

LICENSE OR SERVICE?

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

Catherine Bedell

General Counsel, Vapor IO

Amanda Borichevsky

Associate General Counsel, SolarWinds

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



"Thank goodness we got there when we did. They were on the verge of working out the problem themselves."

Credit: Cartoonstock.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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