**CHECKLIST**

**SOFTWARE licence AGREEMENT TERMS AND PROVISIONS**

It is vitaly important to legally protect your business, hence, your company’s software should be covered by a licence agreement. Not all items are relevant in all contractual situations. In some situations, other provisions may be appropriate that are not listed below. This document is not intended to substitute for legal advice nor legal wording provided by a competent advisor in the relevant legal jurisdiction. Be sure to consult an attorney to make sure you include all the necessary provisions in your licence agreement.

* **Title of contract**
* **Identity of the parties**
* Individuals or business entities
* If businesses, what type? (partnership, company, LLC, etc.)
* Name of person signing on behalf of the business
* Signer’s official title. Does he or she have authority to bind the business?
* **Addresses of the parties**
* **General Purpose and preliminary matters**
* An agreement between Licensor and Licensee, who is being licenced to use the named Software.
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* The licence permits Licensee to instal the Software on more than one computer system, as long as the Software will not be used on more than one computer system simultaneously. Licensee will not make copies of the Software or allow copies of the Software to be made by others, unless authorised by this licence Agreement. Licensee may make copies of the Software for backup purposes only.
* **Breach of limited warranty –example**

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* **Limited warranty – example**

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* **Liabilities – example**

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* **Term and Termination of Agreement**
* How long will the agreement last?
* What are occurrences that can lead to early termination?
* Can either party terminate the relationship without cause?
* Where significant marketing dollars are involved, the parties will want to give the relationship a long enough time to determine whether it will be fruitful. At the same time, if there are ongoing payments required for marketing and advertising, at some point the party responsible for these payments may want to say “enough is enough”
* What obligations do the parties have to each other upon termination?
* Ongoing payments for receivables received after termination?
* Delivery of proprietary information?
* Discontinue using trademarks and other intellectual property?
* Do any provisions (*i.e.* confidentiality requirements) survive the termination of the agreement? If so, how long do they last?
* **Indemnification agreement**
* Is there indemnification for certain breaches or problems?
* What is the procedure required to obtain indemnification?
* Is there a cap on or exclusions from indemnification?
* **Default**
* What are the events of default?
* Does a party have a period to cure a default?
* What are the consequences of a default?
* **Arbitration clause**
* How are disputes to be handled – litigation, mediation or arbitration?
* If arbitration, what rules will govern?
* If arbitration, how many arbitrators and how will they be picked?
* If arbitration, will there be procedures for discovery and what the arbitrator can and can’t do?
* If litigation, where can or must the litigation be brought?
* **Waiver**

An assertion that any delay or partial pursuit by one party of its rights against the other party does not constitute a forfeiture of the right to later seek further or complete remedy or redress to a situation, should the need arise.

* **Assignment**

Identifies if either party to the contract can transfer the contract, in what part, or in part, to another party, and under what conditions (if any).

* **Severability**

Explains that if any of the provisions of the contract are rendered null and void, all other provisions remain in force.

* **Notice**

Describes how and where the parties shall formally communicate to each other in the event they need to take such action (e.g., all notices shall be deemed to have been received by the other party within five working days if sent by regular mail to the addresses below).

* **Entire Agreement**

Explains that the written contract is the only description of the agreement between the vendor and buyer, regardless of what may have been previously stated or written down. Explains the process for updating the contract (often based upon mutual agreement, in writing).

* **Signatures of authorised signatories**
* What authority is required for one party to sign the contract (e.g., Board of Directors approval)?
* How many signatures are required?
* Are the signature blocks correct?
* **Miscellaneous**
* Attorneys’ fees
* Modification of Agreement
* Time of the Essence
* Survival
* Ambiguities
* Headings
* Necessary Acts and Further Assurances
* Execution
* Trial Waivers
* Specific Performances
* Representation on Authority of Parties
* Force Majeure
* Company seal
* Witness(es)
* **Indemnification**

Licensee agrees to defend and indemnify Licensor and hold Licensor harmless from all claims, losses, damages, complaints, or expenses connected with or resulting from Licensee’s business operations.

* **Termination**
* Licensor has the right to terminate this licence Agreement and Licensee’s right to use this Software upon any material breach by Licensee.
* Licensee agrees to return to Licensor or to destroy all copies of the Software upon termination of the License.