

**Baker
McKenzie.**

Cloud Survey 2019





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SURVEY BACKGROUND

Top Respondents



Respondents by Geography

- Global
(i.e., no primary market)
- North America
- EMEA
- APAC
- LatAM

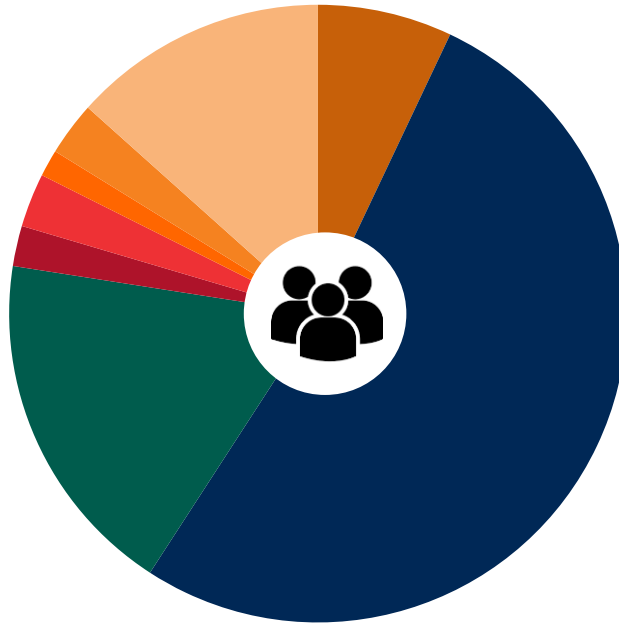


Primary Geographic Market where Respondent Company Operates

Global coverage except underrepresented in Latin America

Respondents by Role

- C-Level
- Legal
- Procurement
- IT
- Sales
- Marketing
- Information Security
- Other

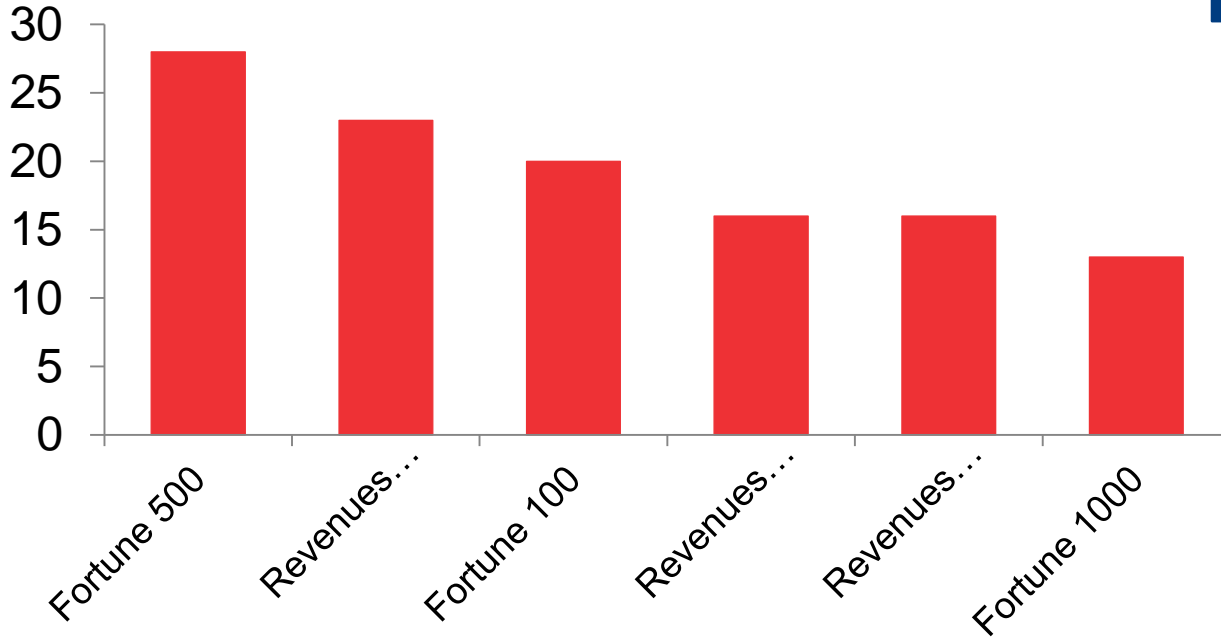


Respondents are from our clients and partner organizations such as the International Association for Contract & Commercial Management

