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***Cloud Law: Everything
You Need to Know about
Cloud Computing and the
Law***

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Managed Services Institute

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Cloud Computing Trends

- Gartner estimates the cloud market will reach \$150 billion by 2013¹
- IBM CTO estimates 50% reduction in labor costs and 75%²
- Bundling professional services with cloud offerings
- Growing concern over how to meet regulatory privacy and security requirements

¹Forecast: Sizing the Cloud; Understanding the Opportunities in Cloud Services” – Gartner Research, 2009

²“Keeping Cloud Costs Grounded” - Forbes.com, 2010



Key Provisions in Cloud Contracts

- 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

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

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

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 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

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

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

Striking the Balance

- Specifically address liability issues specific to the type of data being stored in the cloud
- Risk should be commensurate with the value of the cloud service



Cloud Service Providers

- Understand the regulatory requirements in your industry or region
- Use indemnity provisions to protect against liability
- Obtain cyber risk insurance
- Encrypt data in motion and in storage



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