

# direction

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## PEAK SEASON SUCCESS

ALL THE RIGHT WAYS TO GET AHEAD OF MOVING SEASON

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# SUNNYSKIES

## OR THUNDERSTORMS?

### *A guide to cloud solutions for movers*

By Jonathan Todd and Justin Clark

**M**oving companies, and the transportation industry in general, are increasingly adopting cloud technology to bring connectivity and scale to both core operating systems and public-facing platforms. This trend is slated to continue for the foreseeable future. As projected by the Cisco Global Cloud Index, 92 percent of workload will be processed using cloud data centers by 2020.

Cloud services offer many practical benefits in view of the lightning pace of today's businesses. However, they also present a number of unique legal risks that might be unfamiliar. Fortunately, proper due diligence into vendors and knowledgeable negotiation of services contracts can help prevent the sunny skies of cloud computing from becoming thunderstorms.

The relative newness of cloud computing is appealing to industries

that are time-sensitive, data-driven and geographically expansive, such as the transportation and warehousing sectors. Cloud computing simply refers to accessing information that is stored elsewhere by means of the internet through a third-party provider. Many vendors across a wide range of industries utilize the cloud to run applications and deliver services to customers in a few different ways.

The largest and most common cloud service market is known as software as a service (SaaS). SaaS solutions are third-party-managed applications that are accessed by the customer via the internet. Any data entered into and stored by the cloud-hosted solution will be physically stored on a third party's server, even though it can be accessed anywhere. This adds accessibility, along with a degree of disaster recovery and business continuity benefits, and yet it raises certain other

areas of risk that are not associated with traditional software licenses.

Many companies interested in cloud solutions do not realize that traditional hardware and up-stream service providers work behind the scenes, often hidden from view, to make the groundbreaking functionality of cloud services work correctly. This maze of equipment, proprietary code and providers can take on characteristics similar to "double brokering" scenarios that are all too familiar to transportation and logistics professionals. It is critically important to understand what you are purchasing, and from whom you are purchasing, when placing your enterprise's entire operational capabilities online through a hosted transportation management system (TMS), warehouse management system (WMS) or other core system.

It is necessary to take time and conduct adequate due diligence when

sourcing application and services vendors. In very simple terms, transportation and logistics companies should understand how data will flow through the system like freight flows through a supply chain. The following areas are well worth discussing with your prospective vendors before signing a contract and writing a check.

#### WHAT TO ASK CLOUD APPLICATION AND SERVICES VENDORS

- **Location** – Where is your data stored? In the cloud, right? No, it will be on a server that is physically located somewhere in the world. You need to find out where, including the specific facility address, how many other customers will have data on the same server, whether the data will be moved to other countries, and whether the location and equipment are owned or leased by the vendor. It is often the case

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that the vendor doesn't actually host your data—despite what you might believe—and instead uses a third-party data center. You don't want to find that your data is actually being hosted by disreputable providers overseas, where laws regarding privacy may vary and U.S. export controls may be triggered!

- **Prevention** – What data-security systems are in place? The vendor should have security policies that are industry standard and recognize certain regulations. You should also consider the vendor's disaster recovery plans and breach notification procedures. You don't want to find yourself in the headlines due to a data breach, without your operating system for an extended period of time or liable for a breach of your customer contracts. The vendor should allow for audits and penetration testing



of facilities and systems to confirm its representations.

- **Protection** – Will the vendor or other customers access or use your data? Who will see your data? Will your sensitive data be encrypted?

Should it be? Will your data be treated as confidential information? Does the vendor sell your data, in the aggregate or otherwise? Will the vendor claim ownership of your data? Will you receive the



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data following termination of your contract, and how quickly? Who pays for the transition services to move the data to another vendor? These are all questions you need to ask. You don't want to learn that the vendor or your competitors were using your data against your interest—and now claim that they own rights to it.

- **Uptime Guarantees** – Does the vendor guarantee that you will have access to your critical software solution without interruption? The vendor should have clear service-level agreements with uptime commitments, response and resolution times, and remedies in the form of termination rights and credits or refunds.

Once you have found a vendor with whom you are comfortable, it

is important to carefully read and negotiate the contract for your license or subscription service. Most reputable vendors will entertain your requested changes and additions to contract language, and many will make those changes prior to signing. You might want to consider other vendors if your current vendors are unwilling to negotiate with you or provide credible answers that meet your needs. The terms you accept should both address and be consistent with your complete understanding of the questions above; otherwise, you could put your company at risk for service interruption, loss of data and the resulting increase in cost and loss of business.

Additionally, make sure that the commercial terms (price, number of user seats, data volume, etc.) align with your expectations, that the functionality (connectivity, visibility,

data analysis, reporting, internal and external interfaces, etc.) is completely spelled out and adequately meets your needs, and that there are no extra-contractual (such as online) terms and conditions incorporated by reference. The most important issues that arise in contract negotiations with cloud service vendors involve indemnification, limitations of liability and warranties. Consult with an attorney familiar with your business and cloud solutions if you are ever in doubt of whether you are protected in your cloud provider relationships. ■

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