

# **SaaS Lawyer Kristie Prinz Presented “Best Practices for Negotiating SaaS Contracts”**

SaaS Lawyer Kristie Prinz presented “Best Practices for Negotiating SaaS Contracts” on March 31, 2020.

A copy of the video recording is available for viewing at this link:

<https://theprinzlawoffice.vhx.tv/products/best-practices-for-negotiating-saas-contracts>.

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## **SaaS Lawyer Kristie Prinz to Present Webinar on “Best Practices for Negotiating SaaS Contracts & Managing Customer Relationships”**

Silicon Valley SaaS Lawyer Kristie Prinz will present a webinar on “Best Practices for Negotiating SaaS Contracts & Managing Customer Relationships” on March 31, 2020 from 10-11:15 a.m. PST. To register for the webinar, please sign up at **The Prinz Law Store Website**.

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# Practice Tips for Renegotiating Contracts due to Coronavirus Uncertainty and Changed Business Conditions

If your software company is like many, you are probably already contemplating the renegotiation of certain contracts due to the uncertainty and changed business conditions arising from the coronavirus pandemic.

However, the renegotiation of contracts will inevitably open your software company up to the possibility of having to agree to terms and conditions far less favorable than what you previously agreed to. Furthermore, if not carefully drafted, any modification to an existing agreement could create legal issues that did not previously exist, leaving your software company in a vulnerable position should your company end up in a legal dispute with the other party down the road.

So, what are some practice tips for the successful renegotiation of contracts in a period of economic and business uncertainty?

First and foremost, approach contract re-negotiations as an opportunity to clarify any vague or uncertain terms in the previously executed contract. It is critical in periods of economic and business uncertainty to fully contemplate in the contract the parties' intentions. So, a renegotiation is the perfect time to address any such issues that have come to light with the contract since execution. You definitely do not want to spend the time and money on renegotiating only to leave in the contract all the problems that have previously

come to light with it, any one of which could result in a contract dispute down the road. Also, you want to think through all the possible scenarios that could arise and make certain the contract fully addresses those possibilities. For example, right now, many cities around the world are in lockdown for a period that has been assigned an expected end date. What happens if the date gets pushed back by three months? How does this impact the relationship? What happens if the date gets pushed back by six months? How does this impact the relationship? Thinking through the implications on the contract of potential scenarios and ensuring they are appropriately address in the contract is key.

Second, approach contract renegotiation with the intention of ensuring that the terms will be a “win” for both parties. In other words, both sides of the contract should obtain a benefit from the renegotiation, so that one side is not making all of the concessions on the mere promise of a future relationship. For example, if one side is seeking new payment terms, consider whether the other party would benefit from a longer contractual commitment. Good relationships require mutuality for both sides to remain satisfied with that relationship. If one side feels forced to agree to terms against its interest, then the relationship is likely to be negatively impacted on an ongoing basis.

Third, anticipate the possibility that the contract renegotiation does not truly resolve the issue prompting the renegotiation and develop a fallback solution that will enable the parties to easily go their separate ways without the necessity of further negotiations or proceedings. Contemplate what terms would need to be included that would allow for a clean and painless parting of ways if the issues do not end up being resolved by the modification.

Fourth, make sure you are really contemplating the full impact of the proposed modification(s) on every single clause of the contract, and not a single clause or set of clauses in the

contract. Perhaps the single most common mistake I see with contract modifications is that parties fail to contemplate how a modification affects an entire agreement and draft documents that add a lot of uncertainty into the terms. Even a minor modification has the potential to impact all or nearly all of the clauses in a previously executed document. Thus, make sure you have taken the time to fully contemplate the impact of a proposed modification before agreeing to it.

Fifth, make sure you identify the specific contract you are modifying, and the specific clauses you are modifying, as well as what specific modifications you are making. Also, clearly state what happens specifically to the clauses you are not modifying. The worst contract modifications are unclear as to the contract version being modified and/or the specific clauses being modified, and are not clear as to the effect on other clauses. An effective contract modification is one that does not create new uncertainty.

The bottom line is that even a seemingly simple modification proposal requires careful contemplation beyond just merely the request proposed. While it might be tempting to cut corners with a contract renegotiation in order to save on legal fees or expedite the signing of a contract modification in an uncertain economic climate, such decisions often lead to disputes with previously good relationships that would never have arisen otherwise. It generally pays to take the time do a contract modification the right way.

If you have questions about how to best renegotiate a contract, please schedule a consultation today at <https://calendly.com/prinzlawoffice>.

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# **SaaS Lawyer Kristie Prinz to Present on “Negotiating SaaS Agreements”**

SaaS Lawyer Kristie Prinz will present on “Negotiating SaaS Agreements: Drafting Key Contract Provisions, Protecting Customer and Vendor Interests” for Virginia-based Clear Law Institute on March 23, 2020 at 1 p.m. ET/10 a.m. PT.

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## **Silicon Valley SaaS Attorney Kristie Prinz to Present on “Negotiating SaaS Agreements” for Clear Law Institute**

Silicon Valley SaaS lawyer Kristie Prinz will be presenting on “Negotiating SaaS Agreements: Drafting Key Contract Provisions, Protecting Customer and Vendor Interests” for Clear Law Institute on March 23, 2020 at 1 p.m. ET/10 a.m. PT.

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## **Capitalizing on SaaS Sales**

# Opportunities During the Coronavirus Crisis Without Creating New Legal Risks

Although many businesses are concerned about the potential economic fallout of recent shelter-in-place orders in Silicon Valley as well as more limited office and business closings across the United States, the coronavirus crisis is presenting a unique sales opportunity to savvy SaaS companies, given the fact that much of the United States workforce has suddenly been forced to work remotely.

