

Comprehensive SaaS Agreement Review Checklist

When reviewing a Software as a Service (SaaS) agreement, it's essential to ensure that your interests are thoroughly protected. Here's a comprehensive checklist to guide you through the review process:

☐ General Contract Information

- **Parties Involved:** Verify that the correct legal entities of both parties (you and the supplier) are clearly identified.
- **Contract Term:** Confirm the contract's duration, including the start date and any renewal terms (automatic renewal, notice period for termination, etc.).
- **Definitions:** Ensure that key terms (e.g., "Services," "User," "Data," "Downtime") are clearly defined to avoid ambiguity.

☐ Scope of Services

- **Service Description:** Ensure the services provided are clearly described, including specific features, functionalities, and any limitations.
- **Service Levels (SLAs):** Check for detailed SLAs outlining the expected performance standards, such as uptime guarantees, response times for support, and remedies for failing to meet these standards (e.g., service credits).
- **Customization:** If any customization is required, ensure it is clearly outlined, including associated costs, timelines, and responsibilities.

☐ Pricing and Payment Terms

- **Pricing Structure:** Review the pricing model (e.g., per user, per month, tiered pricing) and ensure it aligns with your usage needs.
- **Payment Terms:** Check the payment schedule, methods of payment, and due dates. Ensure that late payment penalties, if any, are reasonable.
- **Additional Costs:** Verify whether there are any additional fees (e.g., setup fees, training costs, customization fees, or overage charges) and that they are clearly outlined.
- **Price Increases:** Look for terms regarding price increases and ensure they are subject to reasonable notice (e.g., 30-60 days) and capped or justified by clear criteria.

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☐ Data Management

- **Data Ownership:** Ensure it is explicitly stated that your organization retains ownership of all data you input into the system.
- **Data Security:** Check for robust data security provisions, including encryption, access controls, and compliance with relevant regulations (e.g., GDPR, HIPAA).
- **Data Privacy:** Verify the supplier's obligations regarding data privacy, including how they will handle and protect personal data.
- **Data Access and Portability:** Ensure you have the right to access your data at any time and that it can be easily exported in a usable format if you switch providers.
- **Data Backup and Recovery:** Confirm that there are regular data backup procedures and clear disaster recovery plans in place, with specific timelines for data restoration.

☐ Intellectual Property (IP)

- **IP Rights:** Ensure that the agreement clearly delineates the IP rights, including ownership of the software, custom developments, and usage rights granted to you.
- **License Terms:** Check that the license granted to you is appropriate (e.g., non-exclusive, perpetual, or term-based) and that the scope of use is clearly defined.
- **Restrictions on Use:** Review any restrictions on how you can use the software, such as limitations on user numbers, geographic use, or modifying the software.

☐ Performance and Availability

- **Service Availability:** Ensure the contract specifies the expected service availability (e.g., 99.9% uptime) and any exclusions (e.g., scheduled maintenance).
- **Downtime and Maintenance:** Review the policies for scheduled maintenance, how downtime is communicated, and any compensation for excessive downtime.

☐ Support and Maintenance

- **Support Services:** Verify the level of support provided (e.g., 24/7, business hours only) and the channels available (e.g., phone, email, live chat).
- **Response Times:** Ensure there are clear response times for different levels of support requests (e.g., critical, high, medium, low).
- **Escalation Procedures:** Check for well-defined escalation procedures in case issues are not resolved within expected timelines.

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☐ Warranties and Disclaimers

- **Software Functionality:** Ensure there are warranties regarding the software's functionality and performance as described in the contract.
- **Compliance with Laws:** Check for warranties that the software complies with applicable laws and industry standards.
- **Disclaimers:** Review any disclaimers, particularly those that limit the supplier's liability, and ensure they are reasonable and do not overly diminish the supplier's obligations.

☐ Liability and Indemnity

- **Limitation of Liability:** Ensure that the limitation of liability is reasonable and does not overly restrict your ability to recover damages.
- **Indemnification:** Check the indemnification clauses, particularly around IP infringement, data breaches, and third-party claims, ensuring the supplier takes responsibility for their actions.
- **Consequential Damages:** Review any exclusions of consequential damages, ensuring they don't unfairly limit your rights.

☐ Termination and Exit Strategy

- **Termination for Convenience:** Ensure you can terminate the agreement without cause, ideally with reasonable notice.
- **Termination for Cause:** Verify that you can terminate the agreement for cause, such as repeated service failures or breaches of contract by the supplier.
- **Post-Termination Obligations:** Review what happens upon termination, including data return or deletion, outstanding payments, and the cessation of services.
- **Transition Assistance:** Ensure there is a provision for transition assistance to help you migrate to another service or bring the service in-house, including the timeframe and associated costs.

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☐ Confidentiality

- **Confidential Information:** Confirm that the agreement includes robust confidentiality obligations, protecting your proprietary information from unauthorized disclosure or use.
- **Duration of Confidentiality:** Ensure the confidentiality obligations survive the termination of the agreement for a reasonable period (e.g., 2-5 years).

☐ Governing Law and Dispute Resolution

- **Governing Law:** Ensure the agreement specifies the governing law and that it is favorable or neutral to your organization.
- **Dispute Resolution:** Review the dispute resolution process, including mediation, arbitration, or litigation, and ensure it is reasonable and not overly burdensome.

☐ Amendments and Modifications

- **Amendment Process:** Ensure the contract clearly outlines how amendments or modifications to the agreement can be made, ideally requiring mutual consent.
- **Notification of Changes:** Confirm that you will receive reasonable notice of any changes to the terms of service or other key aspects of the agreement.

☐ Audit and Compliance

- **Audit Rights:** Ensure you have the right to audit the supplier's compliance with the terms of the agreement, particularly regarding data security and service levels.
- **Compliance Obligations:** Review any compliance obligations imposed on you and ensure they are reasonable and achievable.

☐ Force Majeure

- **Force Majeure Events:** Ensure the contract includes a force majeure clause that covers events beyond the control of either party (e.g., natural disasters, pandemics) and outlines the impact on obligations under the agreement.
- **Notice and Mitigation:** Check that the supplier must notify you promptly of a force majeure event and take reasonable steps to mitigate its effects.

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☐ Subcontracting and Assignment

- **Subcontracting:** Verify whether the supplier can subcontract their obligations and ensure that any subcontractors are subject to the same terms and standards.
- **Assignment:** Ensure that the supplier cannot assign the agreement to another party without your consent, especially if the assignment could affect service quality or terms.

☐ Additional Provisions

- **Jurisdiction-Specific Requirements:** Check for any specific legal requirements or provisions based on your jurisdiction or industry (e.g., compliance with specific industry standards or local laws).
- **Entire Agreement:** Ensure that the contract includes an "entire agreement" clause that confirms all terms are within the contract and that no external promises or representations are binding.

Thoroughly reviewing a SaaS agreement ensures that your organization's interests are protected, and potential risks are mitigated. By carefully assessing each section—from service levels and data management to pricing, warranties, and termination provisions—you can establish a clear, mutually beneficial contract. A well-negotiated agreement lays the foundation for a successful partnership, reducing the likelihood of disputes and ensuring both parties meet their obligations effectively.