



**Annual Meeting 2011**  
DENVER OCT 23-26  
Where In-house Counsel Connect

# “Hey, you get off of my Cloud!”

## Presenters:

Ted Gizewski - Microsoft Corporation

Bruce J. Rogow – IT Odyssey & Advisory

Allison Malin - BT Global Services

James Nelson - Venable LLP



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# General Overview

Managing Business and Legal Risks in Cloud-Based Environments



# Session Goals

What is Cloud Computing ?

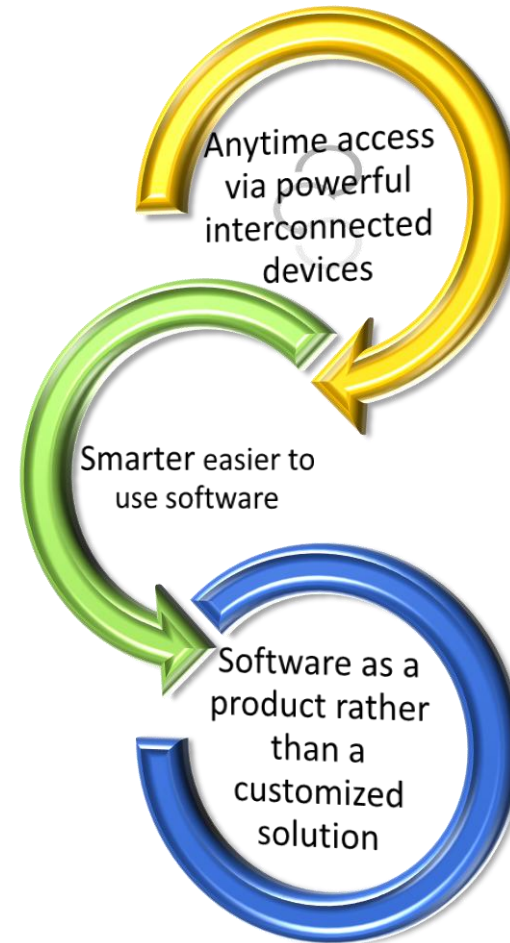
How it works?

Transformational  
role in business

Impacts to legal  
process and  
protections



# Next Wave of Computing





# What is Cloud Computing?

- A recent study found 22 definitions!
- A simple one that hits the core elements:
  - ***Cloud computing provides software applications and computing power to users as a service over the Internet***



It's hyped

It's a large  
segment

Our business  
leads are  
paying  
attention...

"The current economic woes will only drive more enterprises to consider and adopt cloud offerings. Spending on IT cloud services will hit \$42 billion by 2012" (IDC)

**Why Do We  
Care?**

"58 percent say cloud computing will cause a shift in IT and 47 percent say they're already using it or actively researching it" (CIO)



# Cloud Computing Benefits

## Micro-economic

- Choice and flexibility
- Cost savings and efficiencies
- Access to greater computing power
- Earlier access to new technologies

## Macro-economic

- Wealth creation
- Innovation
- Jobs
- Address societal challenges



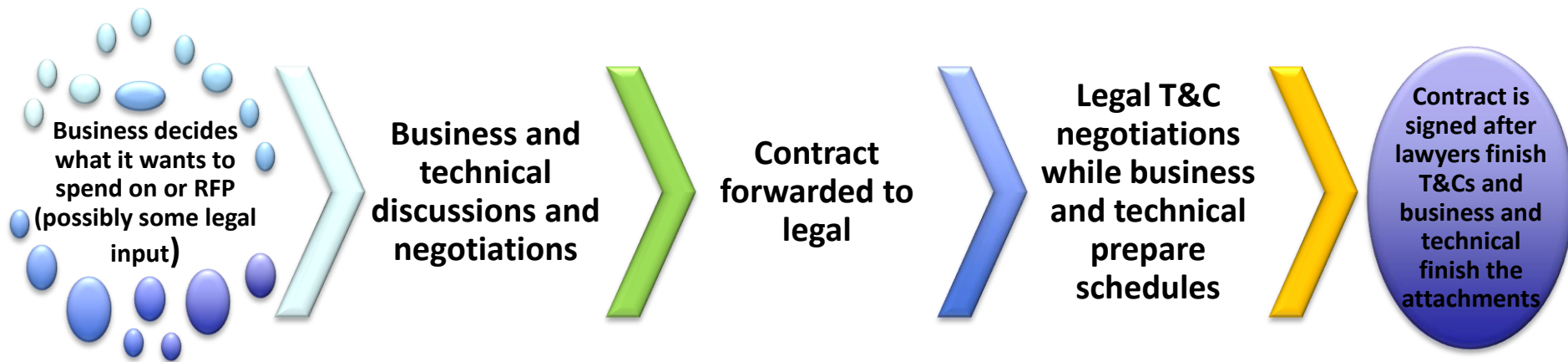
# Key Cloud Computing Policy Issues







# Traditional Model





# New Technology & Media Review Board

Cloud, social media and open source

Process for requesting use

Of a specific technology

By a specific group of users

For specific uses

Testing / Evaluation Process

Impacts on cost, performance, timing, risk and other programs

Development of Appropriate Processes

Training

Source / Version Control

Assured repository

Journaling / Enterprise File system

Audit

Risk Management and Mitigation (by category where practical)

