A person wearing a white, long-sleeved, button-down shirt is shown from the chest down to the hand. The person's right hand is held out, palm up, and a large, fluffy white cloud is resting on it. The background is a plain, light gray color.

Morgan Lewis

INTERNET LAW UPDATE 2016

THE CLOUD

**Peter M. Watt-Morse
Pittsburgh, Pennsylvania
Monday, April 18, 2016**

Introduction

- What is the Cloud?
 - Background, Economic Drivers, Examples
- Contract Issues
 - Vendor Forms, Service Levels, Transitions, Liability
- Data
 - Data Access, Jurisdiction, Security

The Cloud - Basics

- Resource pooling (server capacity, network, storage)
- Broad network access
- On-demand and self-service
 - Rapid elasticity or expansion (and contraction) as needed
 - Measured service
- Public vs. Private Clouds

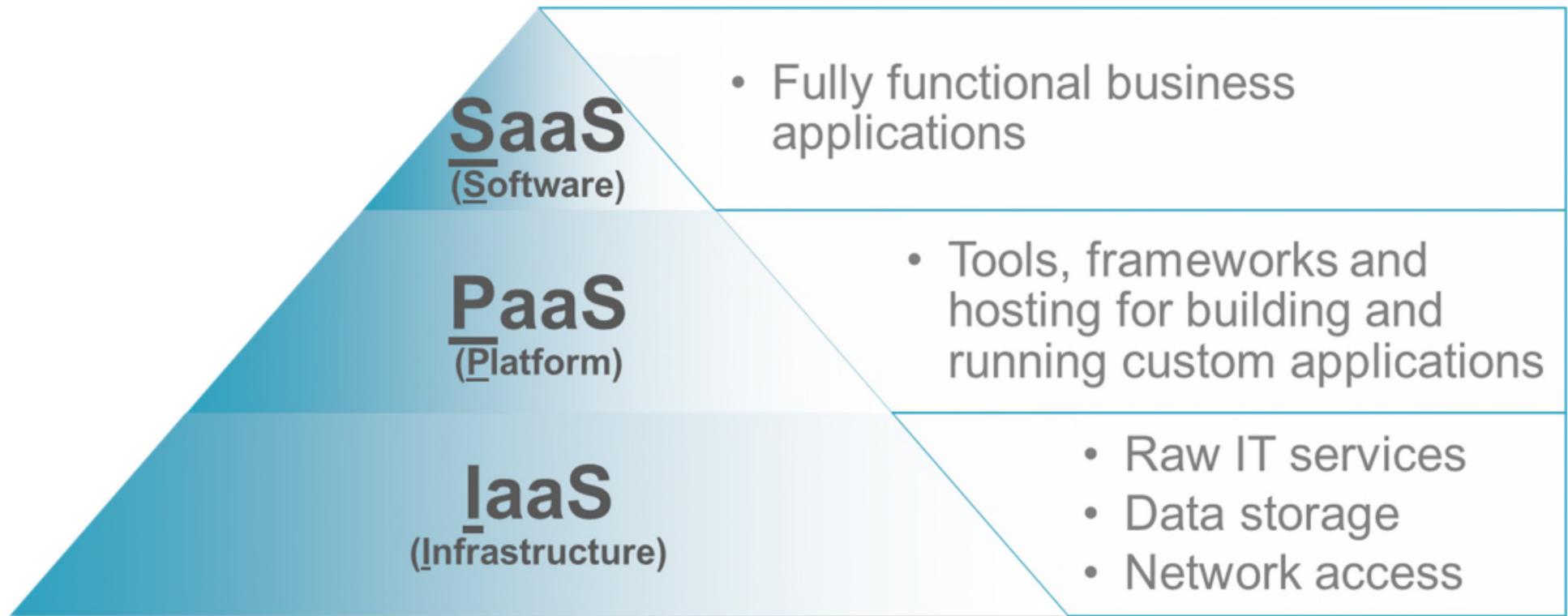
The Cloud – Economic Drivers

- Cost
 - *Lower initial (licensing) costs*
 - *Reduced IT staff and capital costs*
 - *Upgrade expense reduced*
- Flexibility / scalability
 - *Faster start-up times*
 - *Limit "sunk" costs*

The Cloud – Economic Risks

- Vendor Lock-In
- Higher Long-Term Cost
- Need for Customization
- Loss of Control

The Cloud - Types



The Cloud – Examples

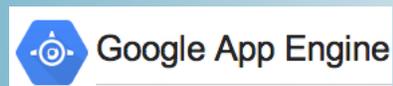
SaaS

CRM
ERP
HR
Email



PaaS

Web apps
Java & .NET
Databases



IaaS

Disk storage
Network
CPU



Lexis®
Applications &
Data Hosting

Contract Issues – Vendor Forms

- Click-Wrap Agreements
 - Non-negotiable
 - User agreements
- Limited Liability; No Indemnifications
- Non-Contract Protections
 - Due Diligence; Scope / Term; Economic Terms; Technology Protections; Insurance

Contract Issues – Service Levels (SLAs)

- Match Service Levels / Client Requirements
 - Sufficient Services / Over-payments
- Establish Measurement and Reporting Processes
 - KPIs
- Service Level Failures
 - Service Level Failure Credits
 - Root Cause Analysis / Remediation

Contract Issues – Transitions

- Startup - Conversion and Testing Processes
 - Cut-over from current system / Data use rates
- Operations
 - Interoperability, Data format and back-up
- Plan for exit
 - Term, Notice, Support time periods
 - Vendor commitments - Post-termination

Contract Issues – Liability

- Direct Damage Caps
 - Time period (12 months); start-up/fee issues
- Consequential Damage Exclusions
 - Data Breach – Remediation cost coverage
- Insurance
 - Vendor and Customer

Data – Access / Audit

- Service Level Requirements
 - Business Continuity Plans
- Location of Data
 - Limitations on transfer / Audit rights
- Litigation Holds
- Vendor Use of Data

Data - Jurisdiction

- Cloud Storage – Typically multiple jurisdictions
- Multiple laws governing data
 - “Doing Business” in multiple jurisdictions
 - Difference data privacy laws and regulations (EU)
- Due diligence - contract protections
 - Specified locations; consent to changes
 - Restrict subcontracting / particular locations

Data - Security

- Vendor Security Protections
 - Physical and electronic
 - Identification, Isolation and Removal of Data
- Legal Compliance
 - Personal Information (HIPPA, GLB)
- Response to Breach
 - Notification, remediation, remedies