Just over half of our respondents are legal professionals

About 20% of our respondents are procurement professionals

Respondents by Size



Representation by larger organizations

Slightly more representation of smaller organizations than past surveys – could be as a result of a trend of greater cloud pervasiveness



Key Trends

Everything Cloud



Continued Convergence

The trend of our respondents being both customers and provider of cloud services increased

Data Security Focus

Our respondents indicated a renewed focus on data security (data security has always been a top concern, but had dipped as the top concern in our last survey)

Contracting Terms Steady

Compared to the notable year over year variations in contracting terms responses, our respondents provided responses consistent with our last survey on issues such as form of agreement and limitation on liability

Data Reigns Supreme



Residency: Increased focus on data residency

Personal Data: Constantly evolving data privacy landscape

Categories of Data: Increased focus on data categories and impact on storage in the cloud

Allocation of Data Rights: Contract terms addressing allocation of data rights between the parties



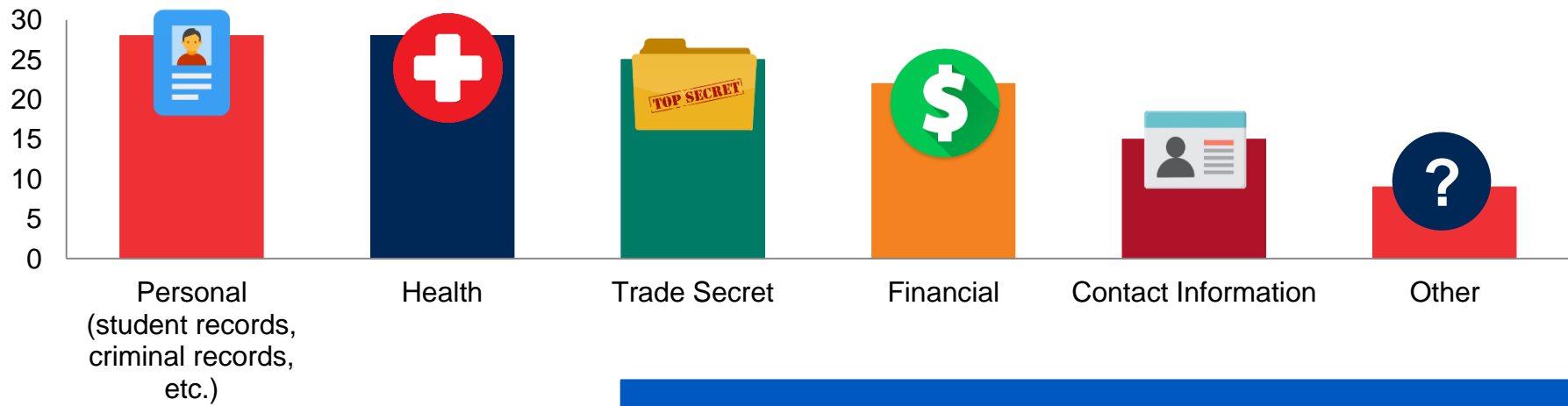
Data

Restricted Data



“We follow processing instructions, which may include restriction on certain types of data”

Categories of data restricted in the cloud



Examples of other include intellectual property and certain client data

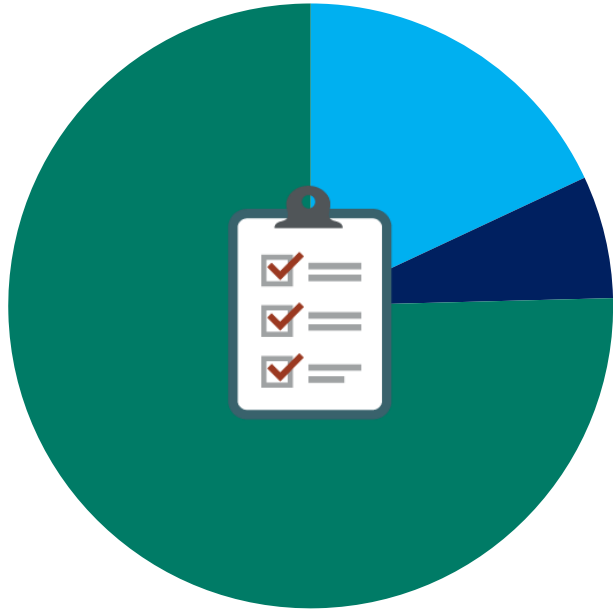
Rights in Company Data

Express acknowledgement that customer maintains rights in customer data?

