

# 6 KEY SAAS CONTRACT ESSENTIALS

**Software as a Service (SaaS)** is a licensing and delivery model where software is licensed on a subscription basis, is centrally hosted, and is made available via the internet (you do not need to download it). This cheatsheet will explain your SaaS contract fundamentals.

SaaS agreements should be comprehensive and set out liability and obligations for both parties. Failing to include or properly define a crucial clause can have serious legal implications for your business' risk, reputation and commercial relationships. If you need legal assistance for your SaaS business, get in touch with our experienced lawyers.

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## SaaS Contract Types

There are two key types of SaaS contracts:

- Online: client signs up and agrees to T&Cs online
- Offline: customised, hard copy of the contract.

Some businesses want a combination of both. Consider how you want your clients to sign up and what will be easiest for you.



## IP and Data

Your contract should reflect how IP and data will be managed. You should consider:

- the difference between IP and Data;
- who owns the IP in your product; and
- what data is generated from your SaaS and how it is owned/used.

Consider whether you should protect your intellectual property through formal registration, such as a trade mark.



## Service Level Agreements (SLAs)

Use SLAs to manage customer expectations:

- make commitments such as uptime as well as support response and resolution;
- quantify risks and risk management;
- identify a service credit process; and
- aim to divert disputes by offering limited customer remedies.

Run an SLA test to check whether you can meet your proposed service levels.



## Contractual Considerations

SaaS contracts should be unique to your business' needs, including:

- how you sign up customers;
- how authorised users are onboarded;
- how you manage IP, data, privacy and risk;
- how users can request support; and
- your Service Level Agreements (SLAs).

Draft a bespoke SaaS agreement for your business.



## Privacy

You should identify:

- what privacy obligations you have;
- what privacy promises you want to make or need to make in your contract; and
- what your privacy policy should cover.

Consider your privacy obligations early in the process. The best approach is privacy by design, where you design your product with privacy in mind.



## Managing Contractual Risks

Options for minimising your contractual risk include:

- exclusions to liability; and
- capping your liability.

Your SaaS agreement is not the only way to minimise risk.

You should also ensure you take out adequate insurance policies.