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HOW TO STRUCTURE A POC & POC AGREEMENT TEMPLATE

Enterprise Playbook Series

INTRODUCTION

It's no secret that CEOs and CFOs are under enormous pressure to ensure their investments will deliver value. Unfortunately, this means signing upfront, long-term contracts with vendors can be hard to justify.

For this reason, Proof of Concepts (POCs) have become a norm for many SaaS startups looking to conquer enterprise sales. It's a great way to get a foot in the door at a large enterprise, establish your business champion early on, and showcase that your product will succeed and solve a problem within the business before they've signed a formal contract.

In short, POCs are a trial period where prospective customers can "try before they buy" and ideally convert to a paying customer. At the same time, it provides startups the chance to gain critical customer feedback on the product itself and to win customers over with a terrific product experience and prove out product ROI.

We know that enterprise sales is a complex and often a long sales cycle, and POCs are often similar. That is why this playbook **outlines of how to structure a SaaS POC, including a step-by-step framework and a POC Agreement template** - in order to get your POC up-and-running fast, so you can better close a full enterprise contract down the road.

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Authored By
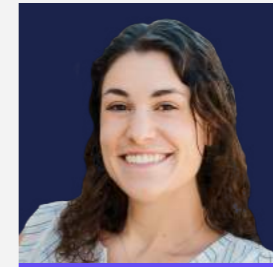
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THE SAAS POC PROCESS

1 DEFINE GOALS & EXPECTATIONS

— Determine if a POC is the right fit for your product

— Define success criteria and the targeted pain points

— Understand and define POC scope

2 SET UP

— Map out POC administrators and users

— Map out intended POC timeline
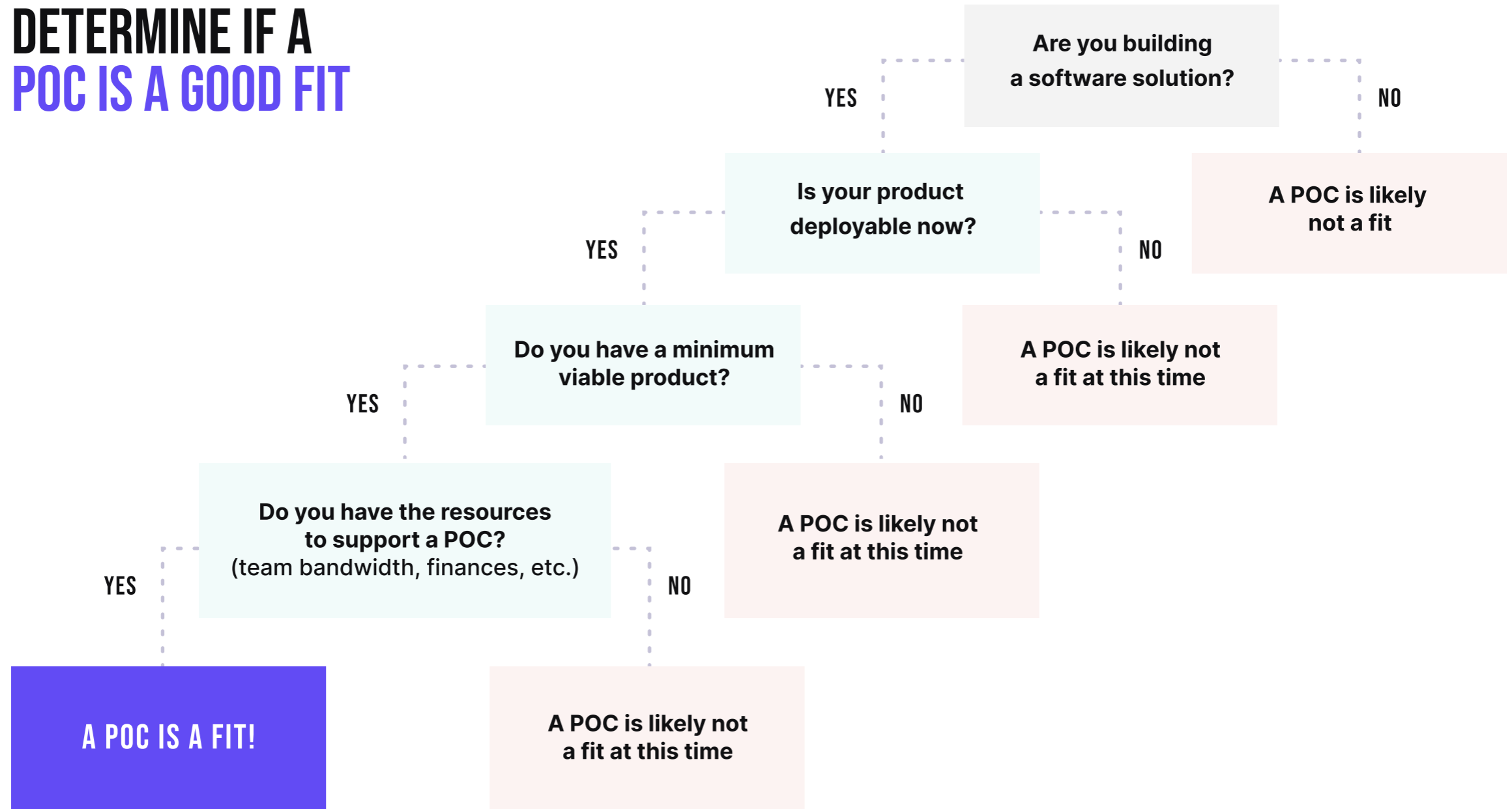
— Execute a POC agreement

