



BSSDA

An Information Technology Law Firm

Assessing Software License Agreements A Checklist for End Users

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Who is your Client?

- Large health system
- Has 16 pharmacy dispensing sites and high prescription volume
- Needs a pharmacy management system for its inpatient and outpatient needs

Proposed Pharmacy System

- Designed for rapid processing of all prescription filling tasks
- Generation of labels, receipts and 3rd party billing documents
- Interfaces with Client's patient record system, AR, and 3rd party claims processors

Areas of the Software License Contract

- Software License and Fees
- Software Specifications and Acceptance Testing
- Warranties, Indemnities, LOL
- Confidentiality and Security
- Maintenance and Support

Software License and Fees

- What is being licensed?
- Who is the “licensee”?
- What is the scope of the license?
- What is the term of the license?
- What fees are due under the Agmt. and when?
- Are there limitations on fee increases?

Software Specifications and Acceptance Testing

- What is the definition of “documentation”?
- Does your Client have any specific or unique functionality or interoperability requirements?

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Software Specifications and Acceptance Testing

- Is the Software subject to an acceptance process?
- Phased Implementation or future modules?
- Hold a portion of the license fees until acceptance is achieved.

Warranties, Indemnities, LOL

- Do the warranties cover all software and services to be provided by the licensor?
- Is the licensor providing any third-party products to your Client?
- Is the licensor providing any of the hardware to your Client?

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Warranties, Indemnities, LOL

- Remedies for breach of warranty?
- Is there an IP infringement indemnity and associated remedy provision?
- Does your client need additional indemnities (e.g. property damage and personal injury)?

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Warranties, Indemnities, LOL

- Does the limitation of liability apply to both parties?
- Is the overall liability cap high enough?
- Have appropriate exceptions to the limitations been carved out?

Confidentiality and Security

- Will the licensor have access to your Client's confidential information?
- Are the parties' employees, contractors and agents covered?
- Are there any regulatory compliance matters that need to be addressed in the contract?

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Confidentiality and Security

- Do such obligations survive termination of the contract?
- Will the licensor be storing critical licensee information and data on its own servers?



Maintenance and Support

- Does the licensor's support program satisfy your Client's performance requirements?
- Does the term of support provide for an initial term and renewal terms at your Client's sole option?

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Maintenance and Support

- Does the support plan limit support calls to a “bank” of hours?
- Is there sufficient time to implement new releases?
- Are there any “add on charges” for certain support tasks?

Miscellaneous License Provisions

- Implementation plan
- Escrowing of source code
- Assignment of the license
- Ownership language
- Avoid shrink-wrap terms

Merci
Thank you
Gracias
Hvala
Danke
Mungen Tuk

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