PRACTICAL SAAS CONTRACT MASTERCLASS

SYLLABUS

VERSION 1.0

Welcome

I would like to welcome you to the Practical SaaS Contract MasterClass. The Practical SaaS Contract MasterClass is a hands-on,8-week training program designed for legal professionals working with technology and SaaS companies. Each session dives into real-world contract issues, like indemnities, IP, liability, SLAs, and more, through practical frameworks, negotiation strategies, and case examples. By the end, you'll have the tools and confidence to lead complex SaaS contract negotiations with clarity and skill.

Looking forward to seeing you in the class!

David Cohen

The Practical SaaS Contract MasterClass is intended to provide accurate information, but it is provided with the understanding that the author is not engaged in providing legal services, advice or representation. If legal advice is required for any reason or any set of facts of circumstances, the services of a qualified attorney licensed in the appropriate jurisdiction should be retained.

Nothing contained in this syllabus or the Practical SaaS Contract MasterClass is to be considered as the rendering of legal advice for specific cases, and participants are responsible for obtaining such advice from their own legal counsel. This syllabus and the Practical SaaS Contract MasterClass is intended for educational and informational purposes only.

01

SAAS CONTRACT FUNDAMENTALS

Master SaaS contract essentials, from historical evolution to modern practices. Develop critical information gathering skills and learn to instantly spot potential issues.

Lessons:

1.1 🎓 Course Introduction & Professional Context
- Overview of the Practical SaaS Contract MasterClass

1.2 Understanding SaaS: Core Concepts & Market Overview
- Horizontal and vertical SaaS

1.3 🕰️ The Historical Evolution of Software Licensing to SaaS
- Transition from traditional software licensing to cloud-based SaaS
- Key legal shifts in SaaS contract risk

1.4 🕵️ Pre-Review Essentials: Critical Information Gathering
- Must-ask questions before reviewing a SaaS contract

1.5 Practical Application: SaaS Contract Issue Spotting
- Case study: Analyzing a SaaS agreement for potential risks
- Identifying high-risk clauses in SaaS agreements

INTELLECTUAL PROPERTY & OWNERSHIP ISSUES IN SAAS

02

This module navigates the complex IP landscape in SaaS relationships. Understand ownership boundaries across software, customizations, and data to protect valuable assets.

Lessons:

2.1 Understanding SaaS IP: Beyond Code and Copyrights
- Five key types of IP in SaaS
- Common misconceptions in SaaS IP definitions

2.2 ✍️ Drawing the Lines: Ownership Rights in SaaS Relationships
- Vendor vs. customer ownership in SaaS contracts
- Red flags in broad IP ownership clauses

2.3 Core Software Rights: Protecting Your Software and Software Updates
- Structuring IP clauses for software updates and bug fixes
- Negotiation strategies for vendors and customers

2.4 🧩 Navigating Customization Rights: Beyond Standard SaaS
- Ownership considerations for SaaS customizations
- Structuring exclusive-use rights vs. ownership transfer

2.5 📊 Reports and Data: Untangling Complex Ownership
- Data ownership vs. report ownership in SaaS agreements
- Handling third-party content within SaaS reports

2.6 ⚠️ Protecting Your IP: Common Pitfalls and Strategic Solutions
- Risks of broad Master Service Agreements (MSAs)
- Efficient redlining ideas to protect vendor IP

2.7 Data Ownership and Usage: Navigating Customer Rights
- Vendor rights to use customer data for product improvement
- Key distinctions between aggregated, anonymized, and de-identified data
- Customer sensitivities and solutions to break a deadlock

03

THIRD-PARTY —— COMPONENTS IN —— SAAS

Uncover the hidden elements powering SaaS solutions. Learn to identify third-party infrastructure, integrations, and content components that impact contracts.

Lessons:

3.1 What are Third-Party Components in SaaS?
- Definition and types of third-party components

3.2 ☕ Embedded Software in SaaS: Hidden Risks and Open-Source Challenges
- Risks and liabilities of embedded software
- Open-source software considerations

3.3 ☁ Third-Party Infrastructure
- The role of IaaS providers like AWS, Azure, and Google Cloud
- Managing risks and liabilities

3.4 Third-Party Integrations
- Risks and responsibilities in SaaS API integrations
- Contractual protections for vendors

3.5 Third-Party Content in Reports and Output
- Legal considerations of third-party data in SaaS reports
- Warranties, indemnities, and content ownership

04

REPRESENTATIONS AND WARRANTIES IN SAAS

Understand performance promises that define SaaS relationships. Master warranty structures, disclaimers, and remedies to negotiate critical contract elements.

