

# Contracting for IT: Special Considerations



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# Key Component: SOW



- Detailed statement of purpose
- Job skills required
- Materials to be developed by contractor
- Materials to be delivered by local government
- Estimated time schedule
- Completion criteria
- Name of contract personnel assigned
- Contractor's work hours required
- Contractor's billing rates
- Contractor's total cost

# General Provisions



- Standard Definitions
  - MTBF, MTTR, Operational Use Time, Others?
- Contract Formation: describe if result of solicitation, state contract, etc
- Severability
- Independent Contractor: contractor cannot act on behalf of local jurisdiction
- Applicable Law/ Compliance with Statutes and Regulations
- Forum Selection

# General Provisions



- Packing and Shipment
- Transportation Costs & Other Fees/Expenses
  - No costs outside those specified in contract
- Delivery
  - Adherence to schedule outlined in contract
- Non-substitution Clause
- Inspection, Acceptance, and Rejection
- Warranty

# General Provisions



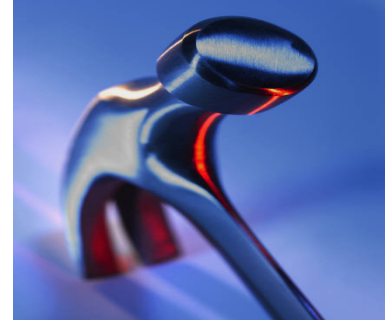
- Termination for Non-appropriation of Funds
- Termination for Default
- Limitation of Liability
- Indemnification
- Invoices
- Contract Modification
- Confidentiality of Data
- News Releases/Advertisement/Publicity

# General Provisions



- Documentation
- Protection of Proprietary Software/Data
  - Public Records Law
- Patent, Copyright, and Trade Secret Indemnity
- Examination and Audit
- Disputes
- Subsequent Contracts/Additional Quantities
- Nondiscrimination Clause

# Maintenance Provisions



- Maintenance of Equipment
- Responsibilities of Contractor
- Responsibilities of Local Government
- Maintenance Coverage
  - Preventative and Remedial
  - Schedule
- Maintenance Charges
- Credit for Inoperable Equipment
- Engineering Changes
- Termination

# Purchase Provisions

- Title to Equipment
- Liquidated Damages
- Price Decline:
  - Contract protects you against price increases during the contract period
  - Pay attention to price decline clause to save money





# Software Provisions

- License Grant
- Fees and Charges
- Maintenance
- Acceptance of Software
  - COTS
  - Custom
- Right to Copy or Modify
- Future Releases



# Personnel Provisions

- Contract Type
- Personnel
  - Assignment and Replacement
- Responsibilities of Local Government
  - Facilities, Information, Delays
- Unanticipated Tasks
  - Work Authorization
- Invoicing and Payment for Services
- Contractor Evaluation
- Conflict of Interest



# Contracting for the Cloud



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# Contracting for the Cloud



## 1. Pricing Assurances

## 2. Data Assurances:

1. Ownership
2. Access to Data
3. Disposition of Data Upon Request
4. Disposition of Data Upon Contract Termination
5. Data Breaches
6. Data Storage Location
7. Legal Data Holds/Public Record Requests

# Contracting for the Cloud



## Data Assurances:

### 1. Ownership

1. The contract should clearly state that the government owns all data residing within the cloud environment. Typically, the contract language will include rights to government data ownership related to issues such as intellectual property as well as disallow accessing the data for corporate gain by the cloud provider or organizations other than the government.

# Contracting for the Cloud



## Data Assurances:

### 1. Access to the Data

1. Who has access and how can it be retrieved?

2. The Stored Communications Act

# Who Can “Consent” under SCA to Disclosure of Contents of E-mail Hosted by Third-Party “Cloud” Provider?

	Traditional Interpretation of SCA	<i>Quon / Theofel Cases</i>	<i>Weaver / (Flagg) Cases</i>
<b>Unopened E-mail (not deleted)</b>	Originator, Addressee, or Intended Recipient Only	Originator, Addressee, or Intended Recipient Only	Originator, Addressee, or Intended Recipient Only
<b>Opened E-mail (not deleted)</b>	Subscriber, Originator, Addressee, or Intended Recipient	Originator, Addressee, or Intended Recipient Only	Subscriber, Originator, Addressee, or Intended Recipient
<b>Deleted E-mail</b>	Consent Not Needed	???	Consent Not Needed
<b>Backup Copy of E-mail for System Integrity</b>	Originator, Addressee, or Intended Recipient Only	Originator, Addressee, or Intended Recipient Only	Originator, Addressee, or Intended Recipient Only
<b>Backup Copy of E-mail for Government’s Benefit</b>	Subscriber, Originator, Addressee, or Intended Recipient	Originator, Addressee, or Intended Recipient Only	Subscriber, Originator, Addressee, or Intended Recipient



