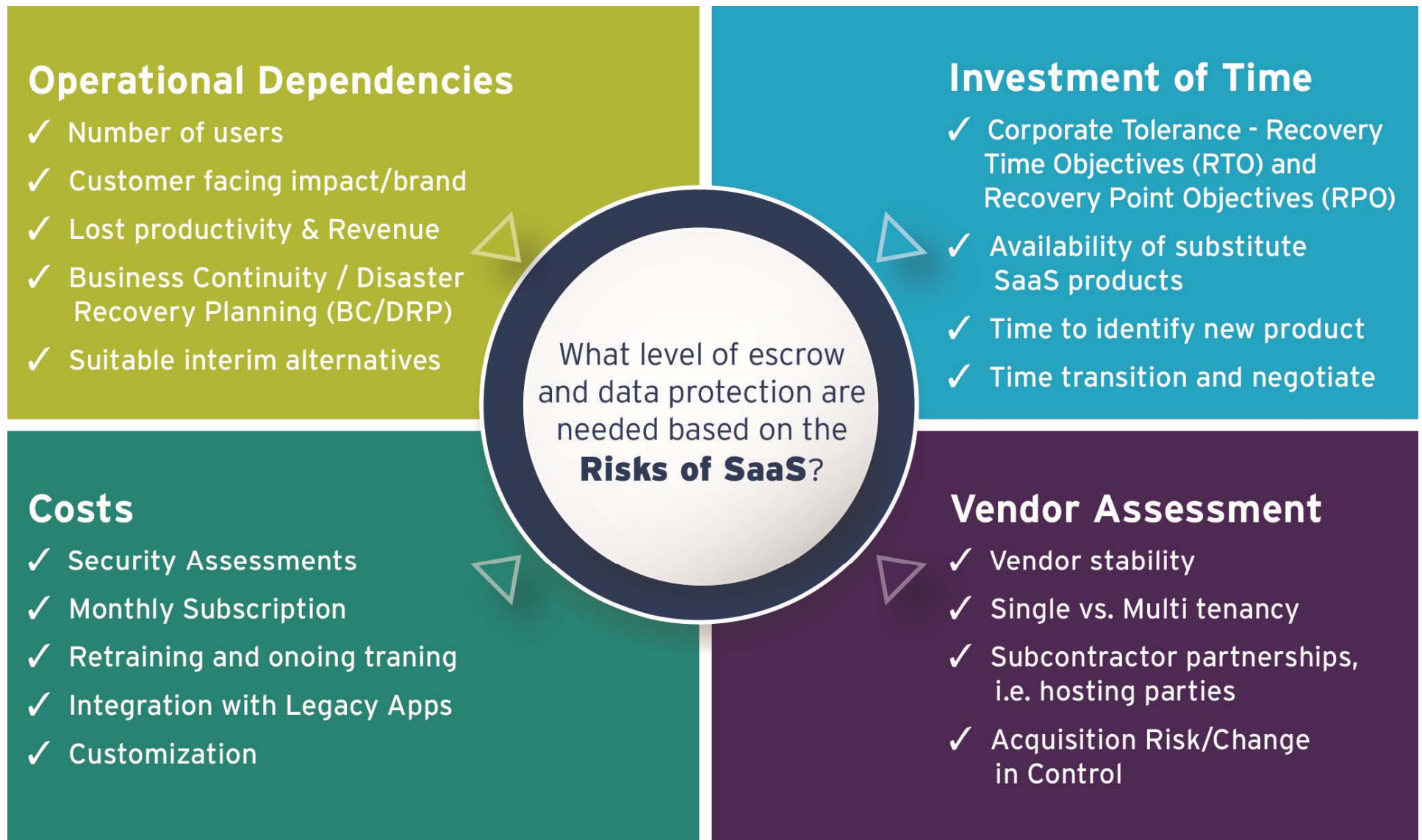
# DUE DILIGENCE

## **“Yes, but what-If? Then what?”**

- **Bankruptcy (an “Enron-Like Occurrence”)**
- **M&A (non prevailing products suffer from extinction)**
- **Contract Breach (Blown SLA’s)**
- **Force Majeure**
- **Extended Outage**
- **Exit Strategy**
- **Can’t Recover Your Data?**



