

SAAS AGREEMENTS

VOLUME 1: Consumers Perspective

Understanding the Basics

When software is delivered as a service (SaaS), a subscriber purchases a right to use that software for period of time. Typically, a subscription purchase is agreed upon with a term from one to three years, and in some cases, as long as 5 years. In most situations, a subscriber pays for a SaaS subscription annually in advance, as they would with a maintenance service contract. A subscriber may receive a discounted subscription by electing to select the longer subscription term.



License Agreement

One of the significant benefits of a SaaS agreement is the subscriber doesn't "own" a perpetual license to a copy of software, as they might have done for years with applications like Microsoft Office and Windows OS. In fact, they don't even own a server that sits in their office or computer room. SaaS subscribers have a right to use that software for a limited period of time in conjunction with the right to use the host computer during the same term. A subscriber simply accesses a URL with login credentials for software that is hosted on a separate environment maintained by the vendor's platform. A license fee is usually calculated based upon the number of users, transactions, and other quantity type metrics associated with the term of subscription.

Support Services

One of the most common questions around SaaS is: *What happens if I have a support issue and need support services?* Unlike the old perpetual software license model, where software was a separate line item, software support and updates are included as part of a SaaS subscription fee. This is a major benefit and quite efficient. The software developer maintains the SaaS licensed application on the host system, which may be at their facility or outsourced through a Cloud platform provider like Amazon, or Microsoft. Some of the additional benefits include not having to sort through the merit of what hardware platform a subscriber should purchase or lease, or at what point an upgrade to that hardware will be warranted.

Subscribers become “Technology Proof”, the SaaS provider upgrades the cloud platform to meet the service level response commitments. A subscriber doesn't buy and upgrade the hardware or software. They don't need to add incremental support personnel or train a specialized in-house person to support the software, it's all part of your SaaS subscription. The SaaS provider is responsible for all of the incidental administrative tasks required to create, implement and support the hosted SaaS application on their platform. Your SaaS provider utilizes a large computer network and their staff to support multiple subscribers in a very secure “multi tenant” environment. They have a dedicated and trained staff whose costs are shared amongst all SaaS users. As a result, a subscriber gains access to a team of individuals who are specialized in the hosted application, the platform and the software support as part of that SaaS subscription fee. This provides significant financial savings and efficiency.

Improved Security

You have a highly specialized SaaS Provider staff providing service to multiple customers on a computer host in a shared tenancy environment, it sounds like a security risk, right?, but it is quite the opposite. These commercial cloud providers are generally ISO certified facilities, trained staff with rigorous security policies and all of that should be reflected in your argument. The fact is that most traditional in-house users cannot always afford these sorts of detailed personnel and network security measures, however it is all backed into the Cloud SaaS business model. Look at all the banks, hospitals and fortune 100 companies that rely upon SaaS providers, it is actually more secure. They are some of the largest users of SaaS solutions and they are in some of the most tightly regulated industries, personal credit information, HIPPA regulations and Safe Harbor data security regulations are all properly addressed by your SaaS provider.

Scalable Capacity

With SaaS, a subscriber has the ability to quickly and easily expand their subscription if they need greater capacity. They don't need to buy additional hardware, wait to install it or shuffle things around to accommodate an upgrade. The SaaS provider simply expands the subscription (number of authorized users, number of transactions or the quantity metrics the application is measured in) so the additional access to the software can be used immediately.

Seamless Integration and Higher Adoption

Since all of the complexity resides with the SaaS Vendor, the subscriber can typically implement a SaaS environment in a fraction of the time required to buy, install and integrate the hardware, software and administratively support it in their own on-premise systems. SaaS applications are available from any computer or device — any time, anywhere. As a result, SaaS applications tend to have high adoption rates, with a lower learning curve.

Financial ROI

One other very important advantage of a SaaS model from the subscriber's perspective is it transforms a large front-end loaded CAPEX expenditure (the on-site computer hardware, and perpetual license expenditure) into a very evenly distributed OPEX expense item. SaaS subscribers are not required to tie

up cash in a five-year depreciable computer platform, improving cash flow. Having less initial cash



expenditure and quicker implementation timeframe allows SaaS subscribers to reach their break-even investment point faster. In the process several important financial ratios including Return-on-Assets (ROA), are favorably impacted by the economic shift to the SaaS model. Implementing a SaaS environment sooner than an older on-premises license model leads to a faster Return-on-Investment (ROI). SaaS offers more nimble functionality than older compute models could ever provide since a subscriber doesn't need to wait months to get started.

Common SaaS Questions and Recommendations

Below are the most common questions that arise when a subscriber contracts for a SaaS offering:

1. **How does a user ensure the software works properly?**

The SaaS service provider is responsible for ensuring the applications work on their hosted platform. Users should note that SaaS Agreements typically do not include an acceptance period. A subscriber simply logs into the SaaS environment to initiate the start of a Service term. Typical SaaS agreements will describe a subscriber's rights if the SaaS application doesn't perform as planned. We recommend a close review of your rights, as described in your contract, if the software doesn't perform as expected.

2. **How do you ensure that it keeps working properly in accordance with the specifications?**

SaaS Agreements generally do not include a warranty where the SaaS provider to correct that Service to perform in accordance with the specification; you may just get a credit for a portion of that month's service fee. If it never works properly do you have a right to terminate? Probably not. What are your rights when the applications don't perform as planned, and are those rights adequate?

3. **How do I ensure a smooth transition at the end of my SaaS subscription?**

Remember a user doesn't own an ongoing license; the computer is at the vendor's site. A subscriber also doesn't own the computer platform or the application and they don't even employ the people that administer the system. What a subscriber does own is the data! As such, we recommend planning an exit strategy before getting started. Anything related to intellectual property should be properly included in a contract.

4. **How can I ensure compliance with laws and regulation regarding Personal Identifiable Information, Personal Credit Information, and HIPPA regulations?**

This is a very important area of a SaaS agreement. It should be noted that the subscriber remains liable for those obligations even though they rely upon a SaaS provider to perform many of the associated services. The business environment is complex and changes quickly as more new regulations are added over time. As such, a subscriber has duties and responsibilities that may expand with regard

to customers, vendors and others regarding data privacy. Careful contract review is required to ensure a subscriber adequately protects their business and employees with regard to these obligations.

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30-minute FREE CONSULTATION
Call (732) 219-6641 or email Johnpobrienesq@verizon.net

Take advantage of a 30-minute free consultation to review a SaaS agreement, highlight anything important and/or provide the extra assurance of adequate protection. Users may be surprised at the errors and/or omissions that occur within most standard SaaS license agreements.

About John O'Brien

John O'Brien is an Attorney at Law with 30+ years of legal technology experience. John helps companies of all sizes develop, negotiate and modify consulting contracts, licenses, SOWs HR agreements and other business related financial transactions. John specializes in software subscription models, financial based cloud offerings, and capacity on demand offerings all built around a client's IT consumption patterns and budgetary constraints. He has helped software developers transition their business from the on-premise end user license model to a hosted SaaS environment; and represented clients in many inbound SaaS negotiations. Please contact John for a free consultation if you or the organization you work for is tired of trying to develop, negotiate and/or modify contracts and agreements of any type. John can be reached at (732) 219-6641 or email Johnpobrienesq@verizon.net.