**CHECKLIST**

**SOFTWARE LICENCE AGREEMENT TERMS AND PROVISIONS**

It is very important to protect your business legally, and that’s why a licence agreement should cover all of your company's software. 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**
* **The 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 the 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.
* Licensee acknowledges that it is only a limited, non-exclusive license. Licensor is and remains the owner of all titles, rights, and interests in the Software.
* 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**

In case of a breach of the Limited Warranty, Licensee’s exclusive remedy is as follows: Licensee will return all copies of the Software to Licensor, at Licensee’s cost, along with proof of purchase. At Licensor’s option, the Licensor will either send Licensee a replacement copy of the Software, at Licensor’s expense or issue a full refund.

* **Limited warranty – example**

 Licensor warrants to Licensee that the physical medium on which this Software is distributed is free from defects in materials and workmanship under normal use, the Software will perform according to its printed documentation, and to the best of Licensor’s knowledge Licensee’s use of this Software according to the printed documentation is not an infringement of any third party’s intellectual property rights. This limited warranty lasts for a period of [NUMBER] days after delivery. To the extent permitted by law, THE ABOVE-STATED LIMITED WARRANTY REPLACES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND LICENSOR DISCLAIMS ALL IMPLIED WARRANTIES INCLUDING ANY IMPLIED WARRANTY OF TITLE, MERCHANTABILITY, NONINFRINGEMENT, OR OF FITNESS FOR A PARTICULAR PURPOSE. No agent of Licensor is authorised to make any other warranties or to modify this limited warranty. Any action for breach of this limited warranty must be commenced within one year of the expiration of the warranty. Because some jurisdictions do not allow any limit on the length of an implied warranty, the above limitation may not apply to this Licensee. If the law does not allow the disclaimer of implied warranties, then any implied warranty is limited to \_\_\_\_ days after delivery of the Software to Licensee. The licensee has specific legal rights pursuant to this warranty and, depending on Licensee’s jurisdiction, may have additional rights.

* **Liabilities – example**

 Notwithstanding the foregoing, LICENSOR IS NOT LIABLE TO LICENSEE FOR ANY DAMAGES, INCLUDING COMPENSATORY, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES, CONNECTED WITH OR RESULTING FROM THIS LICENCE AGREEMENT OR LICENSEE’S USE OF THIS SOFTWARE. Licensee’s jurisdiction may not allow such a limitation of damages, so this limitation may not apply.

* **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 cost 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? (e.g., JAMS/Endispute or the [COUNTRY] Arbitration Association)
* 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).

* **Governing law**
* **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?
* **Notarisation**
* **Miscellaneous**
* Attorneys’ fees
* Modification of Agreement
* Time of the Essence
* Survival
* Ambiguities
* Headings
* Necessary Acts and Further Assurances
* Execution
* Court 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.