

Office of the Internal Auditor

Advisory Memorandum

May 2022

Software as a Service
Contract Language





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Background

In alignment with Citizens' strategy to move software applications to a cloud environment, the contract language in Software as a Service (SaaS) contracts has become increasingly important to protect Citizens. The Enterprise Services' Vendor Management and Purchasing team utilizes a contract template with standard language to protect Citizens' interests as the starting point during the negotiation process. This contract template sets the expectations and outlines consequences in the event a vendor fails to perform or deliver in alignment with the contract. If the contract language is not complete and/or explicit enough this could increase risks with the use of the associated business system applications.

Objectives and Scope

Internal Audit has been asked to provide advisory services and evaluate the reasonableness of the current contract template used with SaaS vendors and complete a gap analysis to validate contract language, terms, and conditions to reduce system application risk associated with the contract.

Results

Internal Audit met with Enterprises Services Management to gain knowledge and understanding of the SaaS contract template and the procurement and negotiation processes with SaaS vendors.

Citizens' SaaS contract template was implemented in 2021 after a full review of the template was performed by Gartner¹ in addition to a review by Citizens' Chief General Counsel at the time. The current contract template is modeled as an amendment of the Vendor Master Agreement (VMA) and contains the standard terms and conditions of the regular vendor contracts together with specific IT and cloud solution language and elements.

Per Management, Citizens currently has contracts with approximately 100 SaaS providers. Management has established a target metric in which 80% of the contracts utilize Citizens' standard terms and conditions with minimal substantive changes. In 2021 the metric was reportedly exceeded with a total of 88% of the contracts utilizing Citizens standard terms and conditions. Specific SaaS template usage data is not maintained as it is commingled with all contract metrics.

Internal Audit performed research and analysis of laws, rules, regulations, and references (guidelines, white papers, articles), as well as leading practices concerning SaaS solutions and contractual practices. A thorough review of the SaaS contract template was completed in comparison to leading practices and trends, which call for consideration of

¹ Gartner is an IT research and advisory company originally founded in 1979.



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certain elements and risks during the selection and contracting processes of SaaS solutions/vendors. Some of the elements may be interrelated and can be addressed in combination with or separate from traditional contractual provisions as circumstances and corporate needs require.

The current SaaS contract template was found to generally conform and align with leading practices as it considers and includes provisions for most of the elements that present concerns or potential risks with SaaS solutions. The contract template was found to be reasonable in its requirements.

While Internal Audit found the SaaS contract template generally conforming and aligning with leading practices, Management is encouraged to consider the following Internal Audit suggestions:

- **SaaS Escrow** – Management could consider adding a SaaS escrow provision to the SaaS template language. This type of provision outlines the terms and conditions under which a solution's source code will be deposited in escrow for the client's use in case of a triggering event such as breaches, failures, or disruptions which cause loss of access to the system application. This would ensure business continuity and minimize financial and reputational damages depending on the criticalness of the solution to Citizens' operations. Independent third-party agents provide various escrow service options, including the technical verification and validation of the source code and its updates.
- **Monitoring and Recording of Contractual Negotiations** – As contracts typically undergo several rounds of revisions and redlines, Management may wish to consider a pilot program to monitor and record the extent of contract revisions. The data could assist in understanding and determining what clauses or language, if any, present a challenge or experience pushback during contract negotiations. In addition, it may provide insight into the overall risks associated with contract revisions during negotiations.

We would like to thank management and staff for their cooperation and for utilizing IA advisory services.



Distribution

Addressee(s) Stephen Guth, Vice President, Enterprise Services

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Barry Gilway, President/CEO/Executive Director

Kelly Booten, Chief Operating Officer

Christine Turner Ashburn, Chief, Communications, Legislative & External Affairs

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Completed by Juan Carlos Rivera, Internal Audit Manager

Under the Direction of Joe Martins, Chief of Internal Audit