- Generally yes
- Generally no
- case-by-case



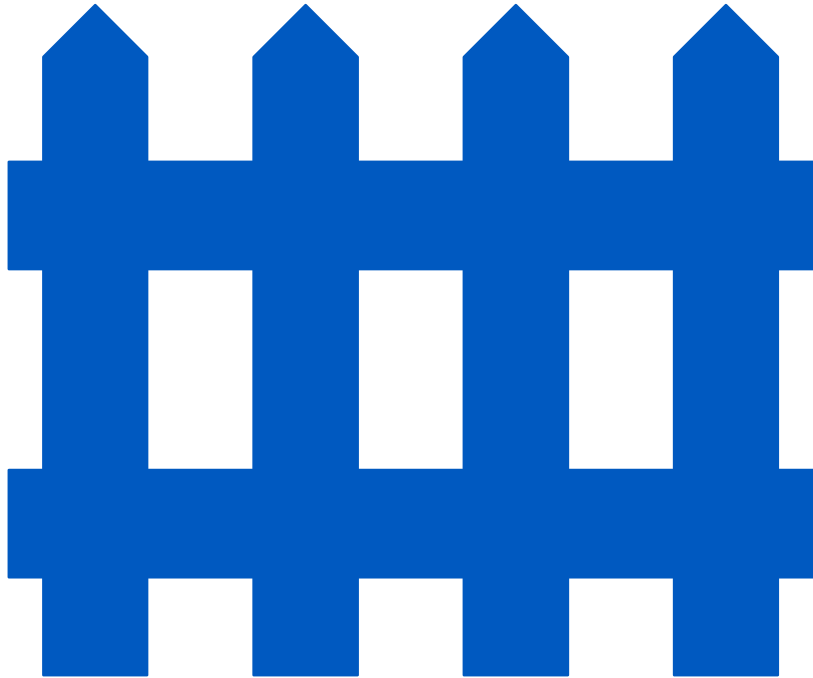
Rights in Company Data



Permit service provider to use data for its own purposes?

- Yes, but only anonymized
- Yes, but limited to service provider internal purposes
- No, may only use data to perform

Data Residency



Restrictions on transfer of your company data out of specific jurisdictions or regions?



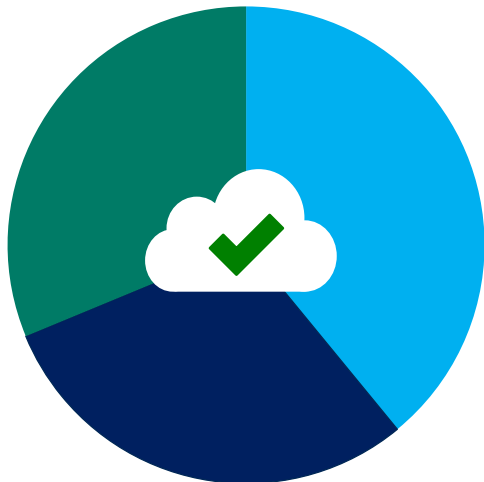
■ Yes

■ No

Data Residency



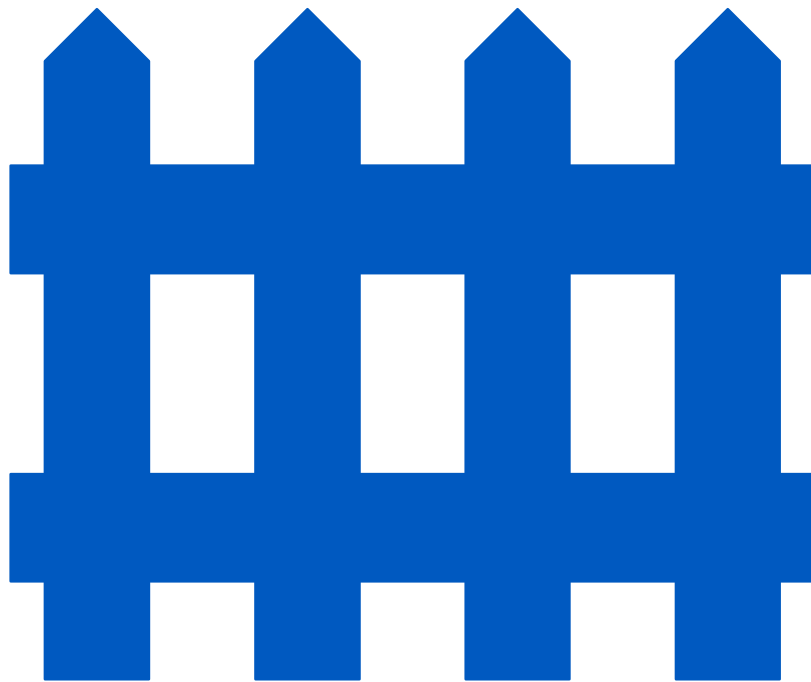
Data residency laws required a change to cloud usage/operations?



