



What to Know As You Head For the Cloud

You've heard about "the Cloud". You've probably used the Cloud either professionally or personally. Now the big question . . . what rights and protections do you have as you head for the Cloud?

In its most basic form, cloud computing is a way in which your data is stored, accessed and managed on remote computer networks operated by third parties instead of on your company's in-house computer network. Access to data can be at any time of day from anywhere in the world. For a business, cloud computing has enormous benefits such as decreased cost of computing power, ability to increase or decrease services quickly, reduced capital expenditures for hardware and decreased maintenance and support costs.

As with any new and evolving technology, businesses need to assess the technology's benefits against its shortcomings. Part of the assessment is identifying legal issues that are presented by the language contained in (and missing from) contracts you are considering. A small sample of the questions you need answers to are listed below:

Data

- Do you have the right to access and retrieve data at any time?
- What are the cloud provider's policies on destruction of data?
- Can the cloud provider use your data for its own purposes?
- Is your data stored in a country whose laws are not as strict as US laws on data protection?

Privacy Breach

- Does cloud provider comply with regulatory requirements applicable to your data?
- What are the cloud provider's policies for notifying you of a breach of privacy?
- Does the cloud provider have sufficient insurance coverage to cover your damages if a privacy breach occurs due to the fault of the cloud provider?
- Who bears the cost of notifying your customers of a breach?
- Does the contract attempt to severely limit the cloud provider's liability in case of a breach?

Disaster

- What back-up resources does the cloud provider have?
- Is your business indemnified by the cloud provider or an insurance company for loss of your business data?

Termination of Contract

- Can the cloud provider terminate on short notice?
- Are there sufficient periods to allow you to cure a breach of contract before the cloud provider terminates or suspends services?
- Is the cloud provider required to assist in transitioning your data to another cloud provider upon termination?

Before transitioning to the cloud, businesses need to very carefully consider the terms of service and associated commercial and regulatory issues they are faced with. Attorneys and other advisors who understand the nature of the cloud, the risks it presents and the ways to reduce these risks can help you navigate through the issues associated with this rapidly changing technology and take advantage of all that cloud computing has to offer.

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