Lessons:

4.1 Representations and Warranties in SaaS - The Performance Warranty
- Standard SaaS warranties: performance and service warranties
- The impact of "materially" in performance warranties
- Balancing customer expectations with vendor risk

4.2 Other Common SaaS Representations and Warranties
- The virus-free warrant and the risks in result-based vs. effort-based warranties
- Degradation in functionality and the specifics to break through a deadlock
- Introduction to third-party IP infringement

4.3 🌍 The Key Question to Ask When Dealing with Foreign Contracts
- How different jurisdictions treat warranties
- Statutes/Courts vs the agreement of the parties
- Key differences between German, US, and UK contract principles

4.4 Implied Warranty Disclaimers Explained
- Hidden risks of express and implied warranties
- Why fitness-for a particular purpose and merchantability don't fit SaaS
- Confusion around the implied warranty of non-infringement
- Why vendors must explicitly exclude implied warranties

4.5 Limited Warranty Remedies and Common Redlines
- The battle over "sole and exclusive remedy" clauses
- Structuring reasonable warranty remedies for both parties

4.6 🐎 The Customer IP Trifecta
- Three overlapping IP customer protections
- Balancing IP warranties and indemnities into a common remedy

INDEMNIFICATION IN SAAS

05

Clarify the true nature of indemnification obligations and distinguish them from warranties. Develop precision in drafting these crucial risk allocation provisions.

Lessons:

5.1 Common Misunderstanding: An Indemnification Is an Obligation, Not a Punishment or a Breach

- Understanding indemnities as performance obligations
- Key differences between indemnification and contract breaches

5.2 🚫 Beware of the All-in-One Indemnification

- Indemnities for contract breaches and warranties and overlapping remedies
- The implications of double-dipping indemnities and warranties
- Strategies to limit the warranty/indemnification overlap

5.3 🎤Indemnification vs Warranty - An IP Indemnification and IP Warranty Walk Into a Karaoke Bar...😱

- Understanding the difference in karaoke
- Key distinctions between IP warranties and indemnifications
- Solution to harmonizing remedies

5.4 What Is Actually Covered - Indemnify vs. Defend vs. Hold Harmless?

- Meaning of indemnification, defense, and hold harmless
- Common solution to broad indemnification carve-out for combinations

06

LIMITATION OF
—— LIABILITY IN SAAS ——

Understand the strategic framework behind liability limitations. Learn to navigate damage categories, cap structures, and exceptions for effective risk management.

Lessons:

6.1 💬The "Why" of the Limitation of Liability Clause - The Answer Is in Wool
- Historical case study (Primrose v. Western Union) and relevance to SaaS liability
- The need for proportionate liability in SaaS
- The key difference between vendors and customers on limitation of liability

6.2 The 4 Parts of Limitation of Liability
- A brief description of what to look out for in limitation of liability clauses

6.3 Direct vs Indirect Damages - What Damages Does the Contract Allow Me to Recover?
- The common understanding of direct and indirect damages
- An case study to understand the difference between the different types of damages
- Recoverable under law but not-recoverable under SaaS contracts?
- A global perspective

6.4 Common Arguments Over Excluded Damages
- Incidental Costs
- Damages resulting from data breaches
- Violation of Vendor IP
- Subscription Abuse

6.5 5 Types of General Caps
- Different ways SaaS providers cap liability from vendor friendly approaches to customer friendly approaches

6.6 💥Unlimited Liability and Supercaps
- Common carve-outs to the general cap on damages
- The role of enhanced caps in SaaS Contracts
- Vendor and customer reasons for and against enhanced caps

6.7 ⚖️Confidentiality and Data Protection
- Vendor and customer arguments for unlimited liability for breaches of confidentiality and data protection obligations
- The IBM Cost of Breach Report

07

SERVICE LEVEL AGREEMENTS (SLA)

Master the technical and legal aspects of SaaS performance standards. Evaluate uptime guarantees and support policies that balance business needs with reality.

