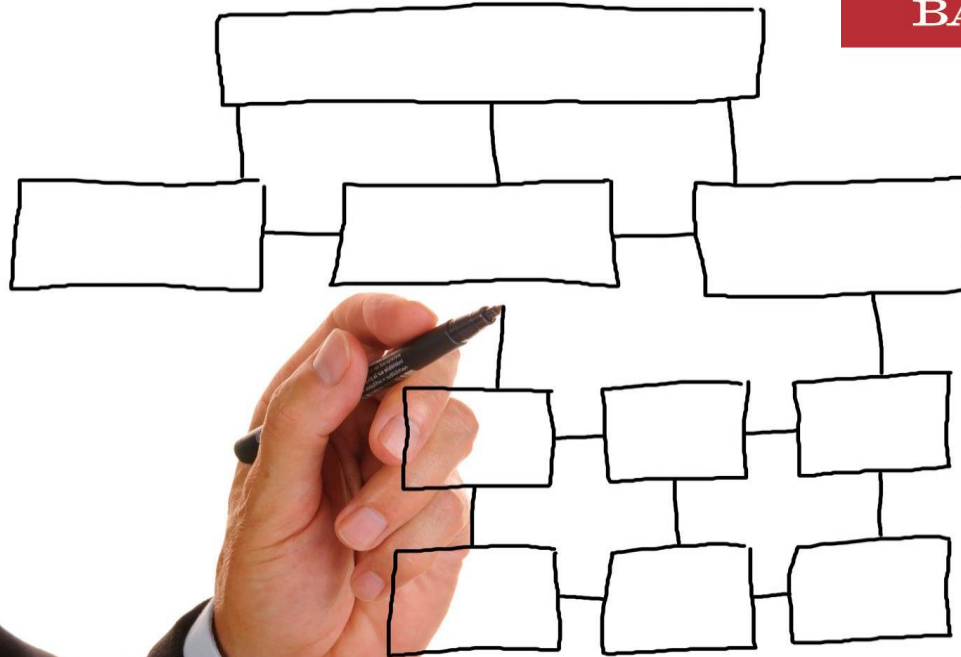


NEGOTIATING FOR CLOUD SERVICES





METHODOLOGY

QUESTIONNAIRE

Survey of **more than 50 questions** and sub-questions on cloud computing
Multiple choice and short response questions
Asked respondents to complete questions based on role (buyer or provider)
Keeping the survey open so more respondents may participate

Circulated online to:

