

DOs and DON'Ts of SaaS Contracts

Many software companies are moving to a SaaS distribution model. Below are some items to consider as you offer or buy SaaS software:

Software as a Service, or SaaS, is the name used to broadly describe software offered through the internet (think QuickBooks online versus the QuickBooks installed on your computer) and is an easier and often more effective way for different companies to make their software available to customers. SaaS software agreements must be treated much differently than standard software licenses. SaaS agreements often include software licensing, the terms and conditions of the customer's use of the software, general maintenance on the software, and ensuring the security and availability of both the customer's data and the SaaS on a server hosted by the supplier. While many agreements are formed and signed using a template, it is essential to have legal representation throughout the process to ensure that both the supplier and the customer are properly protected and their needs/wants are accounted for.

Some of the most basic things to outline in a SaaS agreement include:

- ➔ The details of who can use.
- ➔ How many users at one time can use it.
- ➔ Where the software is available (i.e., location).

The customer should ensure at the outset that all users will be licensed and keep the supplier up to date on any third-party contractors and companies that will have access to the SaaS service during the duration of the agreement. Typically the supplier will maintain intellectual property rights of the services and the software itself, while the customer has intellectual property rights of the data and the systems on which the SaaS will be operating, but these terms (especially the right to re-use the customer's data) are often negotiated. Both the supplier and the customer need to be protected if the software fails to provide the services laid out in the software license and the agreement, which is why it is not only important to lay out the conditions under which the contract can be terminated by either party but also how the customer is compensated in the event the service fails. If there are any disputes throughout the course of the contract, it is suggested to specify which courts will handle them and in what language, which protects either side from being taken advantage of.

How can you optimize your SaaS Agreements?

As a customer, it is important to remain vigilant throughout the product evaluation and contracting process (do not take the supplier's word for it). Read through the reviews to make sure the services being offered will work for your company. Counsel can help with looking carefully at the terms of service, including uptime guarantees and the supplier's mean response time to troubleshoot any issues. If the software is critical to your business, consider having the supplier place the source code in a third party in escrow and negotiate the terms upon which you can access that code. Finally, both

customers and suppliers should ensure that they each get the rights they are expecting to the data entered into the service. Customers may also want to negotiate specific terms for return / export of their data at the end of the agreement (or assistance with transferring the data to another SaaS supplier).