Legal analysis

Other targeted "risk factors"



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# Cloud Contract Issues



# General Considerations

Beware of poorly  
adapted software  
license  
agreements

Robust cloud  
infrastructure  
mimics  
outsourcing  
arrangements



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# Supplier Perspective on Contracting

- One to many architecture
- Everything in offering is “Standard”



# Key Customer Contract Issues

Supplier Lock-in

Security and Confidentiality

Resilience and Business Continuity

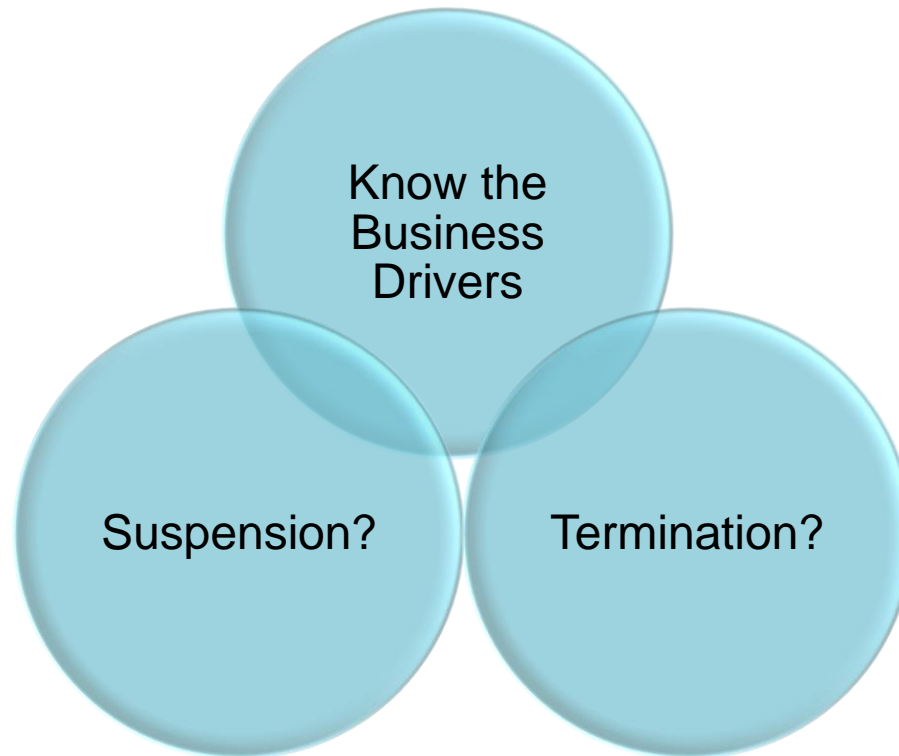
Regulatory Concerns and Audit

Liability

Exit, Insolvency



# Supplier Lock-in





# Security & Confidentiality

- Provider
  - Standard Infrastructure
  - Standard Software
- Customer
  - Standard Policies
  - Updates?





# Resilience & Business Continuity

Business Needs Should Drive Outcome

Understand Offering and Document Needs

- BC/DRP
- SLAs
- Termination

Consider Multiple Providers/Non-exclusive



# Regulation Concerns & Audit

Know Your Current Business

Data Protection

Export Compliance

Audits



# Liability

What Is The  
Capacity Of The  
Supplier To  
Absorb Loss?

What Level Of  
Insurance Is In  
Place For The  
Supplier?

Transferring  
Risk

What Level of  
Insurance Is In  
Place For The  
Customer?

Limitation of  
Liability and  
Exceptions

Standard  
Remedies Might  
Not Apply



# Exit, Insolvency

How Are You Going  
to Get Your Data  
Out?

Exit and Assistance  
Provisions

Exits in Distress

Problems With  
Enforcement and  
Compliance



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# Navigating a Cloud Negotiation

- There may be limited room to flex services
- A shared infrastructure more beneficial to providers if it removes choice from the customer
- Customer cannot sacrifice its requirements
- Customer can (and needs to be) pragmatic



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## QUESTIONS?

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