

More negotiation powers for Cloud Customers



When organizations want to use Cloud services from providers, they often find themselves having technical discussions with the Cloud provider, followed by the service levels and pricing discussion. When it comes to negotiations however, Cloud customers should be aware that there are more issues that

have to be considered. Did you, for example, ever thought about the conditions when you want to switch from your provider and port your data to another environment? Not only the conditions by *entering* into a Cloud Contract are essential, but also try to plan ahead towards the point where you want to *end* the contract with your current Cloud Service Provider and make that a part of negotiations as well.

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Cloud first orientation

With traditional licensing of business software tools diminishing, it is only logical that organizations are looking at Cloud solutions as alternatives. Cloud solutions may be cheaper, easy to subscribe or unsubscribe to and there are a lot of opportunities to choose from providers that are offering the same at different pricing or more interesting conditions. More organizations have, to that end, integrated a 'Cloud First' Strategy. With this strategy, buyers will look at cloud solutions first before they consider buying traditional licensed (boxed) software. The 'Cloud first' strategy aims to have less self-owned software, hired or self-owned datacenters and the need to have technical people employed to manage the technical infrastructure within these datacenters. So far, no issues there. It's only healthy to consider technologies that brings a promise of flexibility as well.

Entering into a Cloud Contract

Whenever you start to look around for a Cloud Service Provider that can handle your business needs following your 'Cloud first' strategy, you often look at the services these Providers bring to the table and how they line up best with your business requirements. After that, the trustworthiness and technical solutions the Provider offers are the next essential requirements. You want the best for your company and you want to make

absolutely sure that the Cloud service provider is capable of delivering Cloud services that are not only safe, but also guarantee that there are no continuity issues.

Entering into a Cloud Contract is essentially shaping the framework that connects to your business needs, safety, availability, continuity and pricing of the services offered. When you start to negotiate the contract and service level agreements for these services, you should consider possible and undesirable vendor lock-in situations. With cloud solutions a vendor lock-in situation can easily occur.

Vendor Lock-in

Vendor Lock-In situations mostly occur in environments where there is a specific demand for a 'niche' service. Think about a Cloud Provider that offers a standard Cloud service that, in basis, fulfils your business needs but has many additional requirements that need to be implemented to fully match the business demands. In this case the Cloud provider tailors the standard solution to your business needs. This may have an impact on the business data that is processed by the Cloud service. In these cases there may be a higher probability that your business data cannot be ported to another environment if, at some point, you want to switch from provider. The avoidance of getting into vendor lock-in situations should be part of any Cloud service contract. That is where the negotiating power of Cloud customers begins. This situation does not only apply to niche services but is also still something every organization should consider when getting into any contractual agreement with a Cloud Service Provider.

Data storage standards and locations

Often a distinction is made between business data and personal data. In some environments this may be true, but most of the time these data are mixed. With that in mind, it is important to know where your business data will be stored and under what jurisdiction your provider provides its services. Within the European Union, the GDPR (General Data Protection Regulation) applies when personal data is into play, in the USA the GDPR does not apply and with current issues around the trans-atlantic transfers of data, this matter is far from solved. And let's not even mention China in protected personal data matters. For more in-depth information on this subject please read our articles; "Safe-Harbor-exit" and "Cloud Act zet verhoudingen op scherp".

These (and more) articles can be downloaded from our website www.bpdelivery.com

Too often the case is that Cloud Service Customers have to accept the delivery conditions from their Cloud Service Providers simply based on the location(s) from where the Cloud services are being offered and (local) regulations that apply. If that is the case, you should be looking for more certainty that your data is processed in a way that switching from any provider and (safe and secure) portability of your business data is assured in the best way possible.

SWIPO

SWIPO, an abbreviation of **SW**itching and **PO**rting, is a Belgian based Non-profit association that provides guidance with Codes of Conduct to implement article 6 of the

"Free Flow of Non-Personal Data" regulation (FFOD, Regulation (EU) 2018/1807)¹. Where the GDPR protects personal data, this regulation aims to protect business data and aims to avoid vendor lock-in situations.

SWIPO has been an industry led initiative, supported and facilitated by the European Commission where Cloud Service Providers and Cloud Service Customers jointly developed Codes of Conduct for Infrastructure and Software as a Service (IaaS and SaaS). For over two years these stakeholders have been working on the completion of these Codes of Conduct to provide more insight for Cloud Service Customers on how their provider should handle their business data when you as a customer want to switch from Cloud Provider. These Codes are already available.

For Cloud Service Providers the Codes can be helpful to get guidance on how to set up internal and technical processes to manage the porting of business data from their environment to another.

To achieve this, the Cloud Service provider can declare any of their services adherent to the SWIPO Code of Conduct applicable to the service(s) they offer to the market. With this declaration, the provider needs to fill in a transparency document. In this transparency document the provider declares how and under what kind of conditions they assure the process of secure Switching and Porting of their Customers business data. And if the Cloud Provider is not following its own procedures as stated in their own transparency statement, the Cloud customer can file a formal complaint about porting issues with their provider at SWIPO. SWIPO will then investigate the claim supported by an independent team of experts. Customer organizations and provider organizations are very welcome as members. For Customer organizations membership is even free of charge. More on SWIPO can be found here: www.swipo.eu

Negotiation Power

With the emergence of the SWIPO Codes of Conduct, implementing European Regulation, the Cloud Service Customers have an additional instrument to ensure that they can avoid undesirable vendor lock-in situations. Now they are in a position where they can demand that the services they use from Cloud Service Providers are adherent to the SWIPO Codes of Conduct and that the Free Flow on Non-Personal Data regulation is implemented. With the transparency statement from the provider that comes along with adherence, there is even more insight for the customer on how their business data will be ported to any other environment. This is real negotiation power that not only helps Cloud Customers to gain more insight in the Cloud Services market, but also provides a clear path if they wish to switch from one Service Provider to another and how their important and sensitive business data is being ported safely during that process.

Conclusion

For Cloud Service Customers it is very helpful to have more assurances to avoid undesirable vendor lock-in situations. Any organization may negotiate any contractual term but having a more formal organization and tools helping them to achieve that, is

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32018R1807>

even a better deal. For Cloud providers, implementing these Codes will be helpful in building internal processes around their porting strategy and exit clauses in contracts.

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