



Overcoming SaaS Fears at the Enterprise Level

White Paper Using Question and Example Format

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INTRODUCTION

Software-as-Service (SaaS) inevitably will progress from its current product placement, that of a lower cost form of computing for small and medium size businesses (SMBs), to the dominant mode of buying and selling software across all markets.

With this progression will come questions from large, enterprise system customers about how well SaaS satisfies their requirements. Enterprise IT requirements range from technical issues like scalability, to financial issues such as cost savings, legal issues such as data rights, risk management issues such as down time, user issues such as workflow, and corporate policy issues such as quality initiatives. In sum, upfront cost is no longer the only driver behind a buy decision when SaaS moves up to the enterprise level.

ENTERPRISE IT BUYING

The biggest obstacles faced by SaaS providers in selling to large, enterprise-oriented corporations are 1) the “software mindset” of corporations, 2) the traditional role of CIOs and IT departments in corporate governance, and 3) the multiple participants involved in the IT buying process. This white paper will focus on the third point, IT buy decision making organizations and their goals.

In large corporations, IT purchasing and vendor management—gathering requirements, vetting vendors, approving budgets, managing projects—is a cross-departmental function involving the following entities:

- User Group (Executive Sponsorship)
- Procurement Department (Various Incl. CEO, CFO, EVP of Proc.)
- IT Department (CIO)
- Legal Department (GC)

Other participants can include risk management and internal auditing departments.

FORMAT OF WHITE PAPER

How these participants interact in IT buying decisions, how much of a say each has in the final decision, and what criteria serve as the basis of the decision varies widely from company to company. As a rule, these participants have different and conflicting interests in the outcome of enterprise IT transactions including the terms of the final purchase-and-sale contract. It is not uncommon for user groups to align themselves with vendors, blurring the lines between customer and vendor. CIOs are cognizant of user groups trying to do “end runs” around them by essentially outsourcing the CIO’s powers to vendors. Lawyers are trained to be wholly risk adverse and sometime lose sight that rewards can outweigh risks in business. Procurement departments have the mission of representing shareholder interests in reducing costs, creating efficiencies in the supply chain, and obtaining high quality goods and services.

This white paper addresses selling SaaS to enterprise customers by posing the central questions that SaaS providers will face from enterprise IT buy decision makers. The questions are divided among the groups identified above that will ask the questions: Procurement; IT Governance; Legal; and User Group. The questions are further divided into priority areas within each organization.

Each question is followed with an example of how a SaaS service provider could fail to address the concerns contained in the question. This question and example format puts the discussion exclusively in the context of SaaS as a technology and as a business.

At the end of each section, suggestions are given on how SaaS providers can overcome the concerns that have been raised.

At the end of the paper James River briefly describes how its methodology-based services can further help both SaaS providers and SaaS customers derive value while meeting critical requirements.

PROCUREMENT



STRATEGIC/CENTRALIZED PROCUREMENT FEARS

- ***Is there an approved business case for the SaaS solution setting goals and projected ROI?***

Example: Management at a customer corporation will not approve a business case for a SaaS service because the business case doesn't show how the ongoing subscription fees will cost less than maintaining an existing parallel system.

- ***Are the prospective SaaS user group's requirements satisfied by existing contracts and vendors?***

Example: An EVP of procurement will not entertain subscribing to a new SaaS service without the company first asking an existing on premise software supplier to develop a similar SaaS offering or to license the on demand application and host it.

- ***Can the SaaS service meet requirements across the entire department or corporation?***

Example: A prospective SaaS service only supports call center functions for a particular market. Further, the feasibility of integrating the service with other corporate systems is unknown. The application is labeled a "stove pipe" system by procurement and rejected.

- ***What is the scope of the SaaS service? What are the customer's respective responsibilities?***

Example: Given that SaaS is a service, corporate procurement will not proceed with vendor discussions until the SaaS provider writes up a statement of work (SOW) defining the business processes that will be supported by the service and defining the customer company's data uploading and sharing responsibilities.

– ***What user group is being served by the SaaS service?***

Example: A company's procurement and IT policies mandate phased purchasing and "rollout" of all new systems. The SaaS service platform has limited provisioning and user administration capabilities. One office within a department is designated as phase 1 and the purchase order is limited specifically to that office. Employees in other parts of the company hear about the new service and log in.

– ***Is there a commodity demand analysis on which the SaaS contractual commitment is based?***

Example: In the past a company has purchased software licenses on a per seat basis and many seats have gone unused. To avoid the same mistakes, the procurement department now requires an analysis of how many employees are involved in the subject business processes and how many have expressly indicated an interest. The subscription to a SaaS service charges according to number of API calls, not number of users.