Firm clients

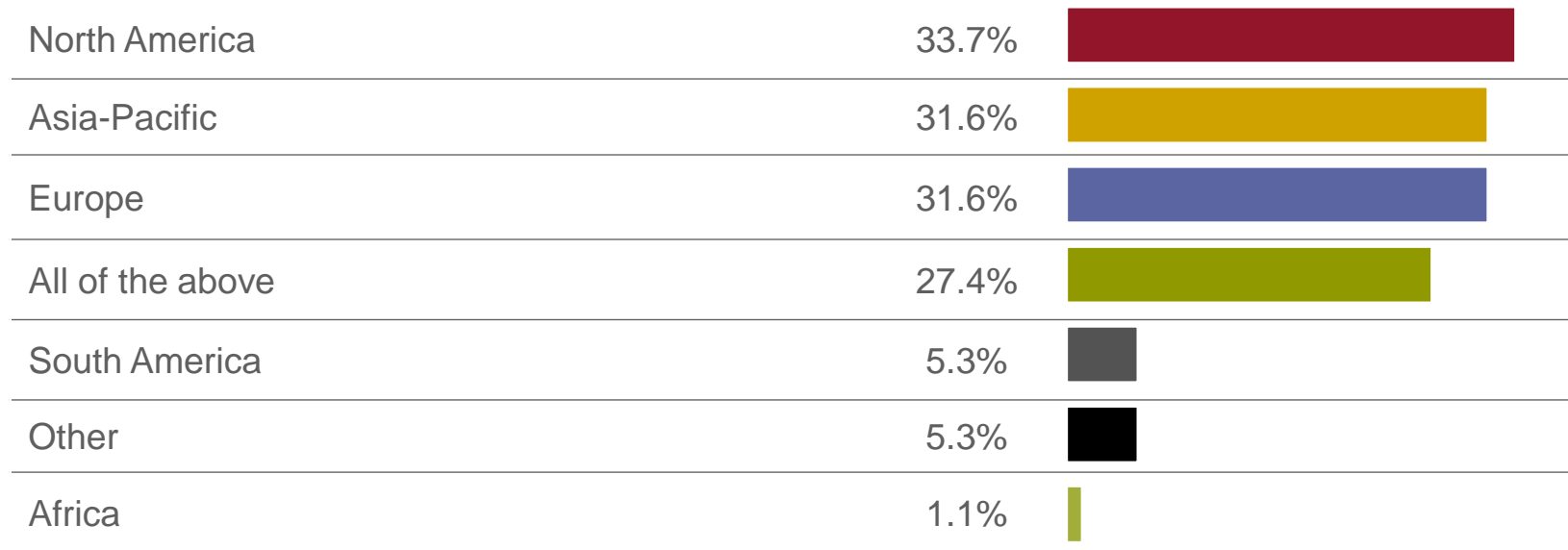
Partner Organizations

IT associations



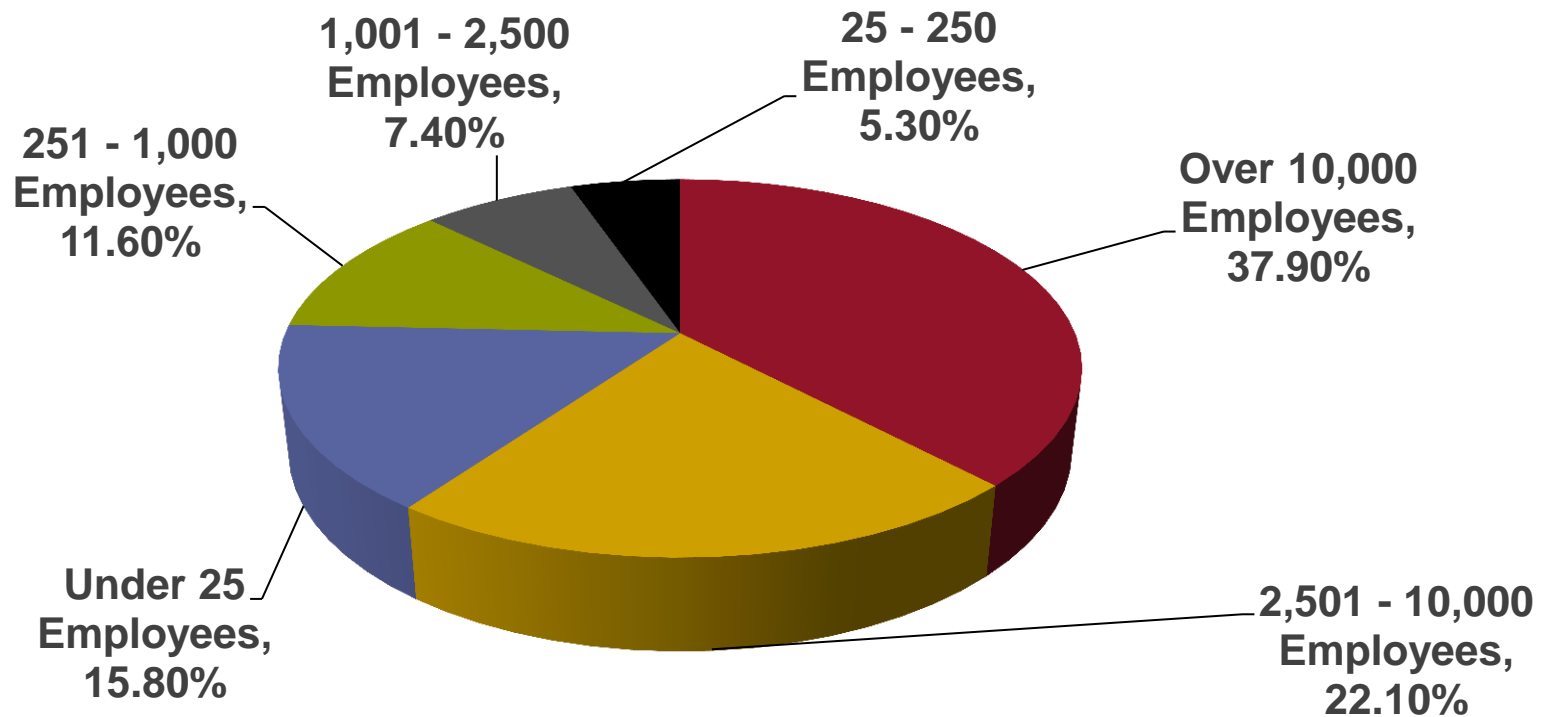
RESPONDENTS BY GEOGRAPHY

Region



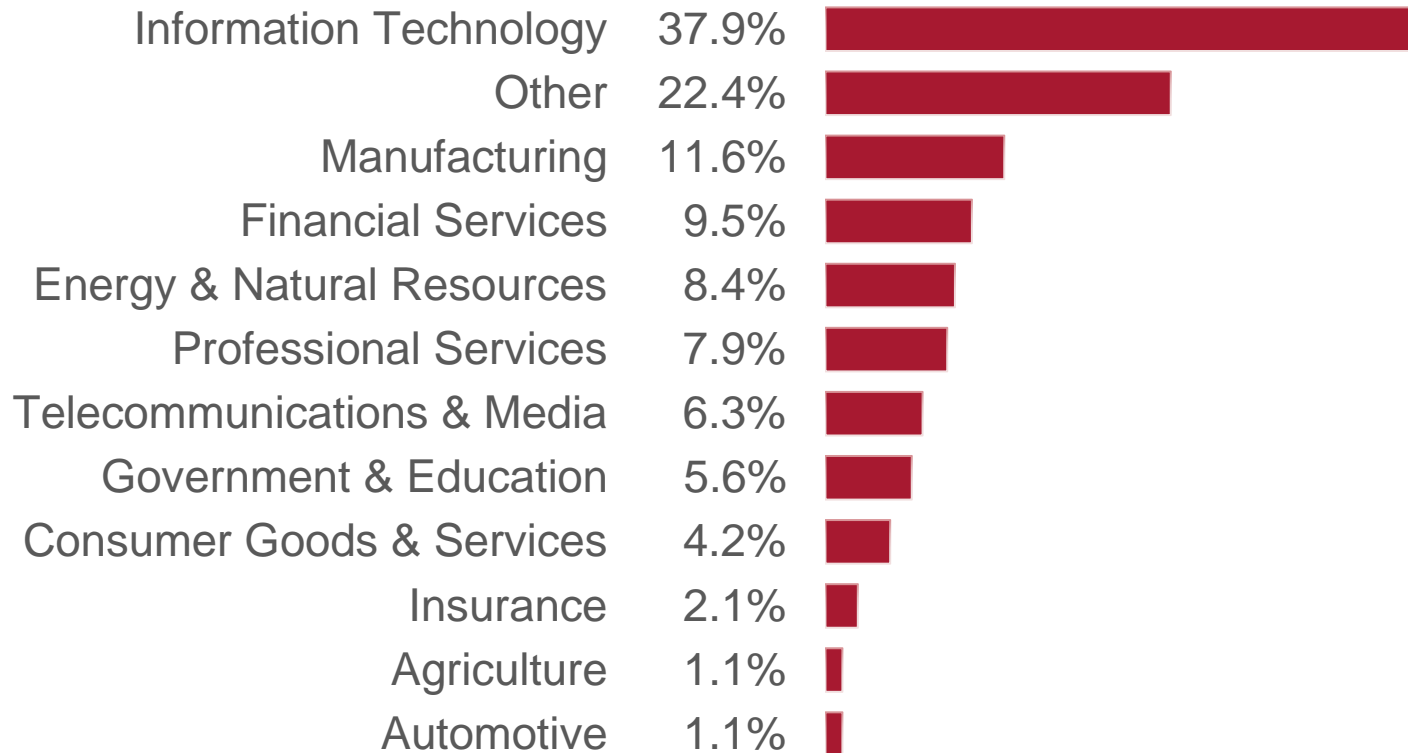
- Almost one-third of respondents operate around the world
- **North America**, **Europe**, **Asia-Pacific** mainly represented

