SAAS AGREEMENTS

VOLUME 2: A Software Developer's Perspective

The Evolution to SaaS

Previously software developers offered their customers the ability to buy a license to run software on their own server for years. They also offered customers the right to buy a support contract and secure future software updates during the term of their license. In addition, they offered customers the option of hiring their consultants to assist them with the implementation and customization. These individual pieces form the fundamental building blocks of SaaS (Software-as-a-Service). However, SaaS is more than just the simple sum of its parts, it's part software license, part Service Delivery, part Host Platform provider and part PS Consulting. Software providers who only include certain aspects and features of each in its own unique blend can often find themselves in an unexpected place with their clients….and guess who pays to get that straightened out? As a software provider—YOU DO!

What makes SaaS so attractive to SaaS providers?

While there are many reasons software developer clients prefer the SaaS model, the two more prominent reasons include: quicker implementations and a short term Operating Expense (vs. a series of long term Capital Expenses). However, the benefits to software developer's business are simple. SaaS is a single comprehensive offering with one sales cycle; one in which more of the implementation variables are now under the control of the SaaS provider. You provide the application, the hosting service, and the software support as part of a reoccurring SaaS subscription fee. In most cases, customers pay an additional implementation fee for the consulting services necessary to aide them in their implementation. Collectively, this provides the knowledgeable SaaS provider with a more elegant bundling vehicle.

SaaS Implementations - Important SOW Considerations

A SaaS subscription can conceptually provide subscribers with the ability to implement a new application in a fraction of the older on-premises license model, in some cases as little as 25% of the standard time. However, a successful implementation still requires all of the same ingredients; i.e. there are no shortcuts. Some SaaS providers charge subscribers a one-time implementation fee to help assist them with the

implementation. The challenge here is to define a fixed fee for an undefined task based upon experience-driven estimations of the task. With this the approach, your implementation SOW needs to carefully define your assumptions and the customer has to support your PS project methodology, including the change order process & status reporting, to protect your liability for when those assumptions and estimates do not match the subscriber's reality.

Another option might be to offer block-service offerings (i.e. a 50, 75 and 100 hour implementation Block Service) to assist the Customer on discounted T&M basis, or perhaps just a vanilla T&M approach. One technique I have seen used is a spin on the old "Vendor Name"-Start Service; i.e. Sun-Start Service. This looks at the tasks generally involved per the number of the Subscriber's use so the start service may be based on the number of Customers, or Vendors or other like relevant record. However, in a SaaS world it becomes easier than ever for subscribers to feign ignorance and take the position that they "presumed" unstated services were all included in the subscription fee. As a result, your statement of work must be particularly diligent in defining assumptions, customer responsibilities and monitoring to keep the implementation process on track and billable, or you may wind up filling-in the void with free implementation services. For instance a mature SaaS provider might have menu driven wizards that guide customers in their implementation, but a provider in the early stages tends to have a consultant working along-side the customer, either way work but this needs to be understood and properly positioned in your SaaS proposal, implementation SOW and contracts. You cannot afford to broach this subject with the customer after he has exhausted his budget and is only ½ way through his SaaS implementation.

As you well know, even if customers don't always pay for support, "you" are often forced to provide the service in order to properly position your application, or at least to prove their problem was not generated by your application. If you are aware of the risk and construct your contracts properly you can help ensure that you are compensated for the services necessary to help make the customer's SaaS implementation successful.

Compliance Liability and Personal Information Privacy Laws

Do you know who is liable for compliance with Personal Information privacy laws? This is an easy one, the relevant person, patient, or corporate entity will most certainly name both you and your customer in the event of a breach action. The subscriber is in exclusive control of the data they load into your system; do they have all the necessary rights? That data resides on your host, have you taken all the appropriate measures to help secure the secrecy of that data (i.e. people, policies etc.)? Do you monitor that data, or do you even want to monitor that data? What are your obligations if that data is leaked? These laws and regulations are rapidly evolving. HIPPA, PII, PCI etc. and compliance is a major concern with most

market segments. Your customers have tremendous dependency upon their SaaS provider and you need to carefully develop a comprehensive offering or your will either wind up on the defensive or it will dramatically slow down the sales cycle as you weave you way through these issues one by one like; it will feel like walking through a mine field.

End of Term Obligations

This may vary a bit if subscribers breach their contract. However, under all circumstances a subscriber owns their data and you, as an experienced merchant of SaaS services, have an affirmative duty to protect their intellectual property rights. Tremendous operational damages occur in situations where end of term obligations are not clearly stated in your agreements. Similar to the implementation process reviewed above, if you do not advise the customer about these matters you may well wind up performing additional services for free in order to manage your potential liability with departing customers.

Recommendations

SaaS offers software developers a lot of advantages, however, there are a number of new risks associated with this new business model. Below are some recommendations.

1. You need to carefully understand the difference between a trail license/sandbox and a Proof of Concept Agreement.

2. If you don't have a well-defined SaaS implementation service agreement and SOW, a fixed price implementation service can be big a financial loser.

3. In the SaaS world you must manage the risks associated with your access to the customer's data, and the customer's access and use of your computer hosting platform while ensuring compliance with regulations as they continue to evolve.

4. You need to carefully construct your SaaS agreements to manage any liabilities and exposure, yet ensure you are properly paid for services in a post termination assistance role?

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

Your SaaS Agreement defines who you are to the customer. Do yourself a favor and take advantage of a 30-minute free consultation to review your SaaS agreement, highlight anything important and provide the extra assurance of adequate protection. You 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.