– ***Has the SaaS vendor forwarded a draft contract to be marked up and negotiated? Is the contract a master ordering agreement? Does the SaaS provider have a negotiation point of contact (POC)?***

Example: Procurement asks the SaaS provider to send them a draft contract document for review. The SaaS provider's service contract exists only online, and the terms are simple Web site terms of use and the site's privacy policy. Procurement tells the provider it needs to provide a real contract and a person to negotiate.

– ***What is the SaaS provider's pricing justification?***

Example: A corporation's procurement department has hired an industry analyst whose data concludes that virtualization and an expanding customer base plus other factors show significantly decreasing costs of providing SaaS services over the past year and going forward. Procurement challenges a



SaaS provider to show them financial proof justifying why their subscription fee remains flat.

VENDOR QUALIFICATION FEARS

– Is the SaaS vendor financially viable and insured?

Example: A customer corporation has a risk management department that requires the SaaS vendor to carry cyber liability insurance to cover data loss. The vendor uses a third party data center that carries such insurance but the center refuses to add any named beneficiaries.

– What is the SaaS vendor's past performance?

Example: All suppliers to a customer company must provide past performance data in order to do business. Procurement for the company requests the SaaS provider to submit network monitoring and security scan data for the past year. The SaaS provider doesn't conduct any security testing.

– Are there subcontractors to the SaaS provider or resellers sitting between the provider and the customer?

Example: The customer company's General Counsel has instructed the procurement staff that if a service contract is with a reseller, the service contract with the must act as a guarantor for performance of all service terms and further indemnify the customer for all service faults. The SaaS provider's channel sales partnership agreement with the reseller specifically says that the provider is not liable for any customer claims.

– Is there reciprocal buying from the customer by the SaaS vendor?

Example: The EVP of sales for a company has directed the procurement department not to do business with any supplier that is not a customer of the company (reciprocal revenue arrangement). The SaaS provider already has a contract with

one of the company's competitors, and further the customer does not sell any services on a like basis.



VENDOR ADMINISTRATION FEARS

- ***Does the SaaS provider's platform offer billing and provisioning? Does the billing and provisioning functionality component generate all of the data needed for the customer's financial reports?***

Example: The CFO of a customer company gives detailed data in the company's financial reports on the use of outside services. The SaaS service's platform infrastructure has no means for measuring usage by customer. Despite all other factors pointing in favor of subscribing to the SaaS service, the CFO tells procurement he objects to using the service.

- ***What are the savings or discounts that have been won from the SaaS vendor? Does the SaaS vendor offer a most favored nation (MFN) price protection clause?***

Example: The procurement EVP for a company will not approve any deals without a hard savings figure that can be reported up to executive management. In the past, software licensing deals have always been accompanied by huge discounts. The SaaS vendor can only point to analysts' predictions that SaaS subscription fees will go down as more and more subscribers join and the providers actually take advantage of virtualization.



OVERCOME PROCUREMENT FEARS

- Prepare customer-specific SOWs describing the user group, the business functions, and the data to be served through the SaaS solution. Include a description of system administration functions. Clearly outline what the customer responsibilities are for accessing the SaaS service, reporting outages, managing data, training, and other service related items. Attach SOWs as addendums to service contracts.
- Clearly outline the SaaS service's billing and provisioning mechanisms. Provide examples of reports on billing, usage, credits, and other financial data.
- Explain how the SaaS solution's platform technology can limit ordering and provisioning according to contract levels. If the platform does not contain this functionality, come up with work arounds. Structure fees as close to actual usage as possible, e.g., metering.
- Aggregate all constituent SaaS software and service providers that make up the solution, so that they appear to the customer to resemble a single vendor as much as possible. Avoid rebranding. Be prepared to identify all third party providers and to discuss the contents of subcontract and partner agreements.
- Prepare comprehensive, standard master SaaS subscription contracts in a transferable and editable document format. Be ready to negotiate.

IT GOVERNANCE



IT GOVERNANCE FEARS

- ***Can the SaaS service be managed according to the company's IT governance policies and strategic plan?***

Example: Individual employees at a company are signing up for test drives of the SaaS service and uploading confidential company data to the provider's data center. Corporate policy forbids use of external applications without IT department

approval. The CIO learns of the unauthorized use and writes a letter to the SaaS provider demanding that the provider prevent further use by company employees unless and until a subscription contract has been signed. The SaaS provider does not have the technical means to fulfill the CIO's demands.

– ***Is the SaaS service open, non-proprietary technology?***

Example: A corporate IT department policy states that all systems must be compliant with established industry standards for openness. W3C Web Services standards, which are recognized by many as the prevailing standards for on demand applications, are still evolving. The IT department opposes entertaining use of a SaaS service until common development and integration standards become established.

