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CRE/FM Outsourcing in a Technology Driven Environment:

Managing Complexity from a Legal and Operational Viewpoint

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Presenters



Rakesh Kishan
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Rakesh Kishan is Managing Principal with Trascent. He leads Trascent's European and American operations and advises leading blue-chip companies on global, enterprise-wide corporate real estate & facilities management (CRE/FM) initiatives to strengthen organizational effectiveness, create greater value to customers, and increase efficiency and innovation in FM through best practices. In his current role, Mr. Kishan advises major corporations in virtually all aspects of the entire outsourcing life-cycle from structuring global FM outsourcing initiatives, to optimizing governance structures and processes for sustained realized improvements and implementing interventions to renew troubled relationships. In particular, he pioneers innovative approaches to structuring contract pricing to foster continued supplier innovation across each stage of the contract lifespan.



Kevin Rang
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Kevin Rang is a partner in the Technology Transactions practice in Chicago. Kevin concentrates on outsourcing and information technology transactions. He represents clients in transactions involving robotic process automation (RPA), artificial intelligence (AI), software licensing, cloud, "as a service" offerings and GPOs; the outsourcing of business process functions, including facilities management, transactional real estate services, food services, environmental services, supply chain, employee benefits, revenue cycle, logistics and accounts payable; and the outsourcing of technology functions, including network management, infrastructure, help desk, call center, telecommunications and application development and maintenance.

RE and FM Market is a Growing Sector

- CAGR nearly 10% over last 7 years
- Focus on 3 Primary Service Categories:
 - Real Estate (RE) Services
 - Facilities Management (FM) Services
 - Project Management (PM) Services
- Market Consolidation
 - M&A
 - Outside Industry Talent
 - Geographic and Capability Reach
 - Limited client options
- Selective Supplier Market, Margin Focus

Capital Inflows

- 2013: SPIE (France) acquired Hochtief FM (Germany)
- 2013: Cafely/GDF Suez (France) acquired Balfour Beatty (UK)
- 2013: CBRE (US) acquired Norland (UK)
- 2014: Bilfinger (Germany) acquired GVA (UK), Europe (UK)
- 2014: DTZ (US) acquired by TPG (Australia) and merged with Cassidy Turley (US)
- 2014: ISS (Denmark) went IPO
- 2014: Dalkia (France) Spin off to EDF (France) and Veolia (France)
- 2014: MITIE (UK) acquired Procius (UK)
- 2015: JCI acquired by CBRE, Cushman & Wakefield acquired by DTZ

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Market Maturity Varies

Gen 2/3 Gen 1/2 Gen 1

Market Maturity High Medium Low

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Key Characteristics

- Labor Enabled Services, Delivered On-Site
 - Fractional Use
 - Gen 1 people - transfer issues
 - Next generation – exit liabilities (especially in ARD countries)
- Data constrained
- Limited definitions
- Limited use of performance metrics and SLA's

Client Requirements

- Innovation
- Shift to Quality
- Brand image as provider of progressive workplace
- Technology enablement of services
- Geography specific performance
- Compliance and risk

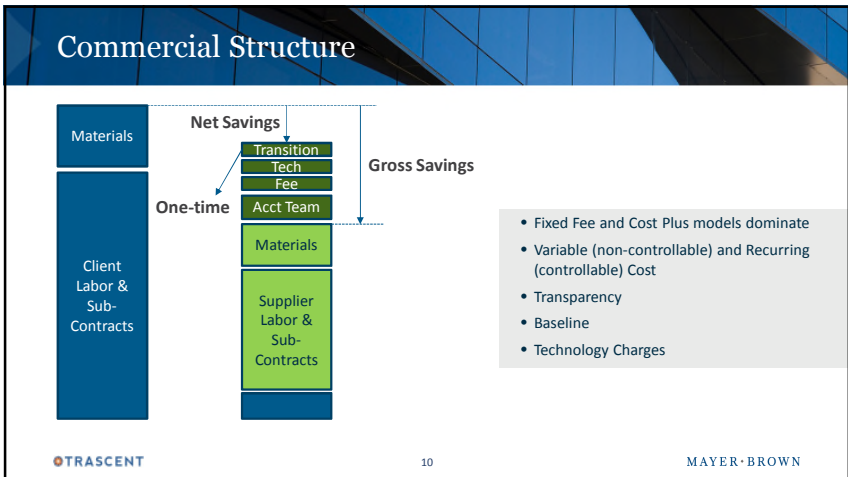
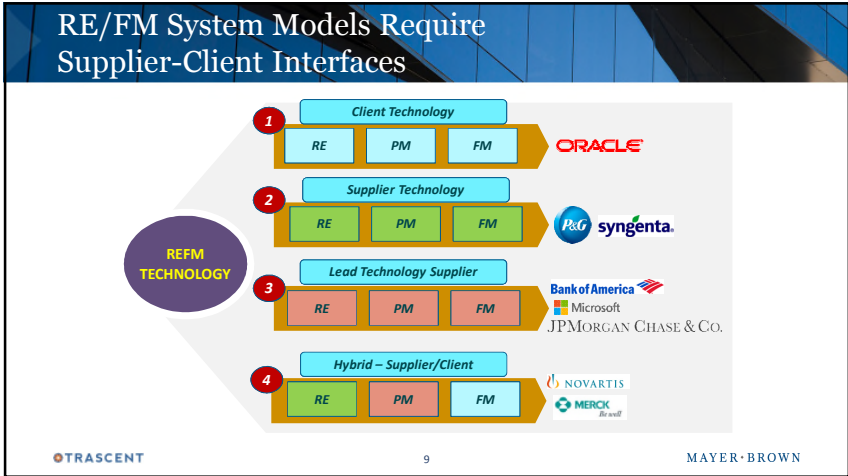
How Will Technology Transform CRE

