

CHARTING LEGAL LANDSCAPES

Navigating International Complexity, One Issue at a Time
by GC Law Firm

绘制法律图景

逐一应对国际复杂性。

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The Architecture of the SaaS Contract – Beyond a Simple License

Focus on Service Level Agreements (SLA), Data Protection, and Business Continuity

SaaS 合同架构 – 超越简单的许可

重点关注服务水平协议 (SLA)、数据保护和业务连续性



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Abstract

The transition from "on-premise" software to the Software-as-a-Service (SaaS) model has radically transformed the legal nature of technology agreements. We are no longer dealing with a simple license of use, but with a complex service contract that requires multidimensional protection of company assets and data.

从“本地部署”软件向软件即服务(SaaS)模式的转变从根本上改变了技术协议的法律性质。我们不再仅仅面对简单的使用许可，而是一个复杂的法律服务合同，需要对公司资产和数据进行多维度的保护。

Key words:

- SaaS,
- Cloud
- Computing,
- SLA
- GDPR
- Intellectual Property
- Exit Strategy

Legal Framework of Software-as-a-Service: Architecture and Contractual Standards

软件即服务 (SaaS) 的法律框架：架构与合同标准

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1. Legal Framework: Service vs. License

1. 法律框架：服务 vs 许可

Reference 参考

Details and Implications

详情与影响

Contract Nature

合同性质

Unlike a traditional license, SaaS is a service or supply contract. The customer does not "own" a copy of the software but accesses it via cloud infrastructure managed by the provider.

与传统许可不同，SaaS 属于服务或供应合同。客户并不“拥有”软件副本，而是通过供应商管理的云基础设施进行访问

Intellectual Property

知识产权

It is essential to distinguish between software ownership (provider) and data ownership (customer). The contract must prevent unintended IP rights transfers.

必须区分软件所有权（供应商）和数据所有权（客）。合同必须防止意外的知识产权转移

2. Service Level Agreements (SLA)

2. 服务水平协议 (SLA)

Parameter

参数

Details and Implications

详情与影响

Uptime & Availability

The uptime clause defines the percentage of time the service must be

在线率与可用性	accessible (e.g., 99.9%), including scheduled maintenance windows. 在线率条款规定了服务必须可访问的时间百分比（例如 99.9%），并应包括计划维护窗口
Penalties 违约金 (Service Credits)	In case of SLA failure, the contract should provide automatic remedies, such as credits on future fees, proportional to the service disruption. 如果未能达到 SLA 标准，合同应规定自动救济机制（如抵扣后续费用），并与服务中断的严重程度挂钩。

3. Data Protection (GDPR)

3. 数据保护 (遵循 GDPR)

Aspect 维度	Details and Implications 详情与影响
Privacy Roles 隐私角色	The SaaS provider usually acts as a Data Processor (Art. 28 GDPR). The agreement must detail technical and organizational security measures. SaaS 供应商通常担任数据处理者 (GDPR 第 28 条)。协议必须详细列出技术和组织层面的安全措施
Data Residency 数据存储地	Specifies where servers are physically located. Extra-EU transfers require Standard Contractual Clauses (SCC) or adequacy decisions. 明确服务器的物理位置。向欧盟以外传输数据需符合标准合同条款 (SCC) 或充分性认定。

4. Exit Strategy

4. 退出策略

Phase 阶段	Details and Implications 详情与影响
Termination 合同终止	The contract must include a clear "Exit Strategy": notice periods, data return in interoperable formats, and provider assistance during transition. 合同必须包含清晰的“退出策略”：包括预通知期、以互操作格式归还数据以及供应商在过渡期间的协助义务
Certified Deletion 认证销毁	Upon termination, the provider must guarantee and certify the permanent deletion of customer data from systems and backups. 合同结束后，供应商必须保证并证明已从系统和备份中永久删除客户数据

5. Practical Advice

5. 实用建议:

➔ **Policy Monitoring:** Regularly monitor unilateral updates to Terms of Service by major cloud providers.

政策监控：定期监控大型云供应商对服务条款的单方面更新。

➔ **Legal Insurance:** Consider coverage for cyber risks or service interruptions, similar to international dispute insurance.

法律保险：考虑针对网络风险或服务中断的保险，类似于国际纠纷保险



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