– ***Does the SaaS service incorporate redundancy and disaster recovery abilities?***

Example: A SaaS provider's third party hosting partner does not mirror or backup systems and data. IT operating procedures at a potential customer require backup of all systems data every 24 hours.

– ***Is the SaaS service certified according to independent standards such as SAS 70, ISO/IEC 20000, ISO/IEC 27001 and TIA-942?***

Example: A potential customer's IT and business operations are ISO compliant, which the company plays up to its own customers and to share holders. The CIO and the CEO have unequivocally said that all outsourcing IT contracts must adhere to ISO. SaaS is considered another form of outsourcing.

- ***Will the SaaS vendor agree to meet the IT department's internal service level agreements (SLAs) with company user groups?***

Example: Previously, the IT department at a company was beaten up for not providing all requested functionality in an ERP implementation project, leading to an internal SLA document. A copy of the SLA is presented to a SaaS provider who is then told the document must be amended to its subscription agreement.

OVERCOME IT GOVERNANCE FEARS

- o Document all SaaS back end operations systems and processes. Make the descriptions available to the customer and include them in the subscription contract.
- o Identify all industry certifications and third party organization seals of approval of SaaS operations. Identify the compliance of on demand applications with open technical standards.
- o Describe controls that prevent unauthorized use of the SaaS service including unauthorized development of "mashups" by employees. Describe controls for preventing the proliferation of company data among multiple data centers.

LEGAL

LIABILITY FEARS

- ***Does the SaaS vendor indemnify the corporation for service related claims including 1) SOX fines and damages and 2) data loss, theft or disclosure?***

Example: The data center hosting a SaaS service annually receives a SAS 70 Type II audit. A customer's legal department takes the position that if the audit is sufficient to show SOX compliance, the SaaS provider cannot object to indemnifying the customer for SOX related SEC fines. The

SaaS provider counters that it is their accountants, not the provider, who are responsible for the audit.

– Does the SaaS vendor undertake a high degree of care for safeguarding data?

Example: In its contract, a SaaS provider clearly gives ownership of data to the customer and agrees to give the customer a copy of the data upon request, but otherwise the provider disclaims all liability for data. A customer company's lawyers refuse to approve any contract that does not place responsibility on the vendor for data loss, arguing that common law already places a duty of care on the provider.

– Is the SaaS vendor liable for lost profits and the cost of alternative solutions?

Example: In the past, software vendors have avoided liability for lost profits on the grounds that they are not the operators of the system. A company's law department argues that because SaaS providers are at least joint operators of the system, they should take on a commensurate amount of liability for negligence including for lost profits.

– Do the SaaS vendor's terms impose exclusivity or non-compete clauses on the company?

Example: Because SaaS is a subscription service and not a license of rights, a SaaS provider attempts to protect its intellectual property in on demand applications by using contract language that prohibits customers from operating similar services. A customer interested in the SaaS service is also interested in building a homegrown Web services application that will eventually replace the SaaS service. The customer's lawyers take the position that if the SaaS service is really a subscription, there should be no lasting conditions once the service has ended.



COMPLIANCE FEARS

- ***Are the SaaS vendor's service operations audited for compliance with Sarbanes Oxley?***

Example: The third party data center for a SaaS service is audited every year using the SAS 70 accounting standard. The service's billing and provisioning system and data backup are provided remotely by other providers in other data centers that are not audited. A customer's procurement department discovers the existence of the other providers and alerts the legal department, which immediately demands the provider to obtain additional audits.

- ***Does the SaaS vendor have an EC Safe Harbor privacy policy governing the data?***

Example: Lawyers for both a SaaS provider and a corporate customer debate the issue of whether it is the customer's responsibility to comply with European privacy laws, since the customer owns and accesses the data, or if it is the provider's responsibility since it operates the data facility, or the responsibility of both parties.

- ***Is the SaaS vendor responsible for responding to ECPA and FISA subpoenas and orders?***

Example: A SaaS provider's subscription agreement says that customers must indemnify the provider for all costs related to law enforcement requests for the customer's data. A customer's legal representative disagrees, arguing that cooperating with law enforcement is a civic duty shared by all.

- ***Does the SaaS vendor have the technical means to retain data for and respond to Federal E-Discovery requests and will it assume liability for "spoilation"?***

Example: A corporate customer of a SaaS provider is sued by another company. The plaintiff company names the SaaS provider in a subpoena requesting data that was uploaded by the customer. The provider's law department tells the plaintiff



they do not have the capability of extracting the data without incurring significant costs. The customer's lawyers take the position that they are not liable for the cost under the subscription agreement.

