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# Is SaaS really better than software licensing?

**T**here is a prominent Software as a Service (SaaS) provider whose marketing campaign includes a red-circle-and-slash symbol over the word “Software” and a toll free number that reads “NO-SOFTWARE.” It’s a provocative ad that is emblematic of the IT industry’s new attitude towards selling software as services instead of licensing. The **Software and Information Industry Association** calls SaaS a “revolution” and quotes **Microsoft Corp.** in arguing that SaaS addresses licensing’s away costs. SaaS will likely soon replace licenses for all except the largest, most critical enterprise apps. Is SaaS a better deal for business than licensing? Given how some current SaaS providers are writing their service agreements, the answer may not be a slam dunk. Cost is not the only factor. Look at the online agreement for a fictitious SaaS provider named Sellhard.com that resembles several current providers. In its terms Sellhard.com grants a non-exclusive, non-transferable, worldwide right to use the service. Payments are due in advance for a set license term. Users owe for all passwords regardless of actual use. If users violate terms, their access is terminated without refund. Licenses are automatically renewed unless users give notice but the deadline is murky. Sound like a traditional license? In licenses, violations mostly concern unauthorized copying, e.g., too many users, too many installs, installs on unauthorized networks. Only a few terms relate to use, i.e., service bureaus and inherently dangerous activities. By eliminating copies and installs, SaaS should eliminate any chance of customers breaching the contract except for non payment. But Sellhard.com goes to great length in prohibiting certain kinds of customer use and can terminate the service for committing any of a long list of offenses. Users cannot: monitor the services’ availability, functionality or performance; hyperlink to the service or mirror it on a network; build a similar service; spam, send viruses, or store or send harmful material including to children; disrupt the service or try to gain unauthorized access; or break any state, national and foreign laws regarding data privacy and transmission of data.

One major difference between Sellhard.com’s agreement and traditional licenses is Sellhard.com can change any term without notice by posting online. License terms do not change, including updates.

## GUEST COLUMN



**Eric Esperne,  
President, James  
River Consulting**



James River Consulting LLC is a Medway, MA, consulting firm specializing in IT contracts of all kinds, and non-IT services contracts in multiple practice areas. James River’s expertise and experience covers the entire contracts life cycle, from development to negotiation to performance management to dispute resolution and close out. The company’s clients include both providers and customers. For more information contact Eric Esperne, President, at 703-850-7061 or [eesperne@jamesriverllc.com](mailto:eesperne@jamesriverllc.com).

Besides license-like terms and rights, and liability become questions 99.9% uptime. Business continuity hefty use prohibitions, SaaS by its that must be answered definitively by and disaster recovery provisions are nature presents customers with two agreement. How SaaS providers never mentioned by Sellhard.com. enormous operational areas not found address data is a significant element in One added value of SaaS over in licenses: data and network service their value proposition. software not addressed by levels.

Sellhard.com's approach is to Sellhard.com's agreement is the SaaS turns the traditional avoid any responsibility for customer growing administrative burden of relationship between customers and data integrity, confidentiality or housing data. A large body of laws has their data on its head. Data is security. In fact Sellhard.com can evolved requiring data custodians to physically located on the SaaS's immediately destroy the data without respond to notices, subpoenas, and hosting company's premises and notice if it believes the customer has court orders seeking data in the form of maintained on the SaaS host's violated service terms. It is also not copyrighted material, communications hardware. Customers must receive required to delete data in its possession contents and transmission, and permission to access. Customer's are and is not liable for unauthorized subscriber records. Data custodians the presumed owners but may never disclosure of data, raising concerns of are legally bound to cooperate with actually create the data or possess it. resale or inadvertent access by copyright owners and the Government, Third parties may constitute the actual competitors. and reimbursement is not always users of the service without any formal The greatest shock in automatic. Violators are subject to relationship between them and the Sellhard.com's contract comes from both civil suits and criminal SaaS or the host. SaaS providers, the absence of any network service prosecution. Publicly traded hosts, customers and users become levels. It says that the Internet has companies must now undergo regular links in a legal and business chain that inherent limitations, delays, and other audits of their automated systems may never be completely joined. problems for which Sellhard.com is not security and comply with national Resellers of SaaS add another link. responsible. As a rule, network and security standards.

With SaaS, data ownership, access Web hosting services guarantee at least