RESPONDENTS BY SIZE



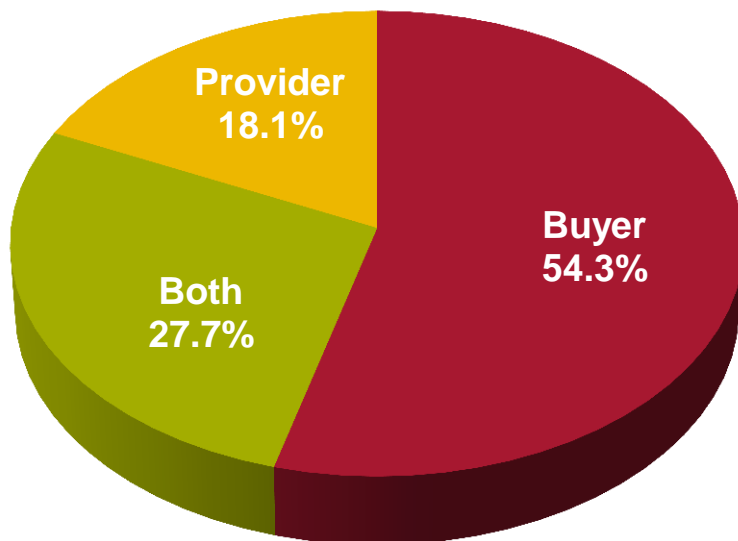
- More than half have more than 2,500 employees
- Smaller companies are better represented compared to last year

RESPONDENTS BY INDUSTRY



INVOLVEMENT IN CLOUD COMPUTING

Provider or Buyer of Cloud Services?



Top 3 Tasks of Survey Respondents:

1. Providing contract advice
2. Pricing, reviewing, drafting or negotiating cloud computing
3. Evaluate cloud service offerings

* Heavier balance of legal respondents compared to last year



FINDINGS

TRENDS

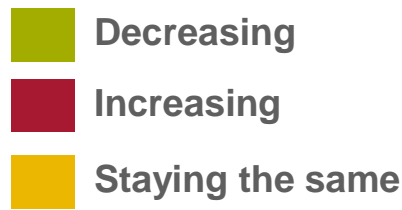
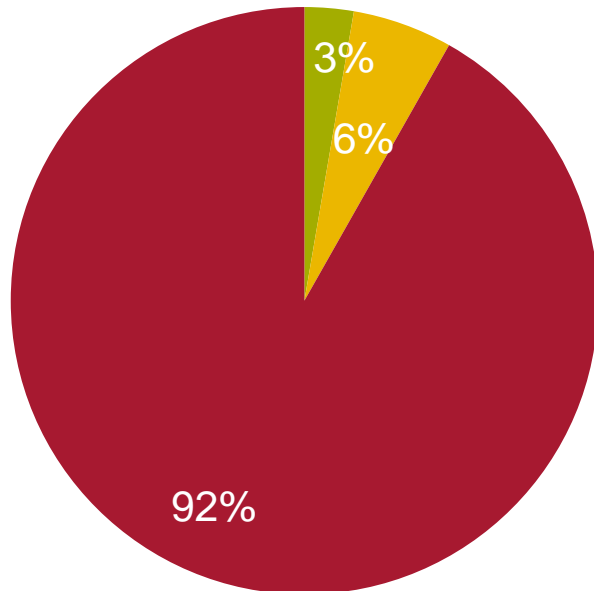
- Cloud deals are taking **less time** to complete
- More use of Provider's paper and **greater consistency** in contracting terms
- **Security** continues to be a significant focus, almost 90% of buyers identified it as their primary concern and more than 90% of providers identified security as their customers' number one concern
- 97% of cloud services are meeting at least some of buyers' objectives



TRENDS

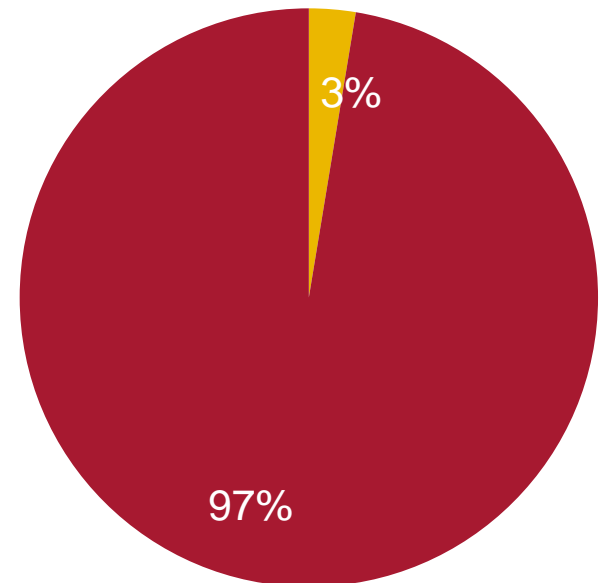
Do you see the integration of various cloud service offerings as part of common business solutions:

Buyer's Perspective



More than 92% of both buyers and providers see the integration of cloud service offerings increasing

Provider's Perspective



QUESTIONNAIRE TOPICS

BAKER & MCKENZIE



Deciding To Buy



Negotiating The Contract



Buyer/Provider Perspectives

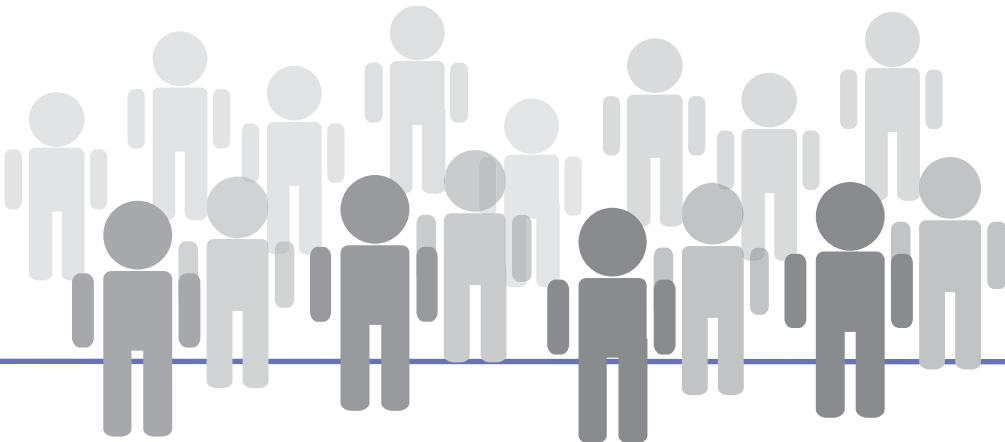


Impact Of The Cloud

IMPORTANT CAVEATS

Keep in mind that:

- Given that more than half of respondents work at companies with 2,500 employees or more, our findings are more representative of organizations with significant bargaining power.
- As the majority of individual respondents hold management, legal or procurement roles, our findings are more representative of cloud deals that go through official procurement channels.












DECIDING TO BUY/SELL








DECIDING TO BUY/SELL

Why buy/sell cloud services?

Why buy?