- **Lessons:7.1**

Introduction to SLAs
- Real-world impact - CrowdStrike
- The importance of reading the fine print

7.2 📊 The Uptime Guarantee - Know What the Numbers Mean!
- What the percentages mean and how realistic are they?
- The link between SaaS and IaaS uptime guarantees
- Monthly vs annual uptime measurements

7.3 What are Reasonable Efforts in SLAs?
- The impact of qualifiers to uptime
- Do qualifiers have a place in SLAs?

7.4 Exclusions and Exceptions to the Uptime Guarantee
- Common vendor carve-outs to the uptime guarantee
- Emergency maintenance
- "Outside of the vendor's control" and IaaS failures

7.5 💳Service Credits
- How service credits work as SLA penalties
- Service credits and sole and exclusive remedies
- Service credits as a negotiation tool

7.6 Support and Maintenance Policies
- Definitions of errors
- Purpose of severity levels and a single word that destroys the structure!

7.7 ⏱Response Times vs. Resolution Times
- Why vendors commit to response times but not resolution times
- Customer strategies to ensure timely issue resolution

7.8 🍭Hidden Traps to Watch Out For in SaaS SLAs
- Time zone limitations
- Support contacts
- Support of certain versions
- Acceptance testing

7.9 Navigating SaaS Performance Warranties vs. Software Maintenance SLAs
- The difference between performance warranties and SLAs
- How warranties serve as a backup when SLA remedies fall short
- When SLAs and warranties contradict each other

SUBSCRIPTION MODELS AND KEY COMMERCIAL TERMS

08

Explore commercial frameworks driving SaaS business relationships. Align subscription structures and key terms with strategic business objectives.

Lessons:

8.1 💰Subscription Models for SaaS

- Different subscription models and pricing structures: usage-based, named user, concurrent, and enterprise models
- Risks and benefits of each model from a vendor and customer perspective
- The impact of AI, APIs, and automation on subscription pricing

8.2 📎Key Commercial Terms

- Automatic renewals and price increases - how to manage contract risk
- Termination for convenience - customer flexibility vs. vendor revenue stability

JOIN OUR CLASS
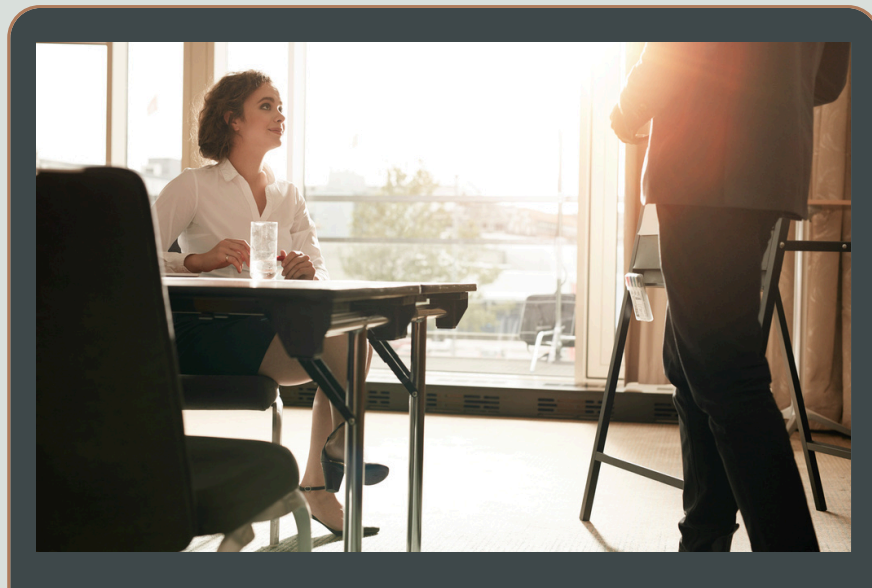
You've just taken the first step toward mastering one of the most critical skill sets in the tech industry - SaaS contracting.

This MasterClass isn't just about understanding the clauses. It's about building the mindset, strategy, and confidence to navigate complex SaaS negotiations with clarity and purpose.

I'm thrilled to have you in this cohort and I can't wait to see the impact you'll make.

See you in class! 🚀

— David Cohen

Instructor, Practical SaaS Contract MasterClass

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