

LICENSE OR SERVICE?

WHAT YOU HAVE, WHAT YOU CAN DO, AND ASKING THE RIGHT QUESTIONS TO FIGURE IT OUT

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Overview

- What questions should you ask before drafting or reviewing an agreement?
- What are the legal implications of the answers?
- What are the drafting differences between license agreements and service agreements?



Attorney as Counselor

Definition of counselor*

1: a person who gives advice or counseling: a marriage *counselor*;

2: lawyer; *specifically*: one that gives advice in law and manages cases for clients in court: "The defendant conferred with his *counselor*."

3: one who has supervisory duties at a summer camp: "The *counselor* led the campers on a hike through the woods."

*Merriam-Webster.com



Threshold question

- **What** are you planning to sell (or buy)?
 - Physical copy of software, downloadable on a device of customer → **License**
 - Access to functionality of the underlying software, infrastructure, platform → **... As a Service**

What is a Software License?

- Grants permission to use object code version of software
- Defines scope of use
 - Non-exclusive
 - Single user or single install
 - Backup/archival copy
- Defines restrictions on use
 - No reproductions
 - No translation/reverse engineering
 - No creation of derivative works
 - No distribution



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