3 DEPLOY

4 ANALYZE FEEDBACK

— Gather customer feedback as they relate to your success criteria

— Make necessary adjustments to the product roadmap

5 SCALE

— Re-engage with POC stakeholders

— Create a roadmap to full-scale production

— Execute a Master Services Agreement (MSA)

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DETERMINE IF A
POC IS A GOOD FIT

Are you building a software solution?

YES

NO

A POC is likely not a fit

Is your product deployable now?

YES

NO

A POC is likely not a fit at this time

Do you have a minimum viable product?

YES

NO

A POC is likely not a fit at this time

Do you have the resources to support a POC?
(team bandwidth, finances, etc.)

YES

NO

A POC is likely not a fit at this time

A POC IS A FIT!

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KEY WORDS TO KNOW

POC AGREEMENT	A legally-binding contract between a "Company" (software startup / vendor) and "Customer" that outlines the details of an upcoming POC.
POC PERIOD	The time span in which "Company" agrees to provide the "Customer" their service or product as part of a POC.
CONVERSION PERIOD	The short time span (~3 months) after the POC is complete, during which good faith negotiations take place between the "Company" and "Customer" about a continued POC or full-term contract.
AUTO RENEW	Signals that the POC Agreement will renew (repeat) once it has reached its original terms of agreement.
LIMITATIONS	The service or product usage limitations within the POC (ie. Number of users) as defined by the "Company."
MASTER SERVICES AGREEMENT (MSA)	A legally-binding contract between a "Company" (software startup / vendor) and "Customer" that outlines the details of a full-term service agreement (not POC). This is the definitive agreement for the provision of "Company's" product or service.

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PRICING & SUCCESS CRITERIA

PRICING

While many POCs are **free**, a POC pricing model will vary from company to company and customer to customer. Consider how many resources will go into the initial implementation. It may make sense to charge a one-time, nominal fee to cover the cost of implementation. Other things to consider, include:
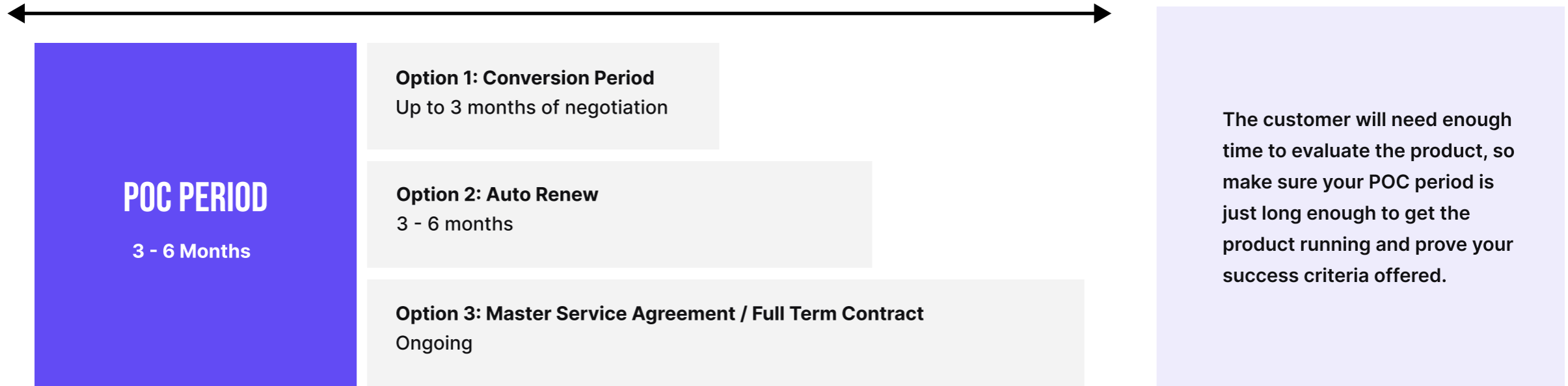
— How will you price? Is your product usage-based, term-based, data-usage-based, etc.?