Flexibility/elasticity	58.7%	
Cost savings/ Standardization	54.7%	
All of the above	46.7%	
Capability	41.3%	
Speed of deployment	37.3%	
IT employee resource optimization	28.0%	
Other	8.0%	











Why sell?

Customer demand	53.7%	
All of the above	48.8%	
Flexibility/Elasticity	43.9%	
Cost savings	39.0%	
Capability	34.2%	
Standardization	34.2%	
Speed	31.7%	

Buyers primarily attracted by **flexibility/elasticity** and **cost savings**

DECIDING TO BUY/SELL

What were buyers' primary hesitations in deciding to buy?

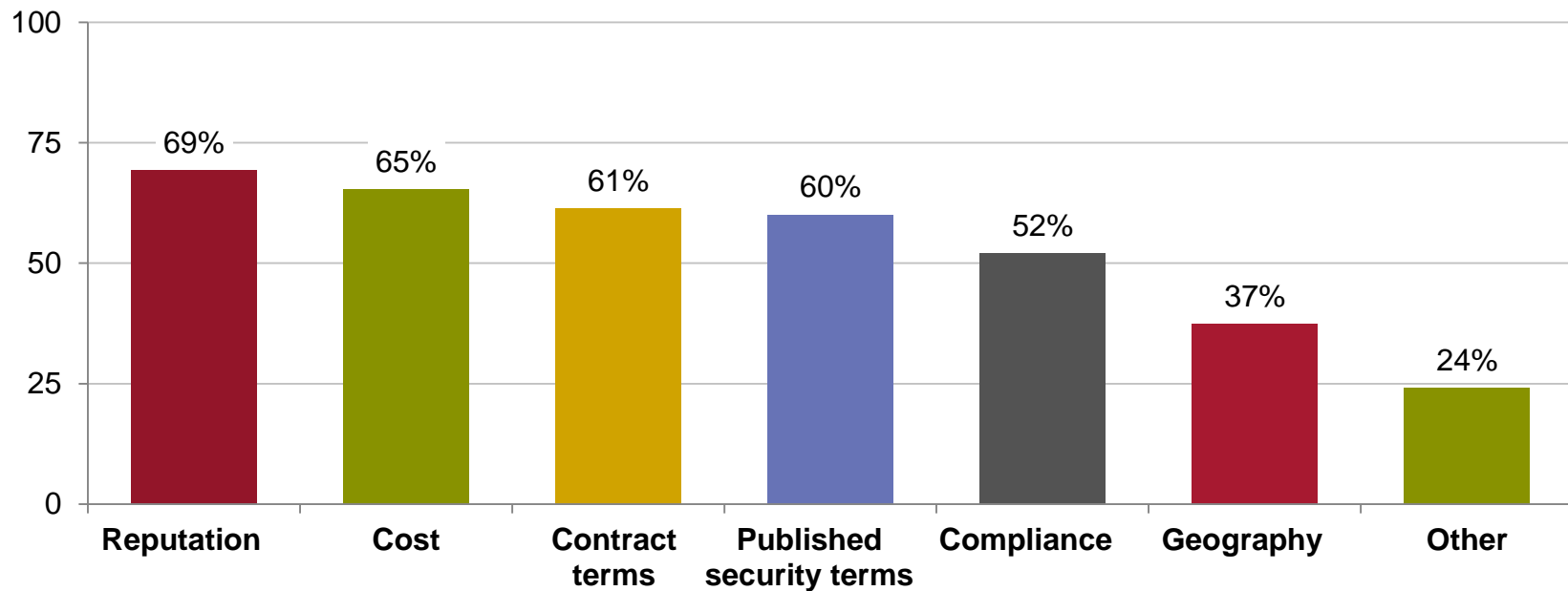
Security	88.0%	
Privacy	73.3%	
Control/Data portability	54.7%	
Regulatory compliance	53.3%	
Availability & reliability	45.3%	
Total cost of ownership	44.0%	
Hacking	37.3%	
Connectivity & access	33.3%	
Government surveillance	18.7%	
Other	6.7%	

- Most buyers concerned about **security**, **privacy** and/or **regulatory compliance**
- Just over half of buyers concerned about **control and portability**

- Concerns regarding **availability and reliability** dropped compared to last year, potentially indicating a continued maturation of the marketplace

DECIDING TO BUY/SELL

What were buyers' primary criteria for choosing a provider?



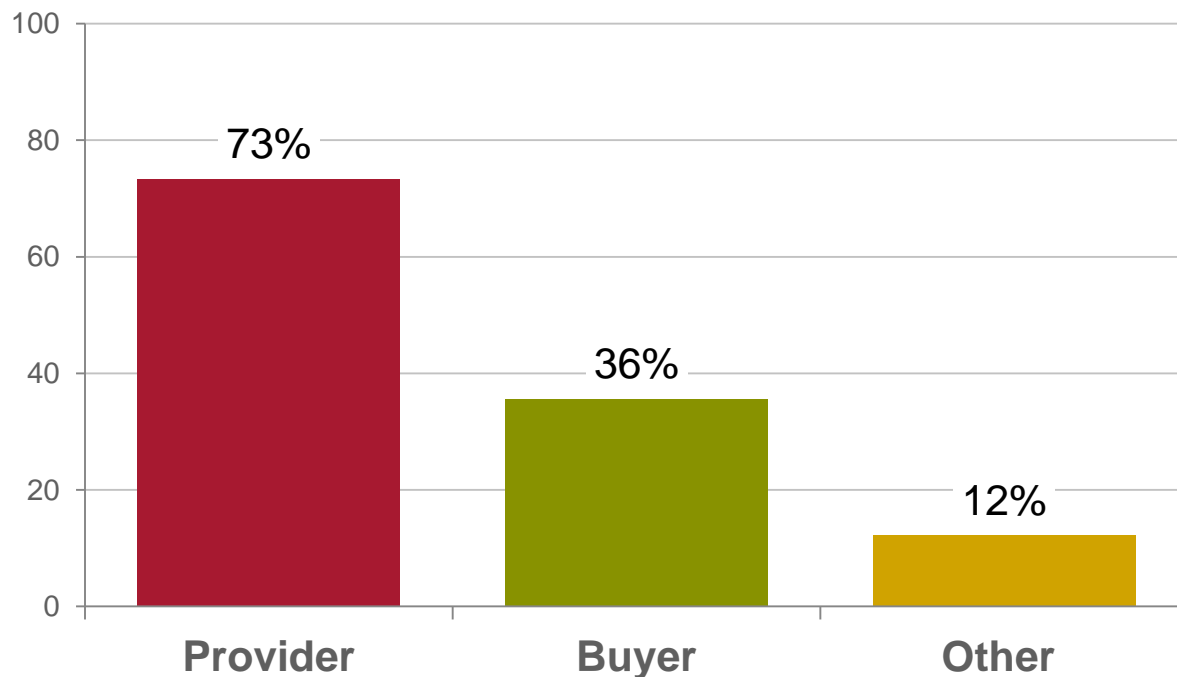
Most important factor is **reputation** of provider, followed closely by **cost** and **contract terms**