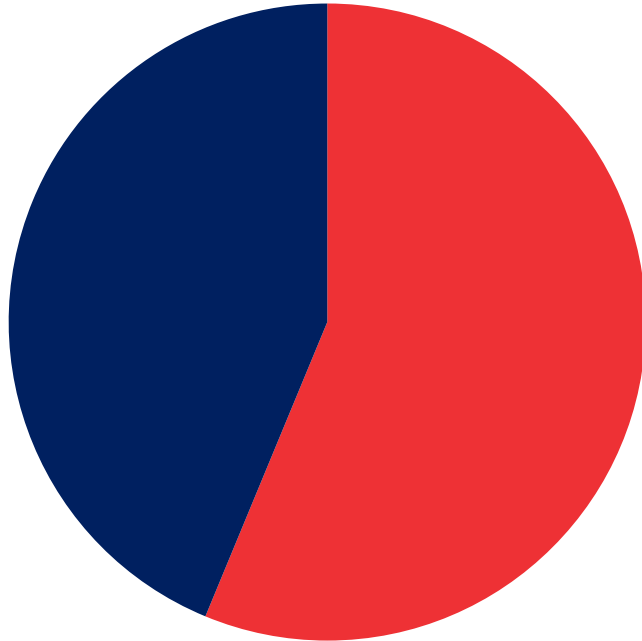
■ Yes

■ No

■ Under
Consideration



Data Subject Requests



■ Customer
Primarily
Responsible

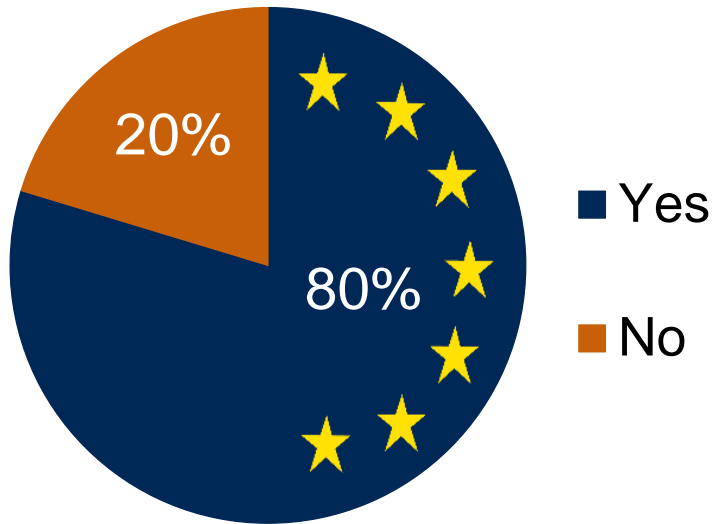
■ Service Provider
Primarily
Responsible

Just over half of our respondents indicated customer is primarily responsible for the cost of assisting with data subject rights requests.

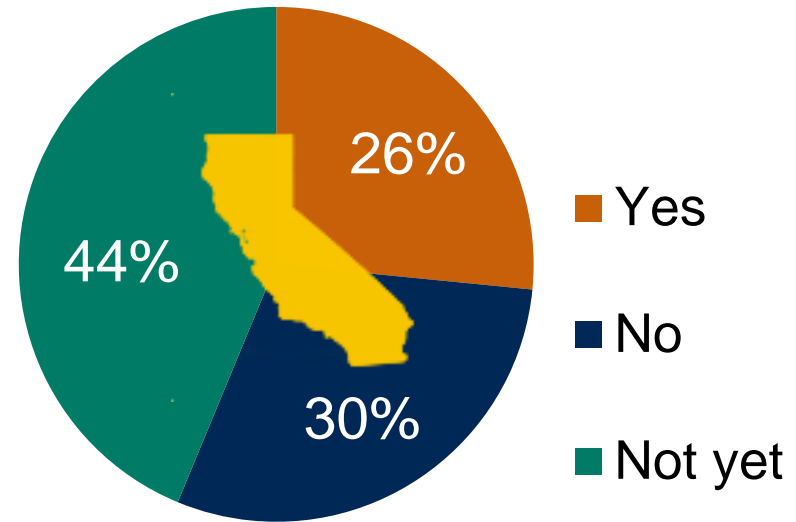
GDPR and CCPA



Amended cloud agreements as a result of GDPR?