— Changing a small POC fee helps gain customer buy-in and incentive.

— You never want to lose money on a POC.

— This is a great time to experiment! POCs are relatively short and pricing can be adjusted on the next POC.

SUCCESS CRITERIA

Outline **5-10 material features and functionalities** your solution will provide to determine if the POC was successful. Make sure these are within the control of your product and the customer (vs. outside factors or timelines). Criteria can include:

— Improved productivity

— Increased cost savings

— Improved quality

— Better scalability

— More rapid deployment

— Better compliance

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STANDARD TIMELINE & AUTO RENEW

POC PERIOD

3 - 6 Months

Option 1: Conversion Period
Up to 3 months of negotiation

Option 2: Auto Renew
3 - 6 months

Option 3: Master Service Agreement / Full Term Contract
Ongoing

The customer will need enough time to evaluate the product, so make sure your POC period is just long enough to get the product running and prove your success criteria offered.

AUTO RENEW

Setting up an auto renew is a balance between satisfying the customer's needs, while gunning for a full-term contract.

— **Benefits:** The customer gets more time to effectively evaluate your product.

— **Downsides:** The contracting process is heftier up front and the customer might be taking advantage of the free / cheaper POC (vs. signing the more expensive MSA).

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SAAS POC AGREEMENT TEMPLATE

ORDER FORM

This Order Form (the "**Order**") is entered into on the Order Effective Date below between the following parties. This Order is entered into pursuant to and shall be governed by that certain POC Agreement attached hereto as <u>Exhibit A</u> (the "**POC Agreement**"). All capitalized terms not defined in this Order have the meaning given to them in the POC Agreement. To the extent of any conflict between the POC Agreement and this Order, the POC Agreement will control, except to the extent this Order expressly identifies a provision of the POC Agreement to be superseded by this Order.

<u>**PARTIES:**</u>

"**Company**":	"**Customer**":
[Company]	**[Customer]**
COMPANY ADDRESS	CUSTOMER ADDRESS
COMPANY CITY, STATE, ZIP	CUSTOMER CITY, STATE, ZIP
Incorporated in [STATE]	Incorporated in [STATE]
Phone: [ ]	Phone: [_____]
Email: [ ]	Email: [_____]

Order Effective Date: [INSERT]

Offerings: Subject to the terms of this Order and the POC Agreement, including Customer's payment of the POC Fees set forth below, Company will provide the following Offerings to Customer:

- <u>Platform</u>: [INSERT]
- <u>Support</u> (if applicable): [INSERT]
- <u>Professional Services</u>: [INSERT]

Limitations: [INSERT]

Order Term: This Order begins on the Order Effective Date and continues for a period of [x (x) days/ x (x) months] thereafter unless earlier terminated as set forth in this Order or the POC Agreement (the "**POC Period**"). Customer may terminate this Order upon written notice to Company at any time prior to the end of the POC Period. Otherwise, at the end of the POC Period the parties will enter into good faith negotiations for the continued provision of the Offerings, including the fees to be paid by Customer, and the term of this Order will automatically extend until the later of (a) the parties entering into a new Order and (b) three (3) months following the start of such negotiations (the "**Conversion Period**"). During the Conversion Period, subject to the terms of this Order and the POC Agreement, including Customer's payment of Conversion Period Fees set forth below, Company will continue to provide the Offerings to Customer.

Fees and Payment Terms:
<u>POC Fees</u>: [INSERT]
<u>Conversion Period Fees</u>: [INSERT]
<u>Payment Terms</u>: All Fees are non-refundable and will be paid in U.S. dollars. All undisputed Fees will be due within thirty (30) days of the date of the invoice therefor. The Fees do not include any taxes, levies, duties, or similar governmental assessments of any nature (collectively, "**Taxes**"). Customer is responsible for paying all Taxes associated with its purchases hereunder, excluding taxes on Company's net income.

[Signature Page Follows]

Annotations:
- Insert description of SaaS offering
- Remove if inapplicable for POCs
- Remove if inapplicable for POCs
- Insert any usage limitations such as number of users
- Confirm duration of POC as well as the concept of a conversation period whereby the customer can continue to access / use the SaaS services while the parties negotiate a definitive agreement. Alternatively, you can have the POC and this Order terminate at the end of the POC Period.
- Customize based on applicable fees and payment terms

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IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to execute this Order as of the Order Effective Date. This Order may be executed in one or more counterparts, each of which will be deemed an original and all of which together will constitute one and the same instrument.

