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Legal Challenges of Contracts for Cloud Computing Solutions

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Overview

- **Nature of Cloud Computing contracts**
- **Migration contract**
- **Transformation project**
- **Quality of service - SLA**
- **Personal information in Cloud Computing environment**
- **Termination of the Cloud Computing contract**



Nature of Cloud Computing contracts

- **Cloud Computing is not explicitly regulated by law**
- **Innominate contract**
 - There are higher demands on accuracy of the contract
 - It is not possible to base on any delineated contractual type
 - Some uncertainties about the handling of personal data
- **Purpose and aim of the contract**
 - Interpretation of contract - intention of the person in charge
 - Purpose of contract and scope of the license
 - Relationship to predictability of damage
 - Ist Zustand a Soll Zustand



Nature of Cloud Computing contracts

Subject of SaaS contract

- The subject of the contract is the **mutual obligations** of the parties
- Examples of inappropriate „wording“ of subject of contract:
 - *Subject of the contract is information system*
 - *The provider is obligated to provide the service specified in Appendix 1*
- **Main areas**
 - **Terms of use of provided software**
 - **Terms of use of the provider's data warehouse, data handling**
 - Data storage
 - Data access and handling
- Negative definition of subject of contracts



Migration contract, Transformation project

Migration contract

- Governing the obligations of the parties to the transition to a new environment (usually at IaaS)
- Specifies the conditions for:
 - Backing up migrated data,
 - Party communications,
 - Testing of completeness and the integrity of migrated data,
 - Cooperation

Transformation project

- The fulfillment of the SLA may be dependent on modifying or supplementing the client's infrastructure
- „Small“ contract for work



Service Level Agreement

Guarantee of service quality

- The obligation of service provider to guarantee the level of service availability
- Availability of the service is usually defined in percentages (99,9%),
- Common legal fault of the service contract – that it lacks the exact way of method of service availability monitoring (service windows, etc.)
- The contract oftentimes lacks the reports of service availability which clients receive -> it could be hard to prove if the client has right to penalties
- **Duties of service provider in case of incidents and shutdowns**
- **Notification duties of service provider**
- **Penalties in case of non-compliance with the agreed service levels**



Personal information in „Cloud“ environment

Recommendation for handling personal data in the „Cloud“

- **Proactive duties**
 - Measures to prevent unauthorized or accidental access to personal data
- **Technical and organizational measures**
 - **Technical measures** - effective protection against unauthorized access to personal data
 - **Organizational measures** - the purpose is to reduce the risk of incorrect behavior of the users themselves - employees
 - **Participation of both contractual parties**
- **GDPR - General Data Protection Regulation**
 - Coming soon



Termination of Cloud Computing contract

- **General rules**
 - Scope of activities
 - Costs
- **SaaS**
 - Access and manipulation with the customer's data
 - Providers usually do not offer neither provide other services
- **IaaS**
 - More detailed
 - „Exit“ strategy created sooner than the IaaS is committed



Thank you for your attention





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