# The Inevitable Looms: The Anatomy of a Security Breach

**Maximillian J. Bodoin**

*Holland & Knight LLP, Partner*

*Boston, Massachusetts*

# Roadmap

- Introduction of new risks
- Obligation to protect against risks
- Proactive and reactive risk mitigation

# Introduction of New Risks

- New sources and uses of data
- Significant added value
- Significant potential risk

# Obligation to Protect Against Risks

- Statutory/regulatory framework
- Contractual obligations
- Reputational considerations

# Obligation: Statutory Framework

- Various statutory obligations:
  - Security breach notification laws
  - GDPR and other trends
  - Preventative InfoSec laws
  - Video Privacy Protection Act
  - Children's Online Privacy Protection Act
- No one ever steps in the same river twice

# Security Breach Notification Laws: Then and Now

| Then | Now | |
|---|---|---|
| **Name plus**:<br>• Social Security number<br>• Driver's license number or State ID<br>• Financial account number, credit or debit card number | **Name plus**:<br>• Social Security number<br>• Driver's license number or state ID<br>• Passport number<br>• Checking account number<br>• Savings account number<br>• Credit card number<br>• Debit card number<br>• PIN<br>• Digital signatures<br>• Any other number that allows access to finaical resources<br>• Biometric data<br>• Fingerprints | **If access to financial account or resources:**<br>• Email name or address<br>• Internet account number<br>• Internet ID name<br>• Parent's legal surname<br>• Passwords |

# Obligation: Statutory Framework

- The EU General Data Protection Regulation
  - Purpose
  - Territorial Scope
- California Consumer Privacy Act of 2018
  - Similarities to GDPR
- U.S. law trending toward greater privacy protections

# Obligation: Contract

- Contractual obligations regarding data collection and usage
- Geolocation data – “brightest flashlight” app

# Obligation: Reputational Harm

- Reputational harm can be as (or more) severe than statutory or contractual harm:
  - Undermine confidence
  - Impact adoption
  - Difficult to quantify

# Mitigating Risk: Proactive Efforts

- Information security policies and procedures
- Internal risk assessments
- Independent third party information security audits
- Training
- Insurance

