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I am [Joanna Bouloux](#), a Solicitor in the Commercial Contracts, Technology and Procurements Team. I have been working at Devonshires for the past 7 years. I have experience in general commercial contracts, Intellectual Property issues, IT supply and support agreements, standard and bespoke terms and conditions, privacy policies and confidentiality agreements. I also advise on corporate agreements such as joint ventures, LLP agreements and other company and partnership issues.

This issue of our Quarterly Brief looks at SaaS Contracts. One of the initial queries we often receive in relation to SaaS Contracts relates to whether a supplier's standard terms are non-negotiable. Generally, the scope for negotiation of the contract depends on a number of factors such as the nature and value of the contract (the higher the value/more bespoke the offering the greater the scope for negotiation) and the bargaining position of the parties. It may also depend on whether there is an existing relationship between the parties. Even where limited negotiation is accepted, it may also be possible to agree certain compromises such as the term of the contract, reducing the risk.

Please do get in touch if there is anything I can help with or if you would like to attend the Webinar.

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How well do you know your SaaS Contracts?

As the way we work has shifted, hybrid working appears to be the norm. As a result, cloud computing and subscription-based arrangements such as "SaaS" are on the rise. The flexibility regarding add-ons, price transparency and standard off-the-shelf products are making it the go to option for technology solutions for organisations. This also reduces the burden of keeping physical servers on site, thus saving time, space and money.

So, how well do you know your cloud contracts?

Scope of Licence / Access

The scope of the licence /grant of access is usually restricted to a number of authorised users and to specific internal business needs. Any further users or extra services and modules will be an additional cost and do not automatically form part of the licence. Customers should consider whether the cost of these additions can be fixed upfront.

Terms of Service

Treat your cloud contracts like you would any other contract, agreement or T&Cs. Review key terms and ensure there is clear agreement on the scope of the services, the duration of the service, any renewal periods and the cost of the subscription. Consider the extent of any onboarding, configuration or data migration etc and whether the agreement needs to provide for this.

Data Security

Given the nature of SaaS arrangements, a large amount of data is generated. When discussing your needs with the SaaS provider, clearly outline who owns the data being provided (usually the customer), how it will be managed, stored and transferred. Be sure to discuss how data will be encrypted, backed up and the role of the SaaS provider in the event of a data breach or security issue.

Termination

Most SaaS agreements have an automatic renewal period. The notification to opt out of the automatic renewal is usually 60+ days before the end of the current term. It is sensible to keep a note of the anniversary or subsequent renewal term dates as well as how many days' notice are required, failing which you will be stuck for another year paying for services you do not require.

As well as looking at termination clauses, have you considered what will happen when the Service terminates? What will happen to your data? How and when will it be returned? Will the incumbent SaaS provider cooperate with the new SaaS provider? Will there be a period of overlap during the implementation or onboarding process?

Service Level Agreement (SLA)

Arguably this is the most important document in the contract. This is usually a standalone document which sets out the day-to-day responsibilities of the provider, minimum performance and standards concerning service availability. Typically the SLA should include availability and guaranteed uptime targets, response times for sensitive issues, general support, fix and maintenance. In addition the SLA will include performance metrics, KPIs, any monthly or quarterly review meetings, service credits or escalation processes for resolving support and maintenance issues.

If you would like any assistance with your SaaS contracts or a review of Supplier standard T&Cs and SLAs, please contact either [Shamila Atta](#) or [Joanna Bouloux](#) for further information.



Upcoming Webinar: IT Contracts – Managing Risk and Avoiding Common Pitfalls

Thursday 15 December 2022 11:00 – 12:00

In this webinar we will explore a wide range of matters relating to IT contracts, including procurement, negotiation of terms, disputes and how best to manage risk and avoid common pitfalls, with reference to real life examples throughout.

Speakers:

Kris Kelliher, Partner, Devonshires
Nikki Bowker, Partner, Devonshires
Joanna Bouloux, Solicitor, Devonshires
Shamila Atta, Solicitor, Devonshires

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