Updated agreements for CCPA?






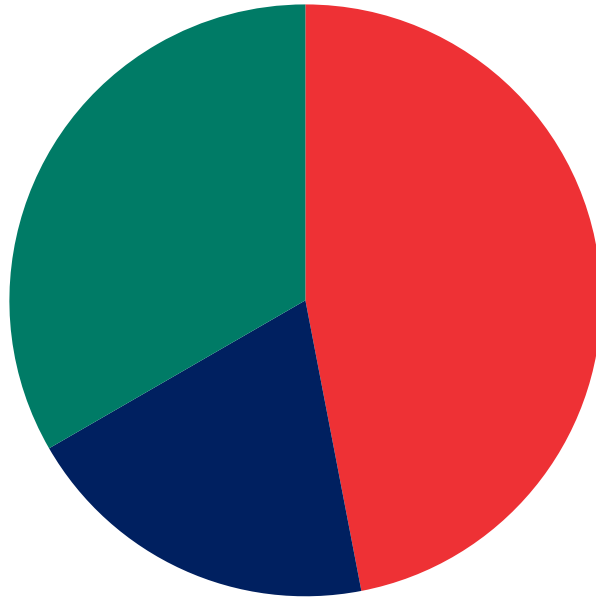
Cloud Contracting Terms

Provider/Customer

■ Customer

■ Provider

■ Both

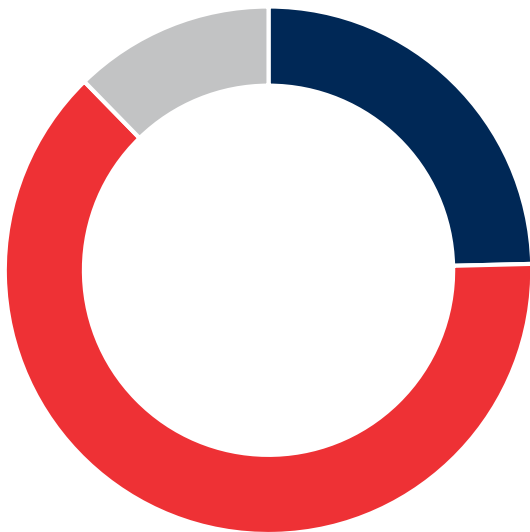


A third of respondents reported being both customers and providers of cloud services – companies more and more are both sourcing and selling the cloud

Across both customers and providers tax planning was only taken into account for about half of cloud transactions

Form of Agreement

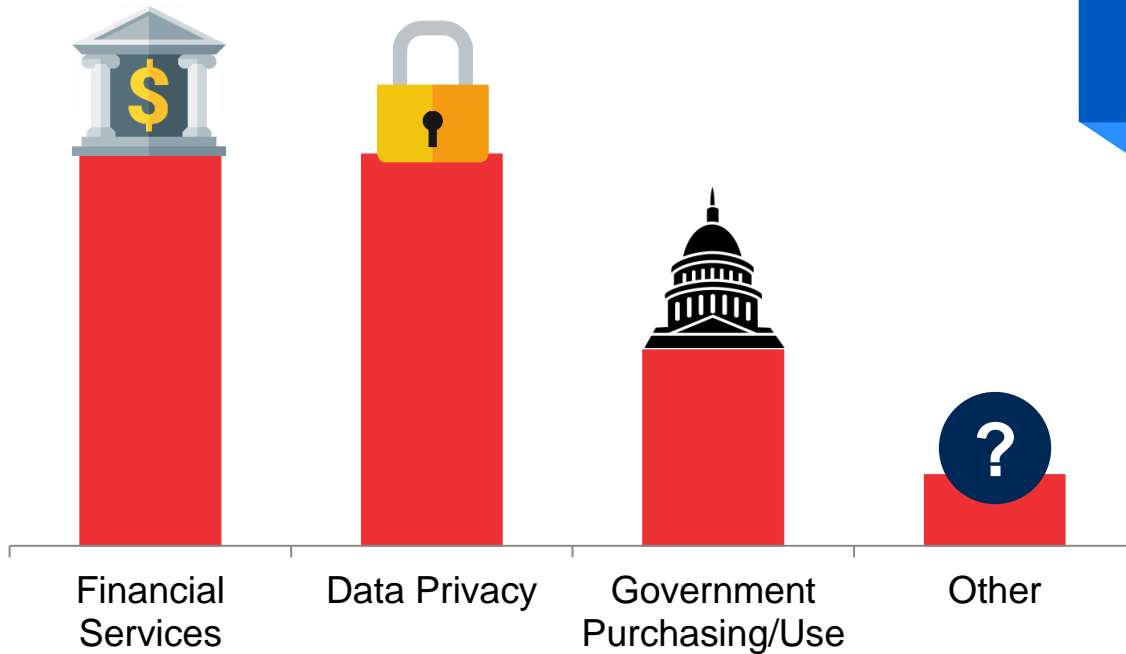
- Primarily service provider's
- Primarily service provider's with some customer terms
- Primarily on customer's