NEGOTIATING THE CONTRACT

NEGOTIATING THE CONTRACT

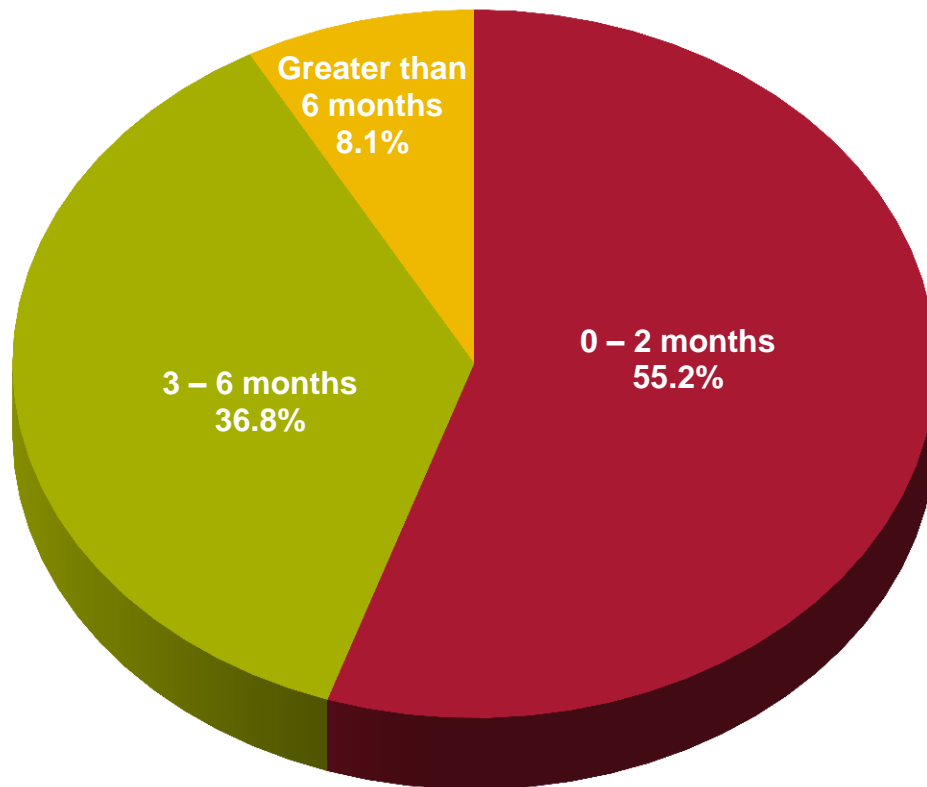
Which party's contract was used primarily?



- More likely to use **Provider's** paper compared to last year
- Other responses indicated a combined approach (e.g., using **Buyer's** data processing terms)

NEGOTIATING THE CONTRACT

How long did negotiations take?



- Most deals close in under 6 months with a majority of deals taking less than 2 months
- Deals closing quicker compared to last year's survey

NEGOTIATING THE CONTRACT

What percentage of negotiated cloud agreements were executed?

75%

What were the most common reasons for failed negotiations?

Same types of disagreements identified:

- Allocation of Liability
- Privacy/Security
- Regulatory Concerns



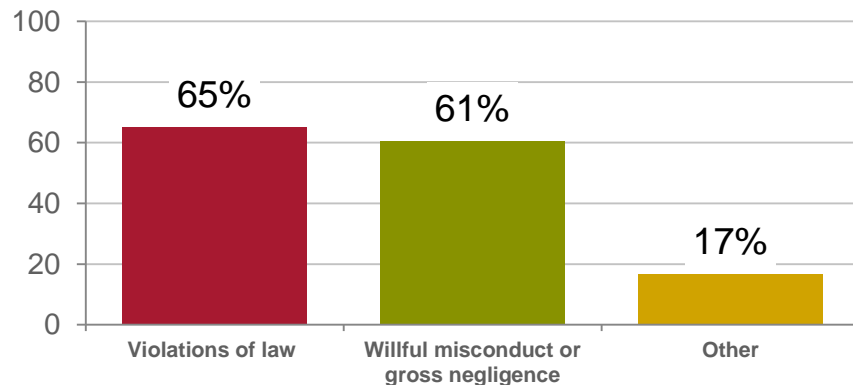
BUYER/PROVIDER PERSPECTIVES

BUYER/PROVIDER PERSPECTIVES

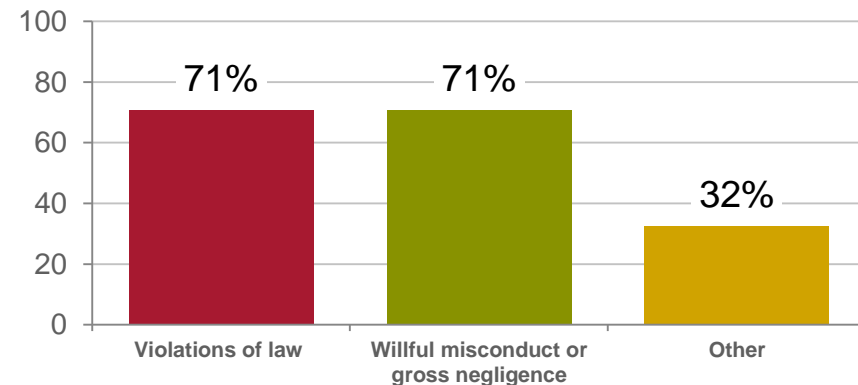
Indemnity - Buyer

What claims does the Buyer agree to indemnify?