[COMPANY]

By: _____

Name: _____

Title: _____

Date: _____

[CUSTOMER]

By: _____

Name: _____

Title: _____

Date: _____

SAAS POC
AGREEMENT
TEMPLATE

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SAAS POC AGREEMENT TEMPLATE

POC Agreement

This POC Agreement (the "**Agreement**") is entered into between Company and Customer as of the Order Effective Date and sets forth the rights and obligations regarding Customer's use of Offerings (defined below) solely for purposes of evaluating the Offerings.

1. **BACKGROUND.** Customer desires to access and use Company's software-as-a-service platform (the "**Platform**"), and to obtain from Company certain support services ("**Support**"), and certain onboarding, deployment, and other professional services ("**Professional Services**" and, together with Support, "**Services**"), in each case as set forth in the Order (collectively, the "**Offerings**") for purposes of evaluating the Offerings and potentially purchasing the Offerings set forth in the Order to which this Agreement is incorporated (the "**Order**").

2. **FEEDBACK.** If Customer provides any feedback, comments, or ideas to Company regarding the Offerings or improvements thereto ("**Feedback**"), Customer hereby grants Company a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual license to use or incorporate the Feedback into Company's products and services.

3. **OFFERINGS.**

    3.1 **License.** Company hereby grants Customer, during the applicable Order Term, a non-exclusive, non-sublicensable, non-transferable license to access and use the Platform subject to any Limitations (defined below) described in the Order, in each case in accordance with the documentation made available by Company ("**Documentation**") and solely for the purposes of testing and evaluating the performance and functionality of the Offerings for Customer's internal use.

    3.2 **Restrictions.** Customer will not: (a) modify, make derivative works of, reverse engineer, disassemble, decompile, or otherwise attempt to discover the source code for the Offerings; (b) use, evaluate or view the Offerings for the purpose of designing, modifying, or otherwise creating any environment, program, or infrastructure or any portion thereof, which performs functions similar to the functions performed by the Offerings; (c) sublicense, lease, sell, resell, rent, loan, distribute, transfer or otherwise allow the use of the Offerings (or Documentation) for the benefit of any unauthorized third party; (d) allow any third party to access the Offerings (or Documentation), except as expressly allowed herein; (e) share usernames, passwords, or any other access credentials with any third party; or (f) remove or alter any trademark, logo, copyright, or other proprietary notices, legends, symbols, or labels in the Offerings or Documentation. For purposes of clarity, Customer agrees that, under no circumstances, will the Offerings be used in a production environment.

    3.3 **Hosting.** Company will, at its own expense, provide for the hosting of the Platform, provided, however, that Customer will be responsible for any telecommunications or computer network hardware required by Customer or any user to access the Platform from the Internet.

    3.4 **Customer Data; Customer Responsibilities.** "**Customer Data**" means all software code, data, information, and other content provided to Company or its contractors by or on behalf of Customer or its users in connection with Customer's use of the Offerings (including imported to the Platform by or on behalf of Customer or its users). Customer hereby grants to Company and its authorized representatives and contractors a non-exclusive and non-transferable right and license to use and otherwise process Customer Data solely to provide the Offerings to Customer and

fulfill other obligations described in this Agreement. Customer further authorizes Company to anonymize Customer Data and to aggregate Customer Data with similar data from other Company customers in a manner that does not identify Customer, to further develop and provide the Offerings. Customer is solely responsible for all acts and omissions of its users. Customer will have the sole responsibility for the accuracy, quality, integrity, legality, backups of, reliability, and appropriateness of all Customer Data. Customer's use of the Services is subject to the limitations (e.g., number of users) set forth in the Documentation or the Order (the "**Limitations**"). Customer will use commercially reasonable efforts to prevent unauthorized access to, or use of, the Platform, and notify Company promptly of any such unauthorized use known to Customer.

4. **INTELLECTUAL PROPERTY.** The Offerings are licensed, not sold. Company and its suppliers exclusively own and retain all rights, title, and interest in and to the Offerings (including the Documentation) and all additions and modifications to the Offerings, including all intellectual property rights therein. Customer exclusively owns and retains all rights, title, and interest in and to the Customer Data. Notwithstanding anything to the contrary in this Agreement, no license or right is granted in this Agreement except as specifically and expressly stated herein. The parties acknowledge and agree that Company may collect anonymized usage data relating to Customer's use of the Offerings. Company may use such data to improve the performance of the Offerings or for any other lawful purpose.