Which response best describes the form of agreement used for your cloud agreements?

2/3 of respondents indicated that where customer terms included they pertained in part to data protection

Regulatory Restrictions

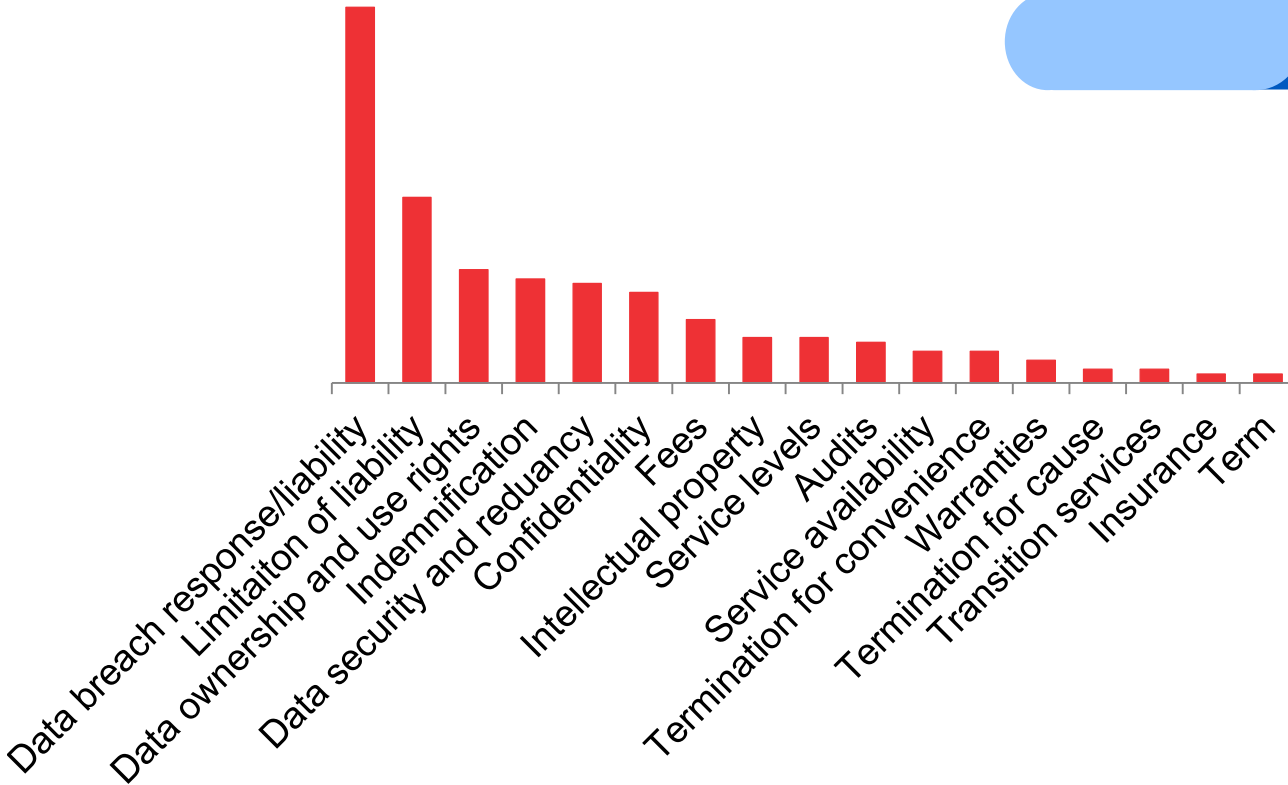


What restrictions does your company manage?