# From a Google Contract

- Customer Obligations.
- - End User Consent. Customer's Administrators may have the ability to access, monitor, use, or disclose data available to End Users within the End User Accounts. Customer will obtain and maintain all required consents from End Users to allow: (i) Customer's access, monitoring, use and disclosure of this data and Google providing Customer with the ability to do so, and (ii) Google to provide the Services.
- - Unauthorized Use. Customer will use commercially reasonable efforts to prevent unauthorized use of the Services, and to terminate any unauthorized use. Customer or Reseller will promptly notify Google of any unauthorized use of, or access to, the Services of which it becomes aware.



# Contracting for the Cloud



## Data Assurances (continued):

3. Disposition of Data Upon Request: audits anyone?
4. Disposition of Data Upon Contract Termination: data format is key, along with reasonable time

# Contracting for the Cloud



## **Data Assurances (continued):**

5. Data Breaches: Yep, it happens all the time!

6. Data Storage: State and Federal Laws

7. Legal Data Hold/Public Records

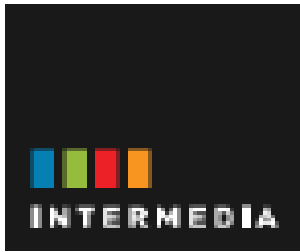
# Contracting for the Cloud



- 3. Right to Inspect and Audit**
- 4. Service Level Agreements**
- 5. Remediation/Service Credits**
- 6. Disaster Recovery & Business Continuity**
- 7. Outsourced Services**
- 8. Termination**

# Exhibit: Cloud Contract (see Intermedia .pdf)





## MASTER SERVICE AGREEMENT

### Shared Exchange Hosting

CAREFULLY READ THESE TERMS AND CONDITIONS, AS THEY FORM A BINDING LEGAL AGREEMENT BETWEEN YOU AND INTERMEDIA.NET, INC. ONLY AN AUTHORIZED REPRESENTATIVE OF YOUR COMPANY MAY EXECUTE THIS AGREEMENT. IF YOU DO NOT ACCEPT THESE TERMS AND CONDITIONS, CLOSE YOUR BROWSER AND DO NOT PROCEED WITH USING THE SERVICES.

(a) 15-Day Termination. Intermedia may terminate this Agreement for any reason by providing fifteen (15) calendar days notice. If Intermedia terminates this Agreement pursuant to this Section 2.3(a), (i) for a Monthly Plan, if the effective termination date occurs prior to the end of the then-current Term, Intermedia will refund (or refrain from charging You) the pro rata monthly fees for the month in which Services terminate and (ii) for an Extended Plan, Intermedia will refund (or refrain from charging You) the monthly fees for the month in which Services terminate. For either a Monthly Plan or an Extended Plan, if Intermedia terminates this Agreement pursuant to this Section 2.3(a), Intermedia will not charge You monthly fees for any month following the month in which Intermedia terminates this Agreement.

8.1. Limited Warranty; Limitation on Liability. Intermedia provides the Services and any related products on an “as is” basis. ... Intermedia and the Intermedia Parties will not be liable for any direct, indirect, incidental, special, punitive or consequential damages (including but not limited to damages for lost profits, business interruption, loss of programs or information, and the like) that result from the use or inability to use the Services or from mistakes, the Services not meeting Your requirements or expectations, omissions, hardware failures, translations and system wordings, functionality of filters, migration issues, interruptions, deletion of files or directories, unavailability of backups, errors, defects, delays in operation, or transmission, regardless of whether Intermedia or any Intermedia Party has been advised of such damages or their possibility. ...Your sole remedy for any claims regarding the Services under this Agreement or otherwise is limited to any applicable credits set forth in the Service Level Agreement.

**INTERMEDIA DOES NOT MAINTAIN  
HISTORICAL BACK-UP COPIES FOR THE  
PURPOSE OF POINT IN TIME DATA  
RECOVERY.**

**WE STRONGLY URGE OUR CUSTOMERS  
TO BACK-UP THEIR ACCOUNT DATA  
(INCLUDING ALL MAILBOX AND PUBLIC  
FOLDER DATA) THEMSELVES OR TO  
ARRANGE FOR THIRD-PARTY BACKUP  
SERVICES.**