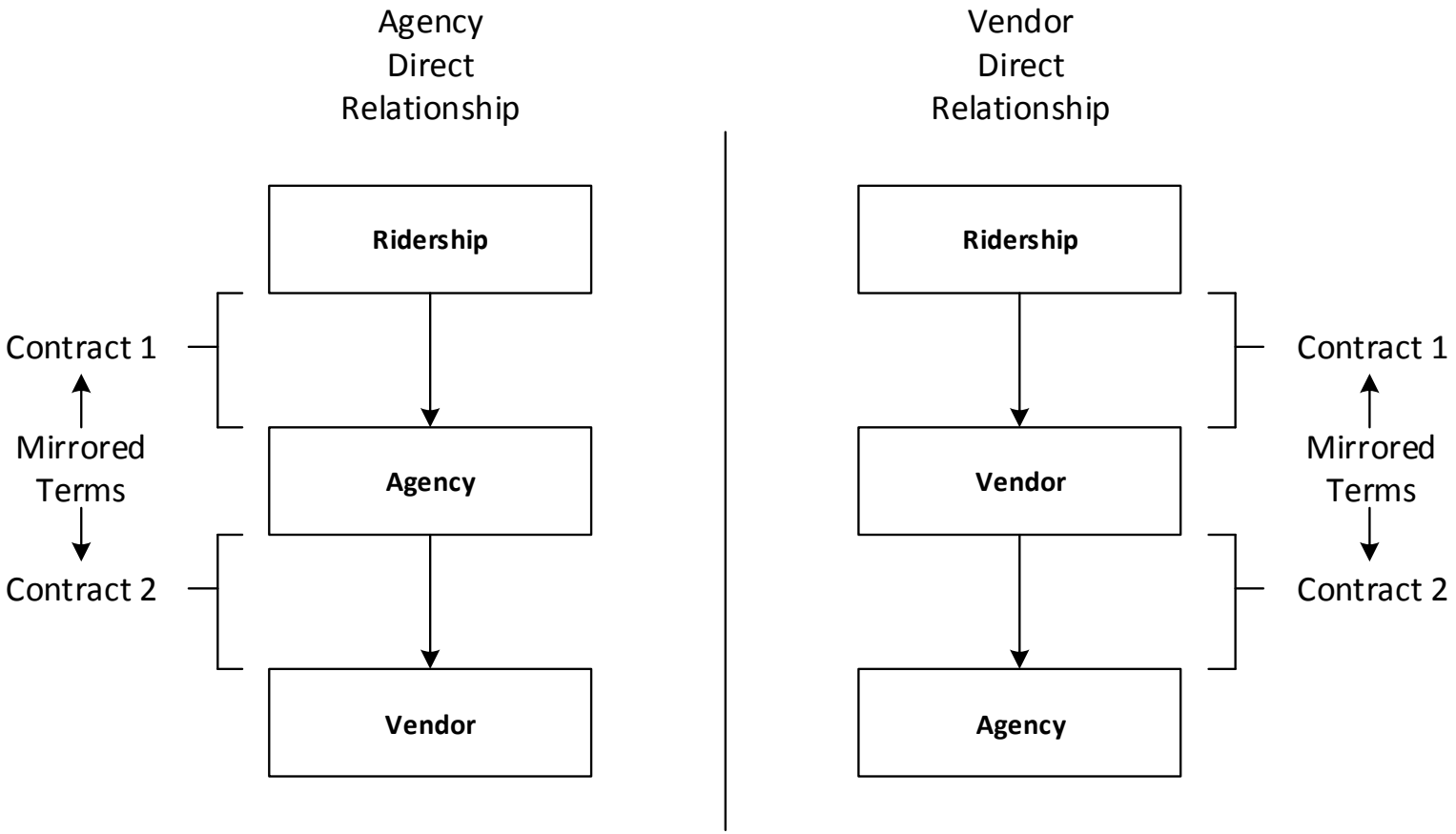
# Mitigating Risk: Vendor Management

- Vendor management begins before the procurement process:
  - Project due diligence
- Vendor management continues during the procurement process:
  - Privacy by design
  - Security by design
  - Procurement due diligence

# Mitigating Risk: Vendor Contract Considerations

- Compliance with proactive efforts
- Data collection and handling practices
- Securing data rights and data ownership
- Data breach response obligations
- Allocation of financial risk
- Transition services
- Subcontracting

# Mitigating Risk: Downstream Contract Compliance



# Mitigating Risk: Incident Response Plan

- Preparation
  - Written incident response plan
  - Response team: key internal members, legal counsel, third party vendors
- Detection and Analysis
  - Investigation
- Contamination, Eradication, and Recovery
  - Mitigation, insurance, public relations, law enforcement
- Post-Incident Activity
  - Risk assessments and changes to business practices
- NIST Computer Security Incident Handling Guide (Special Publication 800-61 Revision 2)

# Mitigating Risk: NIST Incident Response Lifecycle

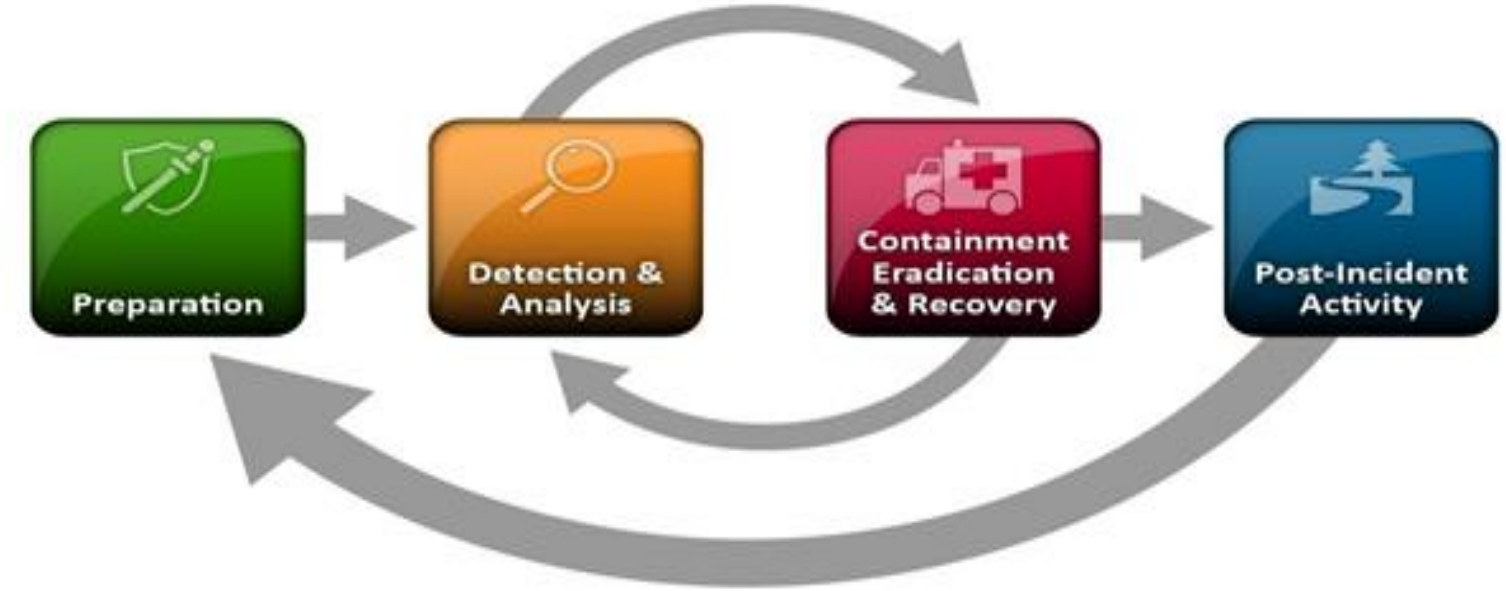



Figure 1 - Incident Response Lifecycle

*Source: NIST 800-61 Revision 2*

# Questions

Maximillian Bodoin | Holland & Knight

Max.Bodoin@hklaw.com

617.573.5819