Other responses included professional responsibility restrictions and limited license rights to data being stored in the cloud

Most Negotiated

Cloud Negotiations

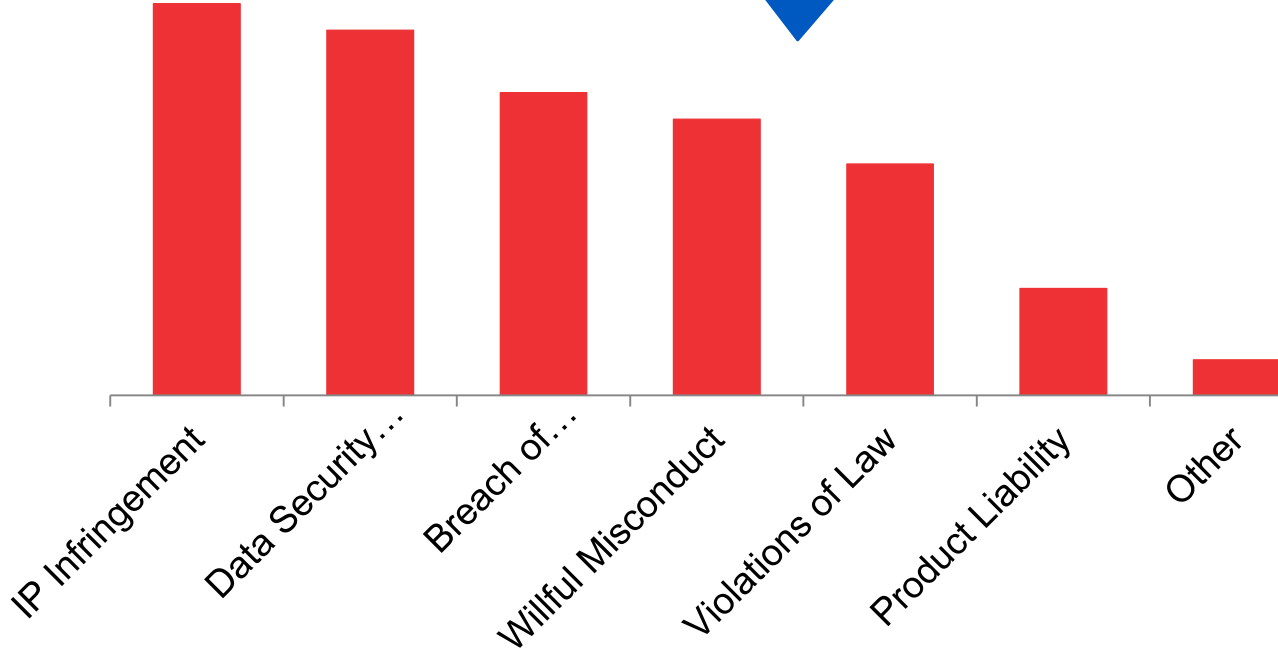


Please rank the issues most likely to be negotiated from most to least

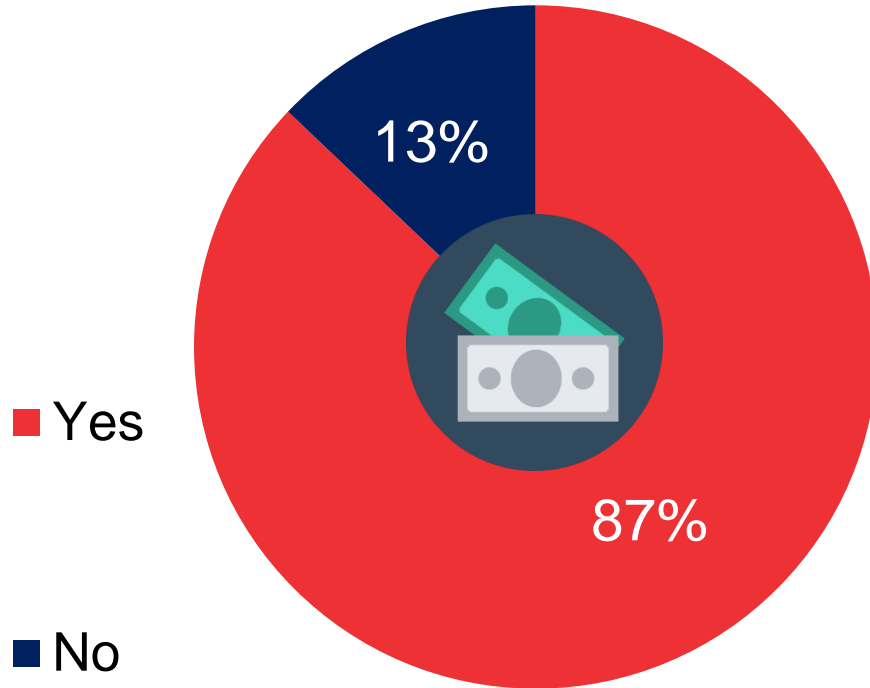
Fees being ranked lower likely result of number of legal respondents