Buyer's Perspective



Provider's Perspective



The most common "other" response was for IP infringement

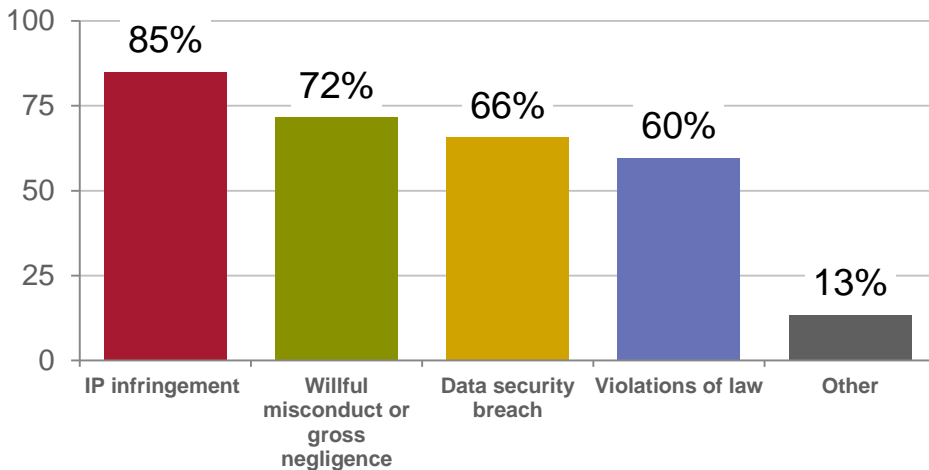
BUYER/PROVIDER PERSPECTIVES

BAKER & MCKENZIE

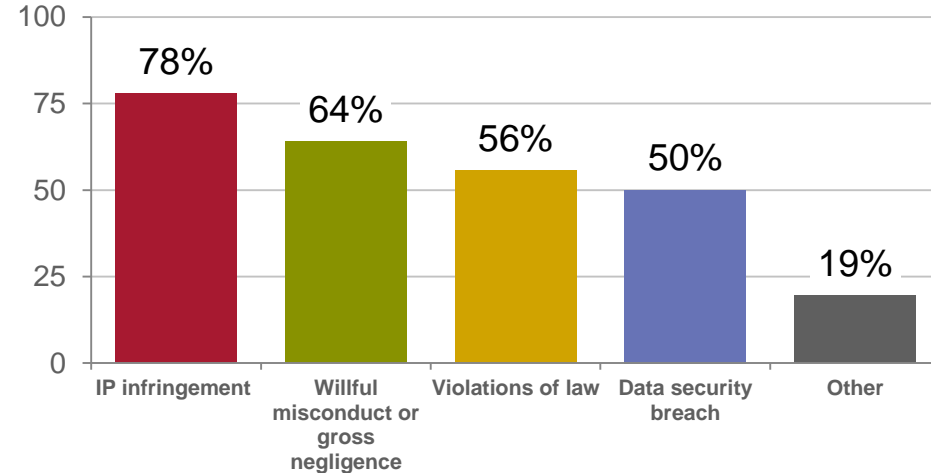
Indemnity - Provider

What claims does the Provider agree to indemnify?

Buyer's Perspective



Provider's Perspective

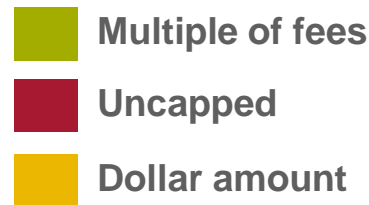
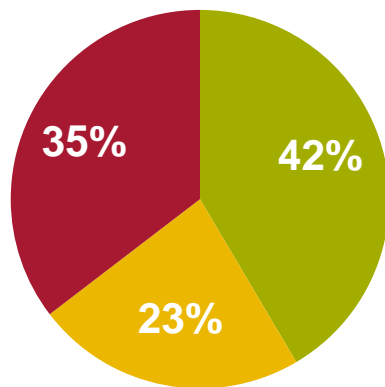


BUYER/PROVIDER PERSPECTIVES

Limitation on Liability

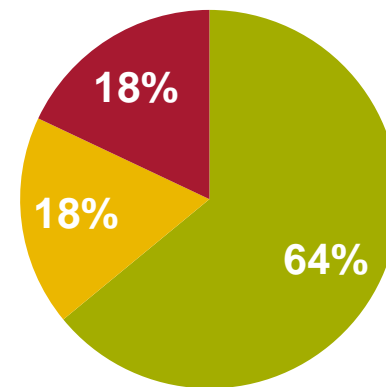
Were you able to negotiate a limitation on liability that was:

Buyer's Perspective



Where there is a cap, Buyers noted straight dollar caps of **\$1 – 10 million** and multiple of fee caps of **1 – 5 times annual fee**

Provider's Perspective



There is a notable deviation in the Buyer vs. Provider perspectives regarding **uncapped** limitations on liability

BUYER/PROVIDER PERSPECTIVES

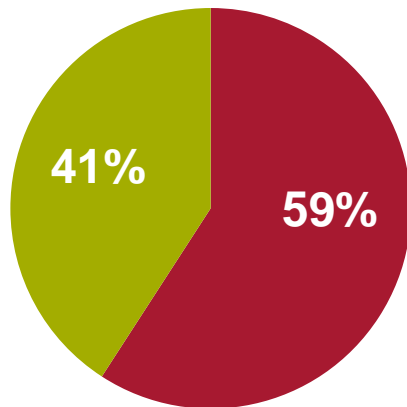
BAKER & MCKENZIE

Limitation on Liability - Data Breach

Were you able to negotiate unlimited liability for data security breach?

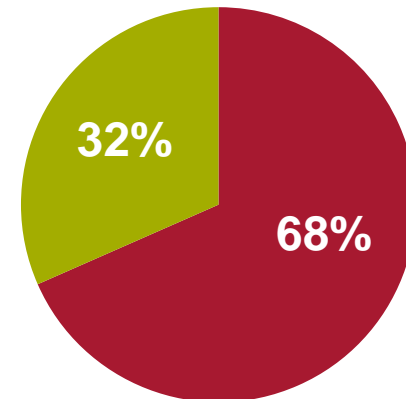
Have you permitted unlimited liability for data security breach?

Buyer's Perspective



Yes
No

Provider's Perspective



Where there was a cap, 34% of Buyers negotiated for a higher cap than the general cap, with a range of 2 – 4x fees.

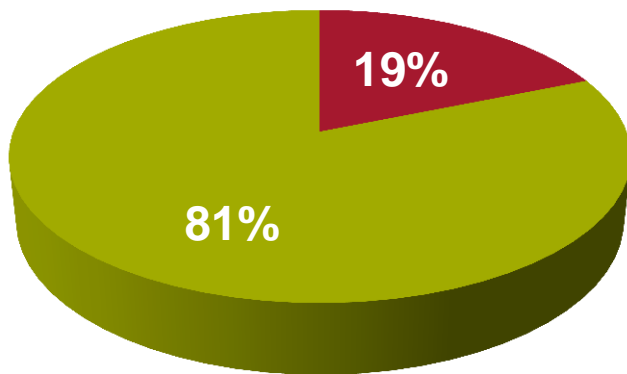
Where there was a cap, 62% of Providers agreed to a higher cap than the general cap.