# Risk Assessments





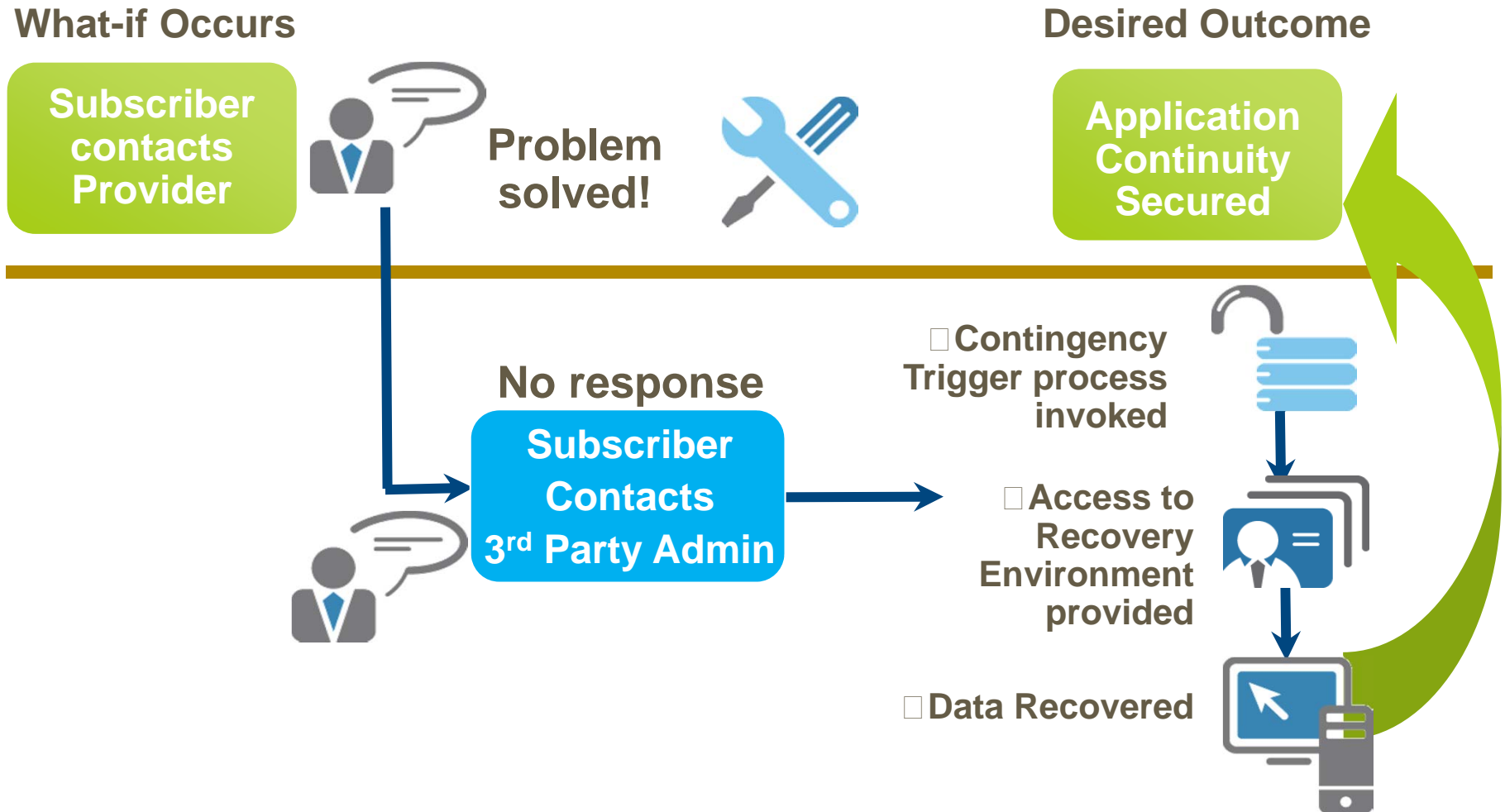
# CONTINGENCY PLANNING

# Practical Strategies for SaaS Contingency Planning

- **Marshaling resources & expertise to craft the plan**
- **Create standards to address the risk of doing business**
- **Concerns become Triggers to set the contingency in motion**
- **Means to keep working while you execute (application continuity)**
- **Trusted, neutral third party administration to execute the plan!**
- **Successors in waiting to take over**
- **Testing to verify that the plan works**
- **Unambiguous contract terms to allow for unencumbered success!**



