

Customer-Side Redline and Issues List

SaaS subscription agreement (vendor form), key commercial and risk clauses

Document	Cloud Services Subscription Agreement, Provider's standard form. The form was written for this sample to reflect positions commonly seen in vendor paper; it is not taken from any real company's terms.
Acting for	Customer: a US mid-market company buying an analytics platform that will process its business data, including some employee and customer personal data.
Scope	Nine clauses carrying most of the commercial and liability risk. Definitions, order form, SLA and DPA exhibits not reviewed.
Markup key	~~Deleted text~~ <u>Inserted text</u> Comments are numbered C1 to C9.
Date	30 September 2026

1. Summary for the supervising attorney

The form is workable but tilted heavily toward Provider in four places that matter to this Customer: the license to use Customer Data for model training (C3), the three-month liability cap with no carve-outs (C7), unilateral amendment of the terms by website posting (C9), and suspension on Provider's belief alone (C2). These are marked **High**. The renewal, security, warranty, indemnity and exit points are ordinary asks that vendors usually concede in some form.

#	Clause	Issue	Priority	Ask	Fallback
C1	3.2 Renewal and fees	90-day non-renewal window; uncapped price increases on renewal.	Medium	30-day window, 60-day reminder, increase capped at 5%.	60-day window; cap at CPI + 3%.
C2	4.3 Suspension	Suspension at any time, without notice, on Provider's belief of breach.	High	Suspension only for imminent harm or undisputed fees 30+ days overdue, with notice.	Add 5-day cure period for non-emergency cases.
C3	5.2 Customer Data	Perpetual, irrevocable license for any purpose, expressly including model training.	High	License limited to providing the Services; no training without written consent.	Training on de-identified aggregate data only, with opt-out.
C4	8.1 Security	"Commercially reasonable efforts" only; no breach notice.	Medium	Named standard, security exhibit, 72-hour incident notice.	Notice "without undue delay"; SOC 2 report on request.
C5	9 Warranties	Full "as is" disclaimer; Customer has no performance remedy.	Medium	Conformity warranty; fix, then terminate with pro-rata refund.	Warranty for first 90 days of each term.
C6	10 Indemnities	Customer indemnifies for any use; Provider gives no IP indemnity.	Medium	Provider IP infringement indemnity; Customer indemnity narrowed.	IP indemnity subject to the super-cap.
C7	11 Liability	One-way cap at 3 months' fees; no carve-outs.	High	Mutual 12-month cap; uncapped carve-outs; data super-cap.	Data breach super-cap at 2x annual fees.
C8	12.3 Exit	Immediate deletion of Customer Data on termination.	Medium	30-day export window; certified deletion.	Export on request within 15 days.

#	Clause	Issue	Priority	Ask	Fallback
C9	14.1 Amendments	Provider may change the Agreement by website posting.	High	Written, signed amendments only; limited updates to policies.	30 days' notice plus right to terminate with refund.

2. Marked clauses with comments

Clause as marked	Comment
3.2 Renewal. This Agreement renews automatically for successive twelve (12) month terms unless either party gives notice of non-renewal at least ~~ninety (90)~~<u>thirty (30)</u> days before the end of the then-current term. <u>Provider will remind Customer in writing of the renewal date at least sixty (60) days before it.</u> Provider may increase Fees for any renewal term ~~by giving notice to Customer by not more than five percent (5%) over the Fees for the prior term, on at least sixty (60) days' written notice before the renewal date.~~	C1 · Medium A 90-day window plus an uncapped increase lets Provider announce a price rise after Customer can no longer exit. The reminder also helps with state automatic-renewal statutes if Customer ever buys on a consumer-style plan. Fallback: 60 days; cap at CPI + 3%.
4.3 Suspension. Provider may suspend Customer's access to the Services ~~at any time, with or without notice, if Provider believes that Customer has breached this Agreement~~<u>only (a) to the extent reasonably necessary to prevent imminent harm to the Services or to other customers, or (b) if undisputed Fees remain unpaid more than thirty (30) days after written notice of non-payment. Provider will give prior notice where practicable, limit any suspension to the affected users or accounts, and restore access promptly once the cause is resolved.</u>	C2 · High As drafted, a mistaken belief is enough to switch off a system Customer's teams depend on, with no notice and no duty to restore. The markup keeps Provider's legitimate emergency right and its right to stop serving a non-paying customer.
5.2 Customer Data. Customer grants Provider a <u>non-exclusive, worldwide, ~~perpetual, irrevocable,~~ royalty-free license during the Term</u> to use, ~~copy, modify and create derivative works of~~ Customer Data ~~for any purpose, including to develop and improve Provider's products and to train machine learning models~~<u>solely to provide the Services to Customer and as Customer instructs in writing. Provider will not use Customer Data, or any data derived from it, to train, fine-tune or evaluate machine-learning models except with Customer's prior written consent. As between the parties, Customer owns all Customer Data.</u>	C3 · High The original grant survives termination and allows any use, including model training on Customer's confidential and personal data. That sits badly with Customer's confidentiality duties to third parties and, for personal data, may conflict with the limits placed on processors (GDPR Art. 28) and service providers (CCPA regulations), which largely confine use to the customer's purposes. Confirm a DPA is attached. Fallback: training only on de-identified, aggregated data, with an opt-out.
8.1 Security. Provider will ~~use commercially reasonable efforts to protect Customer Data~~<u>maintain administrative, physical and technical safeguards for Customer Data that are no less protective than those described in Exhibit C (Security) and consistent with ISO/IEC 27001 or SOC 2 Type II. Provider will notify Customer without undue delay, and in any event within seventy-two (72) hours, after becoming aware of any Security Incident affecting Customer Data, and will provide the information Customer reasonably needs to meet its own notification obligations.</u>	C4 · Medium "Commercially reasonable efforts" is hard to enforce without a benchmark. The 72-hour figure matches the outer limit in GDPR Art. 33 for notifying regulators, so Customer can meet its own deadline. Ask for the current SOC 2 Type II report before signature.