BUYER/PROVIDER PERSPECTIVES

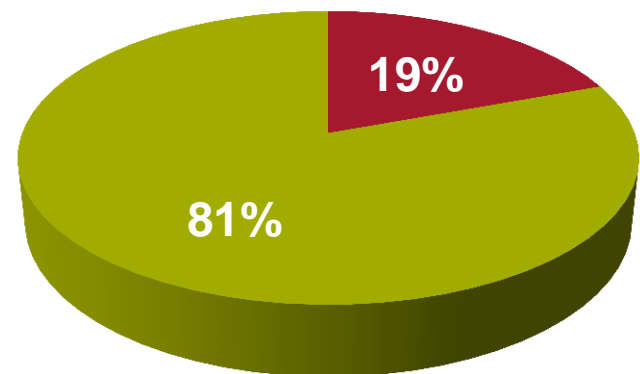
Data Breach Notice

Does your cloud service agreement require notification of data breaches?

Buyer's Perspective



Provider's Perspective

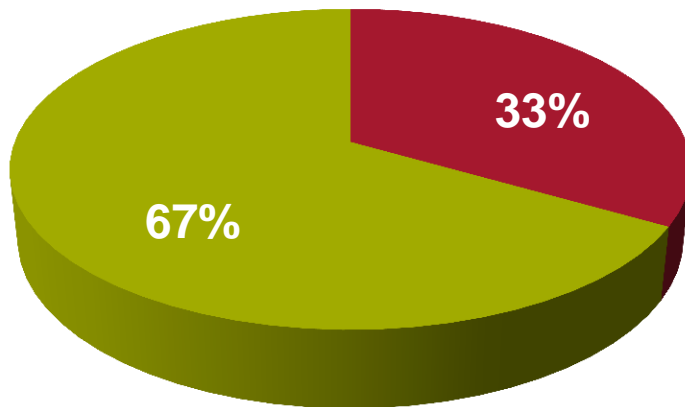


BUYER/PROVIDER PERSPECTIVES

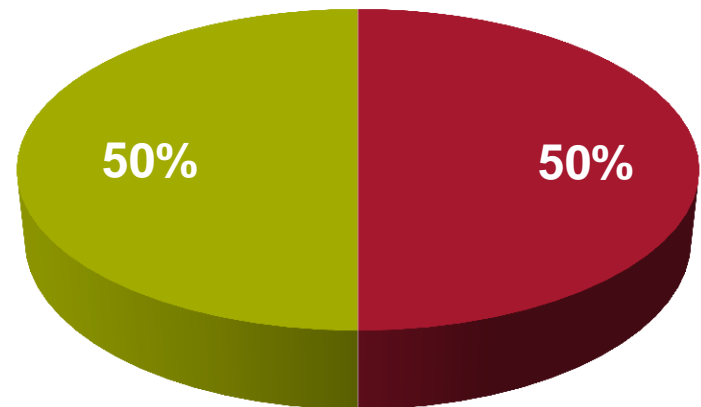
Audits Permitted

Does your cloud service agreement permit the Buyer or its agents to audit the Provider's delivery environment?

Buyer's Perspective



Provider's Perspective



BUYER/PROVIDER PERSPECTIVES

BAKER & MCKENZIE

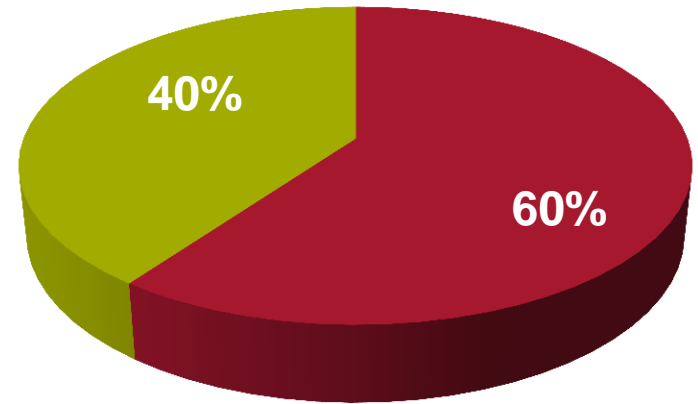
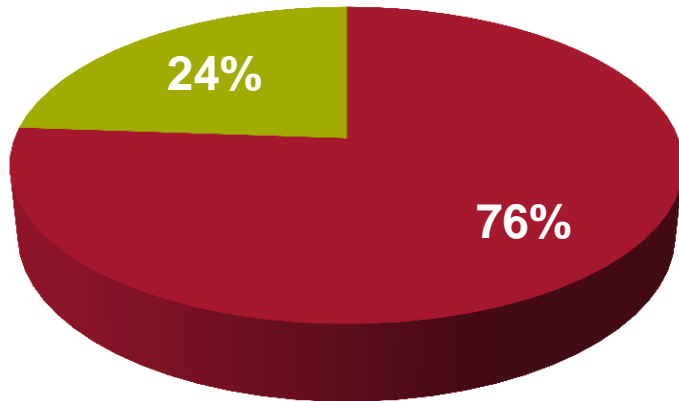
Audits Conducted

Have you performed an audit of your cloud provider?

Have you permitted Buyers to audit your business?

Buyer's Perspective

Provider's Perspective



YES



NO

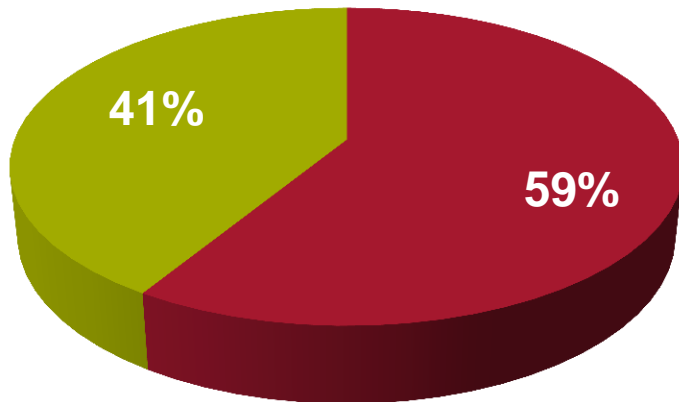
BUYER/PROVIDER PERSPECTIVES

BAKER & MCKENZIE

Transition

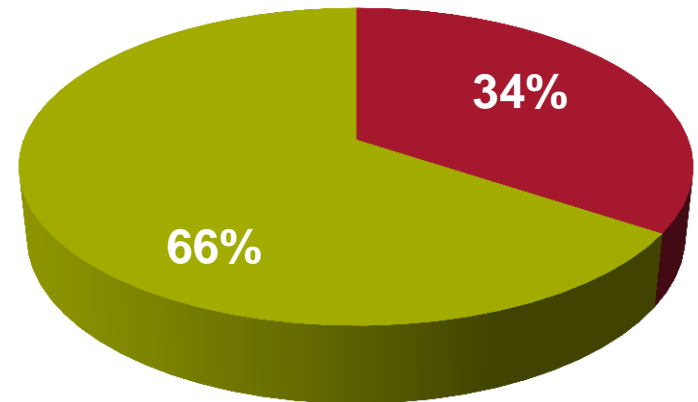
Have you transitioned between cloud service providers or brought cloud-hosted data in house?