# Contingency Trigger Process



# Establish Standards to Support Contingency Plans

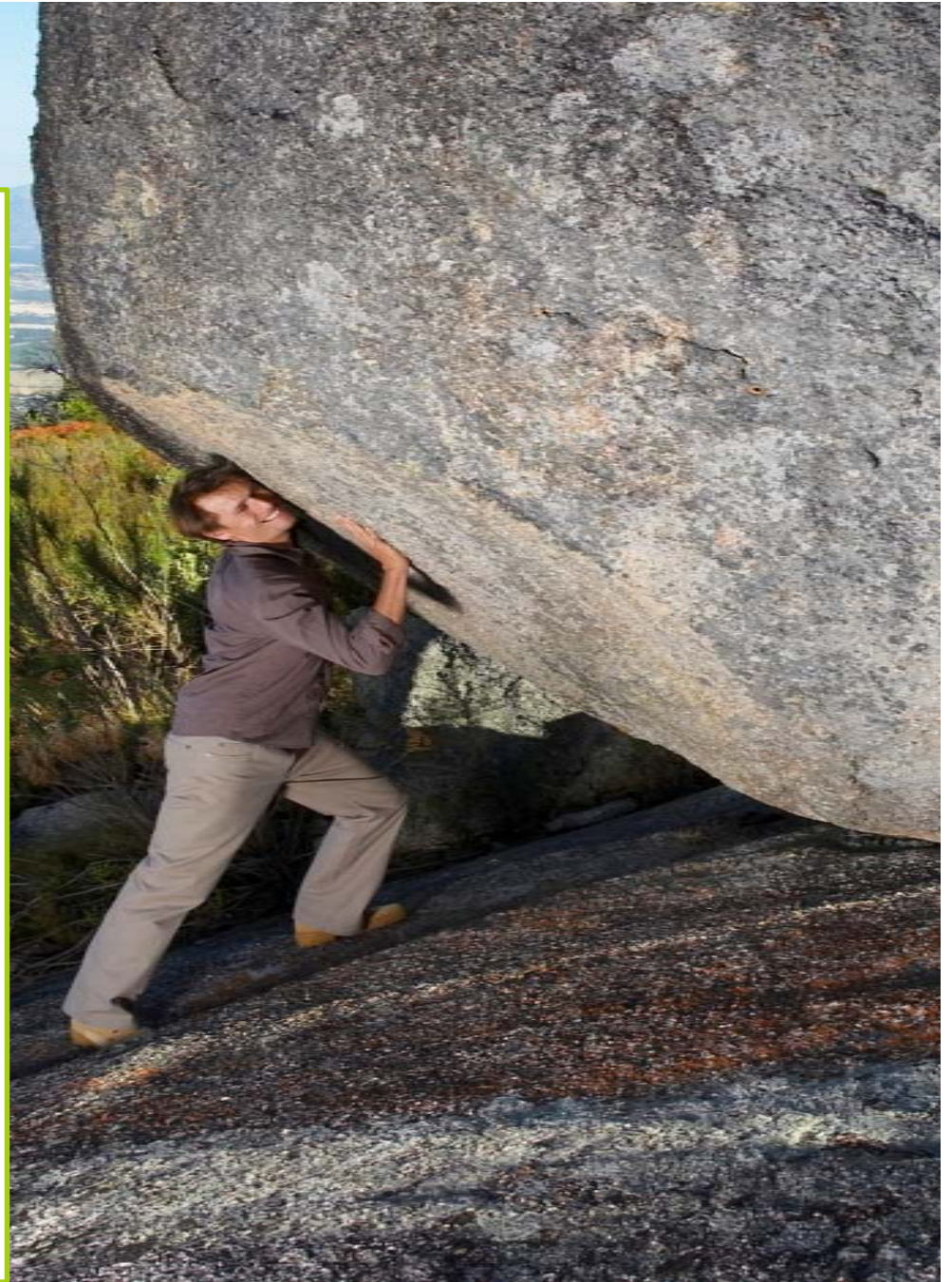


- Deposit Requirements
- Verification (DR) Testing Rights
- Release Conditions (Triggers)
- Demand or Notice Process
- Objection Period
- Contrary Instructions
- Rights Following a Release
- Payment of Fees
- Repeatable Process

# Repeatable Process

1. Conduct your due diligence and craft your contingency plan!
2. Communicate contingency requirements up front as a condition of doing business
3. Execute an agreement that includes the contingency solution
4. Test Everything Frequently

**Do this before you pay a single vendor invoice!**





# Questions?

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# Cloud Contracts – Risks and Mitigation Strategies

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# Key Provisions in Cloud Contracts

- Intellectual property ownership
- Insurance and indemnity requirements –especially for intellectual property infringement
- Regulatory compliance

# Key Provisions in Cloud Contracts

- Subcontractor liability for third party services or software
- Effect of termination – return of customer data
- Service failure corrective action plan

# Mitigating Risks in the Cloud

## Cloud Service Providers

- Understand industry/region regulatory requirements
- Use indemnity provisions
- Obtain cyber risk insurance
- Encrypt data in motion and in storage

# Mitigating Risks in the Cloud

## Cloud Service Providers

- Ensure providers meet and take some responsibility for your regulatory requirements
- Require cyber risk insurance
- Implement employee Acceptable Use policy to limit exposure on free or low-cost cloud services

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