5. **TERMINATION.** This Agreement shall terminate immediately upon notice from Company if Customer breaches this Agreement; otherwise, this Agreement will expire at the end of the Order Term unless earlier terminated by Customer. Upon expiration or termination of this Agreement, (a) the licenses granted to Customer hereunder will cease, (b) Customer will promptly discontinue all access to and use of the Platform, and (c) Customer must immediately destroy any Documentation and all copies thereof (including copies stored in computer memory). Sections 3.2, and 4 through 9 will survive any termination or expiration of this Agreement.

6. **DISCLAIMER OF WARRANTIES.** CUSTOMER ACKNOWLEDGES AND AGREES THAT THE OFFERINGS ARE PROVIDED "AS IS" AND "WITH ALL DEFECTS." TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, COMPANY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT. COMPANY DOES NOT WARRANT THAT THE OFFERINGS WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE OPERATION OF THE OFFERINGS WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL OR ANY ERRORS WILL BE CORRECTED.

7. **LIMITATION OF LIABILITY.** IN NO EVENT WILL COMPANY BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES OR LOST PROFITS OR LOST DATA, HOWEVER CAUSED

Annotations:

- Confirm applicable to POCs
- This form assumes a SaaS offering POC; if another deployment model (ie. on-prem or private cloud) is contemplated, many IP and IT-related provisions would need to be updated
- Confirm use case
- Confirm applicable to POCs
- Recommended disclaiming all warranties/SLAs/etc., which can be negotiated at the definitive agreement stage
- Confirm use case
- This form assumes no PII will be processed during the POC; However, if that is not the case, even at the POC level, customers may insist on information security and data privacy provisions
- Recommended limiting the Company's liability to fees paid and not including any indemnification obligations, which such risk allocation provisions can be negotiated at the definitive agreement stage

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SAAS POC AGREEMENT TEMPLATE

AND ON ANY THEORY OF LIABILITY ARISING FROM OR RELATING TO THIS AGREEMENT OR THE OFFERINGS, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. COMPANY'S TOTAL AGGREGATE LIABILITY ARISING FROM OR RELATING TO THIS AGREEMENT OR THE OFFERINGS WILL NOT EXCEED THE GREATER OF (A) ONE THOUSAND U.S. DOLLARS (U.S. $1,000) OR (B) THE AMOUNT OF FEES PAID BY CUSTOMER TO COMPANY HEREUNDER.

8.   **CONFIDENTIALITY.** The terms and conditions of the previously executed non-disclosure agreement between the parties dated [Date], are incorporated by reference into this Agreement and shall remain in full force and effect for the Order Term.

9.   **GENERAL PROVISIONS.** This Agreement will be governed and interpreted by and under the laws of the State of [Delaware], without giving effect to any conflicts of laws principles. If any provision herein is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way. This Agreement, and Customer's rights and obligations herein, may not be assigned, subcontracted, delegated, or otherwise transferred by Customer without Company's prior written consent. The terms of this Agreement shall be binding upon successors and permitted assignees. To be effective, any notice required to be given under this Agreement will be given in writing, addressed to the applicable party (at the address set forth in the Order) and sent by reputable overnight courier, which is effective on the business day following deposit with such courier. This Agreement, together with the Order, is the final and complete agreement of the parties with respect to the subject matter hereof and supersedes all prior discussions between the parties with respect to such subject matter. Customer acknowledges that any breach of this Agreement by Customer would cause irreparable injury to Company for which monetary damages would not be an adequate remedy and, therefore, will entitle Company to seek injunctive relief (including specific performance). The parties are independent contractors, and no agency, partnership, franchise, joint venture, or employment relationship is intended or created by this Agreement. No modification of or amendment to this Agreement, or any waiver of any rights under this Agreement, will be effective unless in writing and signed a duly authorized representative of each party.

There should always be an NDA in place before a POC agreement is negotiated; Alternatively, this would need to be replaced with a standard confidentiality provision

Include the state where Company is headquartered or neutral covering law, such as Delaware, NY, or CA

DOWNLOAD POC AGREEMENT TEMPLATE ⌄

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THANK YOU

Work-Bench is an enterprise venture capital firm based in New York City. We lead $3M - $6M Seed and Seed II rounds in enterprise SaaS startups throughout the country. We are laser-focused on supporting early-stage startups on all things go-to-market and have built a dynamic **enterprise tech community** in New York City and beyond.

Sign up for the **Work-Bench Enterprise Weekly Newsletter**, to stay up-to-date on all things enterprise tech with 18K+ subscribers.

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