Buyer's Perspective



YES

Provider's Perspective



NO



IMPACT OF THE CLOUD

IMPACT OF THE CLOUD

BAKER & MCKENZIE

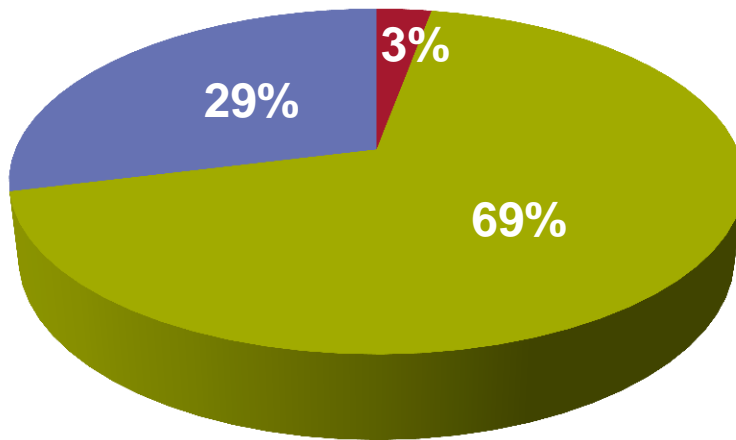
Did entering the cloud meet the buyer's objectives for doing so?

Select comments from those who answered 'SOMETIMES'



Complexity of compliance is at the odds with "ease" of cloud services.

Not vetting capabilities enough in advance.



YES



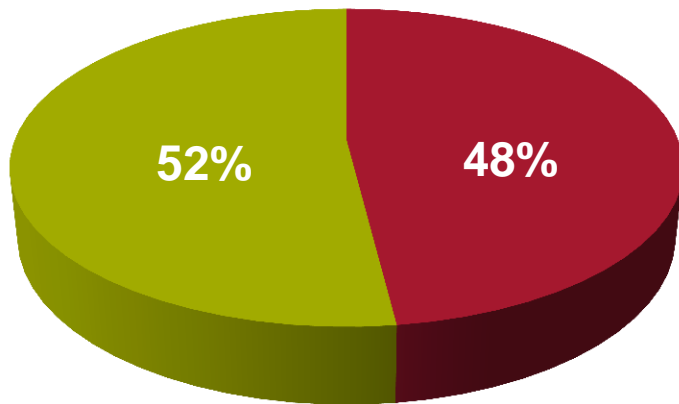
NO



SOMETIMES

IMPACT OF THE CLOUD

BUYER - Have cloud services impacted your internal processes for procurement of technology?



YES



NO

Select comments



More legal involvement.

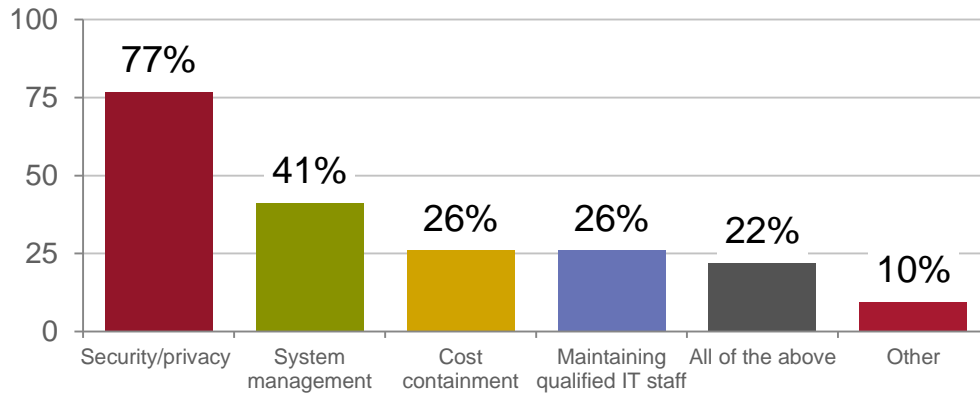
Increased need for external audit control.

Required an over-haul of internal procurement methods for technology to set up a process for checking privacy and security requirements, as well as having clear strategy for sourcing cloud services across the organization.

IMPACT OF THE CLOUD

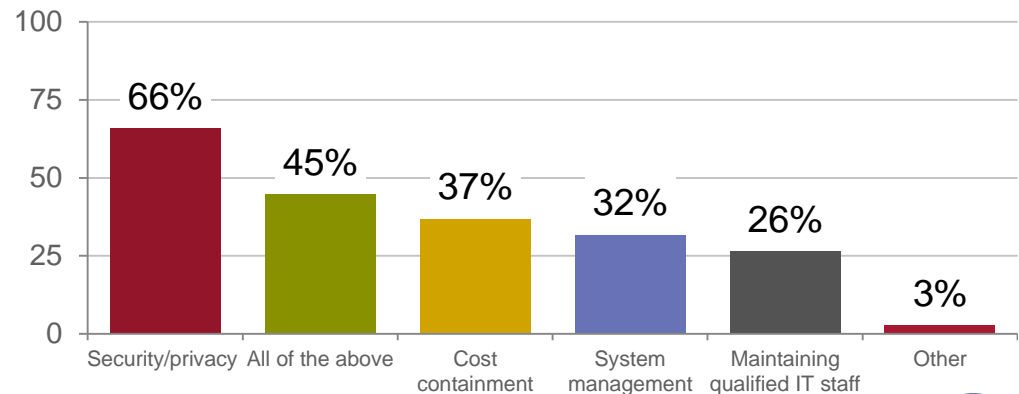
What are your concerns over the next several years?

Buyer



Buyers and providers listed **security/privacy** as their #1 concerns

Provider



Providers placed a greater emphasis on **cost containment**

NEGOTIATING FOR CLOUD SERVICES