Clause as marked	Comment
9. Warranties. <u>9.1 Provider warrants that the Services will perform materially in accordance with the Documentation. If they do not, Provider will correct the non-conformity at no charge; if it fails to do so within thirty (30) days of notice, Customer may terminate the affected Order Form and receive a refund of prepaid Fees for the remainder of the term. 9.2 ~~THE SERVICES ARE PROVIDED "AS IS" AND~~ EXCEPT AS STATED IN SECTION 9.1, PROVIDER DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.</u>	C5 · Medium Keeps Provider's disclaimer of implied warranties (standard and usually conspicuous as required under UCC 2-316 where the UCC is argued to apply) but gives Customer a basic promise that the product does what the documentation says, and an exit if it does not.
10. Indemnification. <u>10.1 Provider will defend Customer against any third-party claim alleging that the Services infringe or misappropriate that party's intellectual property rights, and will pay resulting damages, costs and settlements. 10.2 Customer will defend, ~~indemnify and hold harmless~~ Provider <u>against any third-party claim</u> ~~from any claim arising out of Customer's use of the Services~~ alleging that Customer Data, or Customer's use of the Services in breach of this Agreement, infringes that party's rights or violates applicable law, and will pay resulting damages, costs and settlements.</u>	C6 · Medium The original makes Customer insure Provider for anything connected with using the product, including Provider's own defects. An IP indemnity from the vendor is market-standard for SaaS. Add usual procedure (notice, control, cooperation) and remedies (modify, replace or refund) in the definitive draft.
11. Limitation of Liability. <u>IN NO EVENT WILL ~~PROVIDER'S~~ EITHER PARTY'S TOTAL LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT EXCEED THE FEES PAID AND PAYABLE BY CUSTOMER IN THE ~~THREE (3)~~ TWELVE (12) MONTHS PRECEDING THE ~~CLAIM~~ EVENT GIVING RISE TO LIABILITY. THIS LIMIT DOES NOT APPLY TO (a) A PARTY'S INDEMNIFICATION OBLIGATIONS, (b) GROSS NEGLIGENCE, FRAUD OR WILLFUL MISCONDUCT, OR (c) CUSTOMER'S PAYMENT OBLIGATIONS. FOR BREACH OF SECTION 5.2 OR 8.1, EACH PARTY'S TOTAL LIABILITY WILL NOT EXCEED THREE (3) TIMES THE FEES PAID AND PAYABLE IN THE TWELVE (12) MONTHS PRECEDING THE EVENT.</u>	C7 · High Three months' fees would not cover the cost of notifying individuals after a single data incident. A 12-month mutual cap is the common starting point; data and security breaches are usually dealt with by a separate, higher "super-cap" rather than unlimited liability, which vendors rarely accept. Fallback: super-cap at 2x annual fees.
12.3 Effect of Termination. <u>~~Upon termination, Provider may delete Customer Data immediately. For thirty (30) days after termination, Provider will make Customer Data available to Customer for export in a standard, machine-readable format at no additional charge. Provider will then delete Customer Data from its systems, other than backups deleted in the ordinary course, and will certify deletion in writing on request.~~</u>	C8 · Medium Immediate deletion creates both an operational risk (loss of records) and a legal one (Customer may be under a retention duty). The backup exception is a standard concession that vendors will expect.
14.1 Amendments. <u>~~Provider may modify this Agreement at any time by posting a revised version on its website. Customer's continued use of the Services after posting constitutes acceptance of the revised Agreement. No amendment to this Agreement is effective unless it is in writing and signed by both parties. Provider may update the Documentation and its Acceptable Use Policy, provided that no update materially reduces the functionality, security or service levels of the Services during the then-current term.~~</u>	C9 · High Unilateral change-by-posting undermines every other concession in this markup. US courts have also been reluctant to bind users to revised online terms without clear notice and assent (see the companion research memo on online contract formation). Fallback: 30 days' notice of material changes and a right to terminate with a pro-rata refund.

3. Points to raise with the client before sending

- Whether any Customer Data is regulated (health, financial, children's, or EU/UK personal data). If so, the DPA and C3 move to the top.
- How critical the platform is: if it is business-critical, add service credits and a termination right for chronic SLA failure.
- Whether Customer will accept Provider's governing-law and forum clause (not in scope here) or needs its home state.
- Commercial leverage: the size of the deal and alternative vendors decide how many of the Medium points to press.

Prepared as research and drafting support for a supervising attorney, who remains responsible for advice to the client. Statutory references are for orientation and should be confirmed for the governing law chosen.