Binary Stream

A breakdown of key clauses commonly found in SaaS contracts

Table of contents

What is a SaaS contract?

SaaS is a software distribution model where users access cloud-hosted applications through the internet in exchange for a recurring fee. Typically, the software provider offers different features and degrees of functionality through a few pricing tiers. To support this subscription model, vendors need specific contracts.

A SaaS contract is an agreement between the application developers and users that defines how the application is to be accessed and used. Many providers have a 'terms of service' or 'terms and conditions' page that fulfils the role of a simplified SaaS contract.

How is a SaaS contract different from a perpetual licensing agreement?

Under a perpetual licensing agreement, a company will deliver and physically install software and relevant hardware. Customers are granted rights to copy and use the software, which also serves to protect the vendor's copyrights, patents, and intellectual property rights.

A SaaS contract permits users to access the software through the cloud and customers can only use the software in line with the terms of their subscription. In brief, a perpetual license agreement leads to a singular payment and full ownership of the software whereas a SaaS contract permits use of the software as long as the customer pays for the service.

SaaS contracts VS Perpetual licensing agreements

SaaS contracts

✦ Customers subscribe to use software

✦ Recurring billing

✦ Hosted in the cloud

Perpetual licensing agreements

✦ Customers own software

✦ One-time payment

✦ On premises

Why do companies need a SaaS contract?

SaaS contracts document the exact software access clients receive for the term of their subscription. They are essential for cloud application providers to minimize the risk of lawsuits and penalties. Terms, limits, and liability waivers establish the relationship between the vendor and users so that both parties know exactly what is expected.

SaaS contracts can protect vendors' interests by limiting liability in a data breach or prohibiting specific user activities, like sharing the software with other people or using it to commit illegal actions. It's not uncommon for providers to have unique SaaS contracts tailored to each of their individual, small business, and enterprise-grade tiers.

What is included in a typical SaaS contract?

1 Introduction

2 Definitions

3 SaaS services

4 Customer responsibilities

5 Payment

6 Term and termination

7 Warranties

8 Limitations of liability

9 Indemnification

10 Confidentiality

11 Other general provisions

12 Exhibits

What are the key clauses in SaaS contracts?

A SaaS contract may look easy to manage in theory, but it can become a painful process in practice, especially if you do it manually. Each contract may contain distinct terms and specific clauses dependent on relevant information like your company's industry or the products and services you offer.

Nevertheless, you can set your organization up for success by learning about the following key clauses found in most cloud service agreements.

01
Scope of permitted use

02
Limitation of liability

03
Data ownership and security

04
Customer service and support

05
Subscription plan, model, and pricing

06
Term, termination, and renewal

07
Service Level Agreement (SLA)

1. Scope of Permitted Use

One of the most important aspects to understand about SaaS contracts is that any licensing is for the services—not the software. As such, most SaaS contracts don't include end-user licence agreements (EULA). To make this clear to all parties, you'll often see "scope of permitted use" or "scope of licensed access and use" clauses in place of a "scope of licence" clause.

The scope of permitted use defines and limits the rights transferred to the subscribers. It is the responsibility of the subscriber to ensure that the scope is sufficient to support the intended current and future use of the software service.

What's included in the Scope of Permitted Use?

SaaS contract permitted use provisions usually include most or all the following:

- **The SaaS services.** The specific service applications that the customer may use should be clearly identified and it should be stated that customers do not have a right to a physical copy of the software.

- **The defined extent of permitted access or use.** The agreement must establish the metric used to measure extent of use (such as number of users or amount of data), define what a user is, and establish penalties for abuse.

- **Non-exclusivity.** This allows more than one customer to use the SaaS services in a multi-tenant software service distribution model—customers share the software application through a single database, but each tenant's data is isolated and invisible to other tenants.

- **Transfer and assignment.** SaaS contracts typically either prohibit or impose restrictions and conditions on transferring subscriber rights.

- **The authorized facilities, technologies, and means for accessing and using the services.**

- **The territory of permitted access and use.**

- **The term (duration)**

- **Purpose, use, market, or field of use restrictions.**

2. Limitation of liability

A "limitation of liability" clause outlines under what circumstances the SaaS provider is liable to pay damages to the customer(s) and the maximum amount of damages owed. Most SaaS contracts include limitation provisions to protect the vendor from the impact of events beyond the developers' control. Power outages and bandwidth overloads are common occurrences that can make it impossible for an application to function correctly. The specifics of these clauses often differ between SaaS vendors to capture risks associated with their unique solutions, but SaaS contract limitation provisions usually include most or all the following:

- **Exclusion of indirect, consequential, or special damages**

- **A contractual damage cap.** Often, indemnity obligations will be exempt from the cap and providers may include a higher cap for their data breach liability.

SaaS contract risk models

Model 1: standard

- Direct damages: capped at X

- Consequential damages: no liability for indirect damages or damages beyond the cap

Model 2: modified

- Direct damages: capped at 3X

- Exemptions:
(i) breach of contract,
(ii) infringement indemnity, and
(iii) gross negligence or willful misconduct

- Consequential damages: no liability for indirect damages or damages be-yond the cap

Model 3: advanced

- Direct damages: capped   at X

- Specified claims: capped   at 3X

- Exemptions:
(i) breach of contract,
(ii) infringement indemnity, and
(iii) gross negligence or willful misconduct

- Consequential damages: no liability for indirect damages or damages beyond the cap

3. Data ownership and security

Cloud-based applications host an enormous amount of provider- and user-generated data, so SaaS contracts must have clauses to establish who owns the data uploaded to the platform and each party's data security responsibilities.

