

# IT Procurement Summit

## Cloud Computing Contracting

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# Cloud Computing Trends

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- **Gartner estimates the cloud market will reach \$150 billion by 2013<sup>1</sup>**
- **IBM CTO estimates 50% reduction in labor costs and 75%<sup>2</sup>**
- **Bundling professional services with cloud offerings**
- **Growing concern over how to meet regulatory privacy and security requirements**

<sup>1</sup>"Forecast: Sizing the Cloud; Understanding the Opportunities in Cloud Services" – Gartner Research, 2009

<sup>2</sup> "Keeping Cloud Costs Grounded" - Forbes.com, 2010

# Key Provisions in Cloud Contracts

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- ❑ **Intellectual property ownership**
- ❑ **Insurance and indemnity requirements – especially for intellectual property infringement**
- ❑ **Regulatory compliance**
- ❑ **Subcontractor liability for third party services or software**
- ❑ **Effect of termination – return of customer data**
- ❑ **Service failure corrective action plan**

# Risks

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- **Business Continuity Risks**
  - Service interruption
  - Post-termination data rights
- **Regulatory Compliance Risks**
  - Data privacy and security statutes
- **Intellectual Property Risks**
  - Use and disclosure of information
  - Ownership of software
  - IP ownership at termination
- **Liability Risks**
  - Risk balancing

# Business Continuity Risks

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- **Service Interruption – define service levels, metrics, and remedies in the SLA**
- **Termination of the Agreement – ensure data is owned by and returned to customer in a usable format upon termination**

# Intellectual Property Risks

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- **Use and disclosure of information**
  - **Ensure both parties understand the nature of the data stored in the cloud**
  - **Specifically personally identifying information and trade secrets**

# Intellectual Property Risks

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- **Intellectual property ownership**
  - **Define ownership of any software customizations**
  - **Exclusivity of customizations during term of engagement**
  
- **IP ownership at termination – work for hire or vendor-owned code**

# Regulatory Compliance Risks

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- **Industry-specific regulation**
  - **FTC Red Flags Rule – Financial**
  - **Gramm-Leach-Bliley Act – Financial**
  - **HIPAA & HITECH – Healthcare**
  - **PCI Compliance – Payment Systems**
- **Broad regulation – Massachusetts Data Privacy Law**



# Liability Risks

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## □ Risk Balancing

- **Vendors disclaim all liability – this is unacceptable to the customer**
- **Insurance as a tool for risk balancing**
- **Indemnity as a tool for risk balancing**



# Liability Risks

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- **Striking the Balance**
  - **Specifically address liability issues regarding data risks**
  - **Risk should be commensurate with the value of the cloud service**



# Risk Mitigation Strategies

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- **Require vendors to legally assume all liabilities associated with the service**
- **Specify insurance coverage requirements including forensics, breach response, regulatory response and consumer claims**
- **Use indemnity provisions to protect against liability**
- **Edit limitation of liability provisions that would limit access to coverage**



**Questions?**