Prospective readers considering the purchase of this book may wonder: “Who needs a book on contracting with cloud computing vendors? Aren't all cloud contracts basically commoditized, comprised of ‘boilerplate’ language? And surely no vendor would agree to make any changes to its standard form cloud agreements? It's all just futile, really.”

“Dear reader,” we would respond, “this book will be very useful if you are (or your client is) considering moving to the cloud.” While it is true that in comparison with the earliest one-sided contracts current cloud agreements have begun to (slowly) evolve to meet regulatory and legal environments, not all cloud agreements are created equal or adequately meet customers’ increasingly demanding legal and regulatory requirements. This is where lawyers and others can step in to help redress imbalances in so-called “standard” cloud agreements and create agreements that are more clearly expressed and better suited to the needs of cloud customers. Contrary to popular belief, sophisticated cloud vendors are often open to negotiation of their agreements, particularly as needed to comply with regulatory requirements or can offer alternatives that allow customers to lawfully use their services. Choosing the “right” cloud vendor is therefore a critical component of obtaining cloud services and due diligence is key. Moreover, as many businesses operate internationally, both cloud providers and users of cloud services increasingly have to consider the impact of laws from multiple jurisdictions on the provision and use of cloud services.

This book is intended to teach lawyers and others to understand cloud agreements, separating the “buzz” from the cloud. While it is accessible to non-experts, even seasoned technology law veterans will benefit from the authoritative guidance of our authors who are experts in their fields. We strive to offer our readers practical guidance, including “best practices,” to drafting and negotiating effective cloud computing agreements, taking into account the technological, business, and legal considerations of an organization’s use of cloud computing technologies. The book also explains how to differentiate the good from the bad vendors and how to recognize agreements that heavily favor the vendor. We endeavour to provide readers with practical information and approaches that will help lawyers and others create useful cloud computing agreements that meet their clients’ business and legal requirements.

Our first chapter offers a basic cloud technology overview to set the stage before considering the legal issues. In Chapter 2 we dive into a detailed discussion about negotiating the “must-have” representations and warranties, key carve-outs, and vendor cross-indemnities, with a special emphasis on current trends in limiting liability. Chapter 3 offers a detailed analysis of service levels in cloud agreements, with the intention of demystifying them and avoiding the “gotchas.” It also explains the differences between service level agreements and service level penalties, explains credits and penalties, exemptions and exceptions, and provides tips about negotiating service level agreements in public and private cloud.
environments. Chapters 4 and 5 deal with best practices for cloud privacy and security, including U.S. federal and state regulatory requirements, data breach disclosure rules, and other applicable standards.

Recognizing that certain industries require more specialized cloud agreements, Chapter 6 focuses on clouds for financial service providers (such as banks) and Chapter 7 on healthcare providers (such as hospitals), covering in detail the effective due diligence required to choose vendors in these areas, how to meet relevant regulatory requirements, and cross-border data issues.

Chapter 8 looks at what happens when things go wrong in a cloud arrangement, focussing on dispute resolution and litigation issues, including bankruptcy, litigation strategies, and the good and bad of arbitration clauses in cloud agreements. Chapters 9–11 focus on international aspects of cloud computing, looking at differing laws in Canada, Germany and the United Kingdom (including data protection) that impact both the providers of cloud services and the legal requirements of users in those jurisdictions.

While entering a cloud agreement may be as easy as one click, extricating oneself from a cloud services arrangement is never quite so simple. Chapter 12 focusses on negotiating the exit from a cloud contract and ensuring successful transition, whether to another provider or in-house. Topics covered include crafting appropriate transition clauses, ensuring adequate data migration and data destruction, “no-hostage” payment terms, and compliance with records retention requirements.

In Chapter 13 we include a very practical set of tips and best practices for effective cloud negotiations to better arm you to create “win-win” cloud agreements. Lawyers will appreciate guidance on managing client expectations while meeting their ethical and professional obligations, dealing with the difficult “scorched earth” client, disengaged clients, “sharp practices,” as well as mitigating contract errors and avoiding “over-lawyering.” Chapter 14 is aimed at lawyers and their legal ethics and professional responsibilities while using cloud services.

Lastly and thinking outside of the law, we conclude in Chapter 15 with a timely look at how cyberliability insurance can be used to mitigate certain risks associated with the use of cloud services, including why and when such insurance should be used, understanding potential coverage restrictions, determining how much coverage should be sought, and how to choose the “right” cyberliability policy.

We would like to thank Ted Claypoole, the past chair of the Business Law Section Cyber-space Law Committee, for originally green-lighting (and encouraging) this book, as well as our current Committee chair, Cheryl Balough, for her ongoing support. We also thank the members of the Committee who contributed the chapters that constitute the book, and others who contributed their time and effort to this project.

Lisa R. Lifshitz
John A. Rothchild
Co-editors