SaaS vendors that handle personally identifiable information (PII) or protected health information (PHI), particularly those operating within the healthcare or finance industries, must ensure that their data ownership and security clauses are watertight. While data ownership clauses state who owns data uploaded to the service, data security provisions usually include most or all the following:

- **Data protection procedures.** This includes responsibilities for vendors related to encryption, processing, storage, and security of data.
- **Customer compliance on data protection.** This includes responsibilities for subscribers related to encryption, processing, storage, and security of data.
- **Security breach protocols.** What happens to data and vendor responsibilities in the event of cybersecurity leaks, attacks or other forms of security breach.
- **Return of data.** What happens to data in the event of termination of service or bankruptcy.

4. Customer service and support

Customer service and support clauses state how the SaaS vendor will offer support for their services and any additional guarantees related to expected service. Customer service and support provisions usually include most or all the following:

- **Support requirements.** Commonly these are fulfilled with a 24/7 help desk, a dedicated customer success manager, priority phone support, omnichannel support, email support, or live chat support.

- **Response time.** This is measuring the time it takes for customer service to respond to a reported technical issue.

- **Additional guarantees related to expected service**

5. Subscription plan, model, and pricing

These clauses document the exact subscription plan, model, and pricing the customer has chosen. This is another section that is frequently negotiated during B2B deals. Vendors can work with customers to optimize their SaaS plan, lowering customer acquisition costs (CAC) and increasing customer lifetime value (LTV) through higher prices and better retention rates. Subscription plan, model, and pricing provisions usually include most or all the following:

- **The type of subscription pricing model.** This is commonly a description of one of the top eight SaaS pricing models in use today.

- **The tier of the subscription**

- **The payment schedule.** Recurring billing typically occurs on a monthly or annual basis.

- **The amount the client is expected to pay each billing cycle**

- **How the services will be delivered to the client**

Top 8 SaaS pricing models

Usage-based

Per-user

Tiered

Flat rate

Feature-based

Bundling

Freemium

Hybrid

6. Term, termination, and renewal

Term, termination, and renewal are three clauses that establish the term of the agreement and the processes to terminate or renew the account. Many SaaS vendors have evergreen renewals in place that require the subscriber to terminate their contract before a specified date, or else the agreement will automatically renew. These clauses are generally presented as:

- **Term of agreement.** A recorded period from an effective date that the contract is in effect.

- **Effect of termination.** An acknowledgement of the right of the subscriber to terminate their account at their discretion and what will happen to their accounts upon termination.

- **Term of renewal.** A statement that the contract will auto-renew unless the subscriber or the provider terminates their account and a description of the process of auto-renewal, including the auto-renewal period.

7. Service Level Agreement (SLA)

A Service Level Agreement (SLA) can be a stand-alone document or a section of a comprehensive SaaS contract, either way it's a critical component of any cloud service agreement. An SLA designates minimum performance standards, usually with a focus on service availability. A comprehensive SLA may raise customer expectations, but it can also be a selling point. Quick response times and high availability are valuable metrics for potential subscribers.

What's included in a SaaS SLA?

SaaS SLAs usually include most or all the following:

■ **Performance metrics and key performance indicators (KPIs).** These can include first call resolution rates, acceptable error rates, or maximum number of monthly security issues.

■ **Response time and support availability requirements**

■ **Penalties.** If the performance standards in the SLA are not met by the provider, the customer can be compensated usually by having a percentage deducted from the bill or providing free features or services for a set period.

■ **Exclusions.** The vendor is exempt from compensating the customer if the performance standards are not met due to things beyond the provider's control or when the fault is with the customer.

■ **Guaranteed uptime percentage.** Companies like Microsoft guarantee 99.9% uptime but often deliver 99.99%.

■ **Privacy and security**

■ **Pricing and billing structure**

Introducing Subscription Billing Suite

A comprehensive solution for billing, deferrals, and recognition that streamlines the entire quote to cash process at every step from billing and invoicing to reporting and forecasting. It provides consistent and reliable invoicing for a wide range of pricing models and allows you to take control of your pricing and billing schedules at the line-item level within Microsoft Dynamics 365 for Finance and Operations, Microsoft Dynamics 365 Business Central, and Microsoft Dynamics GP.

What our customers say

> Wonderful, wonderful, wonderful. A joy to work with Binary Stream. Everyone was super helpful and positive, which had a big impact on the success of the implementation.

MoxiWorks

> What makes Binary Stream different from other software companies we have worked with is their ability to truly listen to customer input and enhance their subscription solution to meet those needs.

ioexa

> Since I have come on board, Subscription Billing Suite has paid for itself more than once over. Having this solution to help us manage over 10,000 deferred contracts is an essential part of our financial processing.

BT

> I've long been a fan of Dynamics, and Subscription Billing Suite met and exceeded every feature of our previous solution. However, the factor that made this project a success is having a partner who augmented our internal integration efforts.

OTCMarkets

Binary Stream

Start your subscription billing journey today

Learn more by reading our complete guide to subscription management,
offering insights into billing models, pricing page psychology,
and plenty more.

Discover more