How can your company capitalize on the sales opportunities now presented by the increased demand for SaaS and other tech solutions while avoiding the legal pitfalls that can arise from economic uncertainty?

First and foremost, increased customer demand presents an opportunity to improve poorly drafted contracts, which can be more easily renegotiated in conjunction with a customer-initiated request. If your customer is looking to add user access or other services as a result of the new focus on a remote workforce, then you may want to update your customer contract at the same time, particularly given all the predictions of a post-coronavirus recession. It would be in your company's best interests to have a strong contract in place with your customers in the event of any recession, since poor economic conditions tend to result in contract cancellations by customers. If you have never had your customer contract reviewed by a lawyer with SaaS contract expertise, now might be a perfect time to do so in conjunction with meeting any new customer demand, so that your business is better prepared to weather an economic downturn and customers looking for loopholes to walk away from your agreement.

Second, if your customer is looking to add authorized users at new locations, ensure that you are addressing the new sales by properly amending your existing contract as contemplated by the SaaS lawyer who originally drafted the contract. More often than not, I see companies making huge mistakes with subsequent SaaS sales, where they execute amendments that incorrectly override key terms in their original contracts or add significant legal loopholes into the original contracts. Obviously a poorly drafted amendment can completely undo any investment you made in a well written original agreement, and can create legal disputes where you previously had none. So, you definitely want to exercise a high degree of care to ensure that any new sales are appropriately addressed by a correctly drafted amendment.

Additionally, you need to consider whether any implementation services will be required to make these additions, whether the possibility of future implementations was contemplated by the original contract, and how the delivery of implementation services might be impacted as a result of the coronavirus pandemic or any economic conditions that might arise as a result of the pandemic. In the prior recession, implementation was one of the most commonly disputed issues between software companies and customers.

Third, if your customer has gone entirely remote, you need to anticipate a greater demand for various types of support services, which also creates new customer sales opportunities. For example, perhaps instead of one-size-fits-all free standard support, there may now be a customer demand for multiple levels of paid, enhanced support services. However, if your company suddenly decides to completely revamp support services in response to new customer demand, you definitely need to make sure such changes have been contemplated in your original contract, and to the extent they have not, make sure the contract again is appropriately amended to address a complete revamp of your support offering.

Fourth, you may find that your customer now has new custom functionality or feature development needs in response to changing service demands by the customer's own client base, which is similarly responding and trying to adapt to the same crisis. If you are fortunate enough to have this type of opportunity arise, then you need to ensure that ownership of custom functionality features was sufficiently contemplated by the original contract with your customer, not only with respect to whether or not those features can subsequently be made available to your entire customer base but also with respect to the specific terms for costs, timetable, and specifications for development. To the extent these issues are not fully addressed by your original contract, you will want to make sure they are properly addressed by separate agreement. In light of the current crisis, you will want to ensure that any potential delays that might arise due to the coronavirus crisis have been properly addressed in the terms.

Fifth, the new circumstances may present new customer demands for live and recorded remote training that did not exist previously, which may be able to be sold at different price-points. However, again, if such an opportunity for sales presents itself, you should ensure that your original contract contemplated the possibility of different levels of training for a fee being purchased by the customer. If not, then you will want to ensure that your agreement is properly amended to reflect the new training service offerings. And of course, if your customer is seeking training to be provided by a particular instructor, you will want to ensure that the possibility of that instructor falling seriously ill to coronavirus has been contemplated and any risks properly addressed.

Sixth, the new remote circumstances may present customer demands for enhanced levels of service in terms of available bandwidth and other service enhancements, which you also may be able to make available to customers at different price-



points. Should this arise, you will again need to ensure that the possibility of different levels of service was contemplated by the original agreement, and if not, appropriately amend the agreement to address this possibility.

Finally, the new remote circumstances may present opportunities to sell new professional services to your customers that you had not previously considered. Should an opportunity of this nature arise, then you will need to ensure that the possibility of future professional services was contemplated by the original agreement, and if not appropriately amend the agreement to address this possibility and then potentially draft a separate professional service agreement that addresses the contemplated services required by the customer.

All in all, the coronavirus crisis is presenting a unique business opportunity for cloud-based SaaS providers to deliver more services to a workforce suddenly forced to work remotely. However, to capitalize on the opportunity to meet the demands of a newly remote workforce, SaaS companies will need to apply a high level of care to the technical drafting of their contracts. Otherwise, to the extent they cut corners, they are likely to pay the price by attracting customer disputes in a subsequent weak economy.

To explore how you might capitalize on SaaS sales opportunities in the current business climate, please schedule a consultation today at <https://calendly.com/prinzlawoffice>.

# Silicon Valley Tech

# Transactions Lawyer Kristie Prinz to Present Webinar Series on Negotiating in an Uncertain Economy

Silicon Valley Tech Transactions Lawyer Kristie Prinz will be presenting a series of webinars on negotiating in a very uncertain economy, sharing practice tips developed and lessons learned from the last recession. Kristie will be kicking off the series with a **webinar** on “Best Practices for Negotiating Master Services Agreements in an Uncertain Economy” on April 6th, followed by a **webinar** on “Best Practices for Negotiating Development Agreements in an Uncertain Economy” on April 13th, and and a **webinar** on “Best Practices for Negotiating SaaS Agreements in an Uncertain Economy” on April 20th. The next webinars in the series will be announced soon. To register for any of these programs, please check out the webinar notices at **The Prinz Law Store Website**.