



IAITAM ACE

May 7-9, 2024 The M Resort  Las Vegas, NV

Sailing the Software Contract Seas

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Finding your IAITAM Oasis





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What is a Software License Agreement?



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A Software License Agreement is a contract between a customer and Publisher or vendor that outlines how software can and cannot be used. The agreement can vary from a standard, boilerplate document to a unique, tailored contract that meets specific needs.

The purpose of the Agreement is to define expectations and protect all involved parties.

Let's look at some examples of legal terms customers should be aware of before signing an agreement.



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Usage

Is the publisher granting the customer unlimited - on-premises or cloud-based - usage for all employees, agents, contractors, bots, and/or third-party entities? If not, specifications should be implemented stating who can use the software provided.

Ask questions such as "on what platform can the software be installed" - desktop only or can it be installed on a server? If you have multiple servers, can the software be used on all servers or does it require partitioning? If you have multiple locations, can the software be used in all of those locations?



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User or Authorized User

The user or authorized user should include employees, consultants, clients, external users, contractors, and agents. Pay close attention to this clause in your contract to ensure that all these instances are covered without any additional fees.



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Restrictions

Is the customer prohibited from sublicensing, selling, transferring, leasing, distributing, or making the software available to any third parties?

Is the customer prohibited from installing the software in a virtual environment or on a server?



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License Type

There are many types of software licenses and they all come with their own set of nuances. Are you agreeing to a subscription-based license, a perpetual license, end user only (no bots allowed), a concurrent license, metered (consumer-based) license, device license (ex. a call center), or a multi-user license (ex. a training lab where end users change daily)?

Have a very clear understanding of how the software is licensed as this could cause compliance issues if the software is outside the scope defined by your contract.



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Organizational or Infrastructural Terms

This defines your company, i.e. the enterprise. Do you have multiple business units that will be using the software? If these are not clearly defined in your contract, you would be required to purchase additional licenses to cover those business units not outlined in your contract.



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Annual True-up Clause

This clause will cover any changes in the estimated versus actual license count that have occurred before the renewal of the contract. One example: if your company wants to avoid multiple, daily purchase orders they chose to issue a license to an end user (over and above the original licenses purchased) and pay a set fee at renewal for any overages.

True-up fees should be negotiated to ensure you (the customer) get the best price per license. You never want to pay more per license than the original price agreed upon.



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Audit Clause

This defines how and when a publisher can audit a client. Ensure the publisher gives you ample time - at least 60 days advanced notice - and that you are informed in writing that the publisher intends to audit your company. Allowing the publisher to remote into your environment to monitor usage should be prohibited. A major red flag to look for and avoid is the hidden audit clause, which may not be defined as an audit clause, but included in the language that outlines and defines what you must provide to your vendor during the renewal process. Vendors are requiring the customer to provide a Baseline (Renewal) Report showing active usage. Following submission, the vendor will review the report and, as outlined in the contract, can ask questions and address any concerns. This is an open door for an audit. The language further states that, if concerns are raised, the customer will pay "adjusted" renewal rates. These hidden clauses can result in very hefty renewal rates and make the renewal process long and exhaustive.



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Termination Clause

This will outline what occurs when the contract ends.

Does either party have the right to end the contract earlier than agreed upon? Is it a Termination at Will or a Termination for Cause? If the publisher breaches the contract, are you still responsible for making payments? Clearly state that a breach of contract would immediately halt payments.



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Before you commit to anything, carefully review and question your contract and know that all terms and conditions are negotiable.



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Questions or Comments?



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