Service Provider Indemnification

We asked respondents to check all of the issues where the service provider indemnifies customers



Limitation on Liability



IACCM Survey indicated liability caps tend to be preceding 12 months fees with higher caps for data security incidents, agree?

Those that disagreed indicated other multiple of fees (e.g., 24 months) or fixed amounts (e.g., USD\$2M)

Limitation on Liability Detail



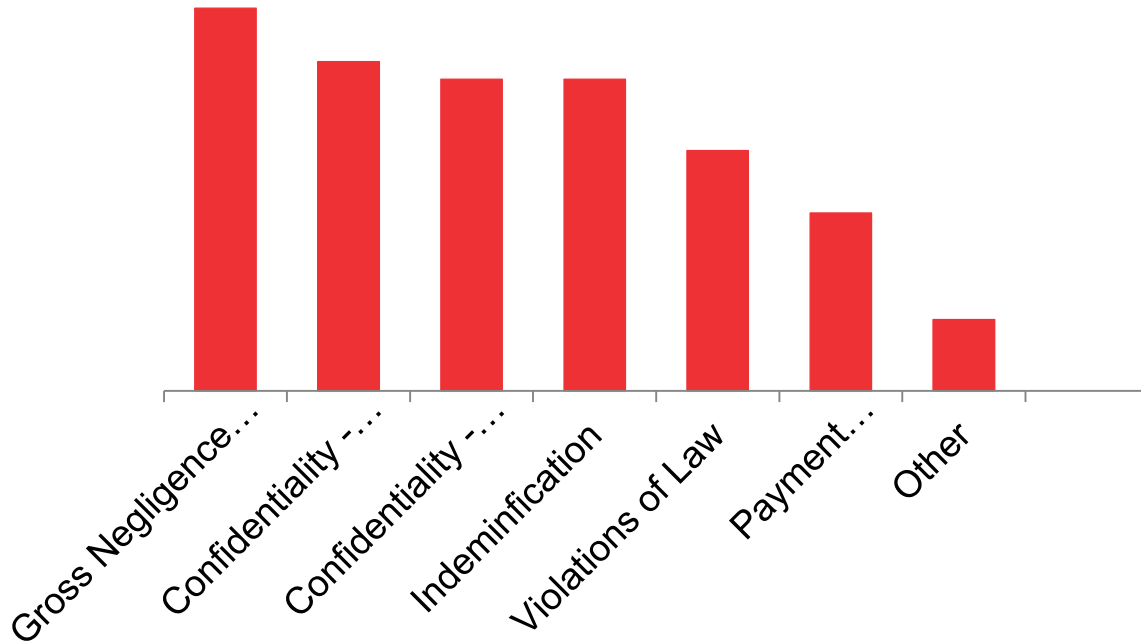
Data security incident caps
range 2-5X or fixed amounts
USD\$1-10M



Also higher/uncapped: gross
negligence/willful misconduct;
IP; confidentiality; indemnity



Consequential Damages



85% of respondents indicated that consequential damages are generally excluded

The chart indicates a ranking of typical exclusions from the disclaimer (in some instances subject to a higher cap)

Cyber Insurance



2/3 of respondents carry
cyber insurance

1/3 of respondents
require service providers
carry cyber insurance



Horizon Scanning

On the Horizon



20% of respondents have explicit data monetization business; 20% considering

Data was discussed in more than half of M&A and a top 10 issue in 20% of M&A

2/3 respondents have data/data ethics governance

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