- IoT Enabled Smart Workplaces that engage employees
- Workplace experience customized to the individual
- User centric, anticipatory services
- Predictive analytics and machine learning based solutions
- Mobile based access and solutions
- More flexible and adaptive footprint
- Greater integration of services and social networking

Tech Companies Are Leading The Way....

- Workplace Design
 - Activity Based
 - New concepts – libraries, lounges, etc. (Salesforce, Amazon, LinkedIn WeWork, etc.)
 - Purpose & culture (Airbnb, LinkedIn, etc.)
- Monitoring Usage to Adapt
 - Facial recognition (NVIDIA)
 - Tracking & interactive usage (Deloitte, WeWork)
 - Work patterns
- Concierge & Amenity Services (that save time)
 - Enhance lifestyle
 - Services afforded by the wealthy – housing, pet adoption, etc.
 - Campuses becoming villages offering life-style and amenities



...But use 25% Less SF/Employee





XaaS

- Overview of RE and FM Market Trends
- Client Requirements and Issues
- New types of Real Estate Service offerings
 - RPA
 - Cloud based services
 - AI
- Need to Understand HOW services are being delivered
- Need to understand WHAT is being used to provide services
- Need to understand SCOPE of rights customer is receiving to Data and Services
- Need to understand Exit rights

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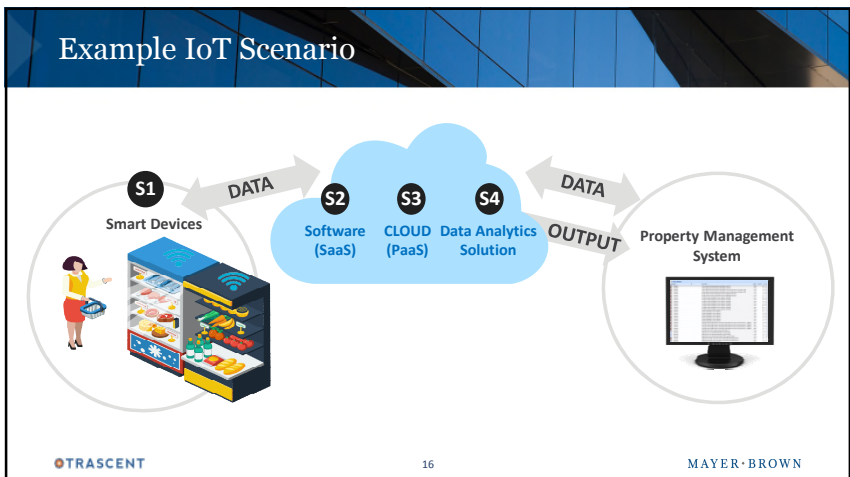


Data Issues and Compliance Obligations



Data Issues and Compliance Obligations

- The GDPR Revolution – global not regional concerns
- High-risk processing, (e.g. facial recognition technologies)
- GDPR increases fines for non-compliance to focus attention on compliance – maximum fine 4% of worldwide revenues of the undertaking
- Negotiation of arrangements between data controllers and data processors – a legal and technical negotiation