INTELLECTUAL PROPERTY FEARS

- ***Does the SaaS vendor agree to escrow or license the on demand application code to the corporation?***

Example: A corporate procurement department instructs the lawyer negotiating a SaaS contract that the vendor is required to place a copy of the on demand application code in escrow in the event the vendor ceases operation. Procurement views the escrow as equivalent to a software vendor escrowing source code. The SaaS vendor refuses to escrow the code because it views escrow as an unnecessary cost.

- ***Does the SaaS vendor agree to keep data confidential and return all copies of the data at the contract's end?***

Example: A SaaS vendor refuses to sign a customer's non-disclosure agreement (NDA) in addition to the subscription agreement. The vendor wants to perform trend analysis on all of its customers' data and sell it to an industry research firm, which it does not view as disclosing the actual data.

- ***Does the SaaS vendor agree to treat user feedback as confidential and as a trade secret?***

Example: A customer user group regularly provides feedback to a SaaS provider on how the service needs to be customized to support the customer's business processes. The provider takes the feedback, customizes the on demand application, and releases it as a new version to the public.

- ***Does the SaaS vendor forego any ownership interest in customer data and waive all other rights, e.g., artisan's liens?***

Example: A SaaS service is terminated by a customer claiming the service did not perform according to the service level. There are outstanding invoices for data uploading work done by the SaaS provider which the customer refuses to pay. The provider in turn refuses to return the customer's data, claiming a lien on the data on grounds it performed compilation and management work.



OVERCOME LEGAL FEARS

- o Escrow the SaaS application code or negotiate an optional license.
- o Provide the means for customers to independently access and backup SaaS data.
- o Expressly grant data rights to customers in the contract but also carve out SaaS vendor rights of use for purposes of delivering the services.
- o Clearly define whether the SaaS vendor undertakes any SOX, EC Privacy Directive, or E-Discovery responsibilities. Clearly define whether the SaaS vendor is authorized to independently respond to subpoenas or whether customer consent is required.
- o Incorporate into the SaaS service an electronic data management system or consulting service specifically for electronic discovery, or partner with electronic discovery providers.

USER GROUP



USER GROUP FEARS

- ***If the SaaS service goes down, whom do users call to report the problem?***

Example: A SaaS service interface is not loading onto users' browsers at the company's offices. The supervisor of the office calls the SaaS provider's help desk and initiates a trouble ticket. The source of the trouble is with the company's own Internet service provider (ISP). The company and the SaaS provider never coordinated systems monitoring and technical support, however.

- ***Can the SaaS service interface be configured to support the company's business?***

Example: A company subscribes to a SaaS service that is inexpensive and effectively supports its business processes. 6 months later, based on feedback from all its customers, the provider relaunches the service. The new service's functionality no longer supports some aspects of the company's business. The SaaS provider explains that under the terms of the subscription agreement it reserves the right to change the service.

- ***What are the SaaS subscription termination rights?***

Example: Senior management for a department interested in subscribing to a SaaS service does not want to commit its budget long term until it can get additional budget for the service. The user group will agree to any other terms but demands a right of termination with only 30 days notice. The SaaS provider's subscription is for one to three years and requires payment in advance.



HOW JAMES RIVER'S SERVICES CAN HELP

OVERCOME USER GROUP FEARS

- Clearly delineate which party is responsible for a particular service issue. Establish methods of communication between company technical support and SaaS provider support.
- Describe functionality. Include the description of functionality in the terms of the SaaS service. If functionality is subject to change, provide advance notice and the ability to terminate the subscription.

All of the questions posed in this white paper, and the issues raised by them, are matters that can and should be addressed in SaaS subscriber contracts.

James River's many years of experience in all phases of the contract life cycle can help SaaS vendors to meet enterprise requirements, and SaaS enterprise customers to exploit the advantages of SaaS in their user organizations.

A good example of how James River's methodologies can facilitate SaaS at the enterprise level is our Playbook, one of the service products that are part of our Contract Event Management methodology. The Playbook enables sales persons to be prepared for any number of issues they may encounter when working with a customer. The Playbook not only provides immediate and reasoned answers to questions, but it can also explain why the SaaS model drives different service terms than those found with software licenses.

Our Contract Performance Management methodology also recognizes the differences between SaaS and software. It applies performance metrics that are appropriate to SaaS, and that drive optimum customer value from SaaS.

James River has created a SaaS vs. Software Transaction Hierarchy Model (See Appendix A) that helps understand the ways in which enterprise customers will draw the SaaS/software comparison.



ABOUT THE AUTHOR

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APPENDIX A--SAAS VS. SOFTWARE TRANSACTION MODEL AT THE ENTERPRISE LEVEL