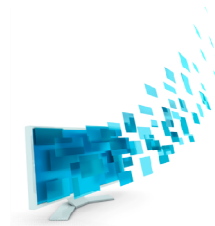
IoT Issue: Contracting Challenges with New Suppliers

- IoT Reliance on Open Source Licenses
 - If Target becomes subject to these licenses, is Target obligated to disclose Target IP to Open Source community?
 - Can the Supplier identify the Open Source in its supply chain?
 - Rep and warrant as to Open Source
- “As-Is” Contract Terms
 - One-sided, supplier-oriented
 - Subject to unilateral change at an URL
- Interoperability / “Walled Gardens”



IoT Issue: Technology Currency Challenges

- Difficulties in patching/updating
- Related integration problems
- Allocate responsibility for maintenance and updates
- End-of-life issues
 - How long will devices be supported?
 - Deprecation/sunset policies
 - Notice period before support ends



IoT Issue: Increased Security Concerns

- IoT device manufacturers may not prioritize security
- Standardized IoT devices = increased risk of breach
- Increased physical access = increased vulnerabilities
- Highly networked = more openings to your network
- Example:
 - DDOS attack by “an army of IoT devices protected only by factory default passwords.”



IoT Issue: New Potential Liability/Regulatory Oversight Concerns

- Risks of harm to a person or property (e.g., smart floor cleaners, car charging)
- Additional data from IoT sensors may increase discovery obligations (and data available to plaintiffs)
- Increased liability for product defects or other safety problems, because more harms are arguably foreseeable
- Commentators have noted that ease of availability of compliance and risk data may increase risk of more regulatory oversight
- Regulators may demand data relating to regulatory compliance issues (e.g., work site safety compliance)





Facilities & Transactional Real Estate Services

A photograph of a modern building with a glass facade, viewed from a low angle. The sky is clear and blue. The text "Facilities & Transactional Real Estate Services" is overlaid in white on a dark blue rectangular background.

- Pricing models and impact on contract terms
- Approach to liability and indemnification
- Ownership of materials and IP
- Exit protections

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Technology Issues in Real Estate Acquisitions and Dispositions

Why Are Technology Issues Important in Real Estate Acquisitions and Dispositions?

- Technology and related contracts should not be an afterthought
 - Technology is important to how a smart building operates
 - Continued access to technology impacts valuation of the building
 - For the seller, it may be difficult to separate technology in a smart building from seller's wider operations
 - For the buyer, it may be difficult to replace technology in a smart building or to integrate that smart building into buyer's wider operations



What Can Sellers do to Maximize Value of Smart Building?

- Present a smart building that the buyer is confident it understands and can successfully use and integrate
 1. Analyze the building's capabilities and needs from the operational and legal perspectives
 2. Standardize favorable disposition-ready contract terms with vendors
 - Maintain a database of agreements
 3. Suspend new technology projects

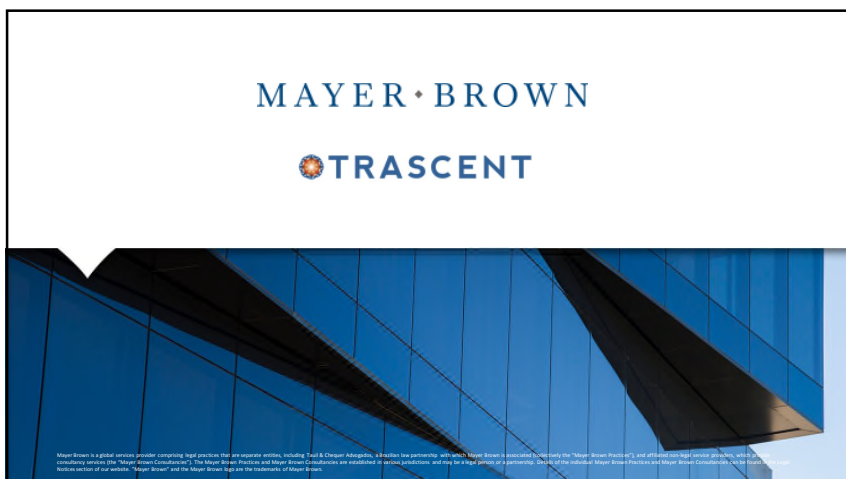
What Can Buyers do in Advance to Use and Integrate a Smart Building?

1. Ensure there is focused technology due diligence done during acquisition process
2. Prepare a form Transition Services Agreement
3. Prepare a thorough integration plan
4. Standardize favorable acquisition-ready contract terms with vendors (i.e., expansion rights)
 - Maintain a database of agreements




Questions?

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