



1



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2

BEFORE YOU SAY, 'I DO'!

Software Contract Fundamentals

1. Know the License Type Included in the Software Contract
2. Understanding the Terms of a Software Contract
3. Negotiating Software Contracts
4. Must Avoid vs. Must Have
5. Processing Software Contracts
6. Renewing Software Contracts & Annual Executive Software Contract Reviews
7. Contract Management Solutions
8. Key Aspects of IAITAM's Contract Management:
9. AI for Contract Review Software


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3

BEFORE YOU SAY, 'I DO'!

1. Know the License Types included in the Software Contract

Software license agreements, including subscription agreements, come in various forms, including perpetual, subscription-based, open-source, and proprietary licenses, each with different terms and conditions regarding usage, distribution, and ownership





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4

CONTRACTS FOR LICENSE TYPES

- Subscription/Term Licensing
 - Device Licensing
 - Anchored Licensing
 - Perpetual Licensing
 - SaaS Licensing
 - Consumption/Usage-Based Licensing
 - Concurrent Licensing
 - Other....





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


5


BEFORE YOU SAY, 'I DO'!

Know which license type is best for your organization:

- Shared devices (1 to many users)
- Dedicated devices (1 user only)


No matter your choice, you must ensure compliance with the publisher's software license agreement, EULA (End-User-License-Agreement)

<p>Perpetual</p>  <p>No expiration date</p>	<p>Locked to a device</p>  <p>Assigned to one or more specific systems, to be used by various users</p>
<p>Subscription</p>  <p>Term-based, with recurring payments</p>	<p>Consumption</p>  <p>Counted against a provisioned quantity</p>




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Shared devices – Device license

Dedicated device
Named subscription software license



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7




BEFORE YOU SAY, 'I DO'!

2. UNDERSTANDING THE TERMS OF A SOFTWARE CONTRACT

The software agreement generally describes how the software can be used, the software publisher's terms and conditions, and the rights of both parties. Often, an agreement details the customer's rights to modify the software or may contain warranty information. An agreement also includes the duration, term start, and term end date, e.g., one-year, three-year, etc., software license type, license costs, training, and support levels.

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8



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Often, an agreement details the customer's rights to modify the software or may contain warranty information. An agreement also includes the agreement duration, term start, and term end date, e.g., one-year, three-year, etc., software license type, data privacy, copyright, non-disclosures, Intellectual property rights, type of warranty, copyrights, license costs, software training, support levels, and termination.


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9




When reviewing a software agreement, pay close attention to intellectual property rights, limitations of liability, warranties, termination clauses, support and maintenance terms, and data ownership/privacy provisions.

- Intellectual Property (IP) Rights:
- **Ownership:**
 - The agreement should clearly define who owns the software and its related intellectual property (copyrights, patents, trademarks).
- **License Type:**
 - Understand if you're receiving a license to use the software (e.g., a proprietary license with restrictions) or if you're purchasing the software outright.




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10




2. UNDERSTANDING THE TERMS OF A SOFTWARE CONTRACT

- **Restrictions:**
 - Be aware of any limitations on copying, modifying, or distributing the software. Limitations of Liability:
- **What's Covered:**
 - This section outlines the extent to which the software provider is liable for damages or issues arising from the software's use.




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11




- **Disclaimers:**
 - Look for disclaimers that state the software is provided "as is" and that the provider is not liable for certain types of damages.
- **Remedies:**
 - Understand what your recourse is if the software fails to meet your expectations or causes problems.
- **Warranties:**
 - **Performance Guarantees:** Determine if the software provider offers any warranties or guarantees regarding the software's performance, functionality, or error-free operation.



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12



➤ **Termination Conditions:**
 ➤ Understand the circumstances under which the agreement can be terminated by either party (e.g., breach of contract, non-payment).

➤ **Consequences:**
 ➤ Be aware of the consequences of termination, such as ceasing use of the software, returning copies, or paying outstanding fees.

➤ **Support and Maintenance/Scope:**
 • Determine the level and scope of support and maintenance services provided by the software provider (e.g., bug fixes, updates, technical assistance).



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13




➤ **Responsibilities:**
 ➤ Clarify the responsibilities of both parties regarding support and maintenance.


➤ **Governing Jurisdiction:**
 ➤ **Applicable Law:**
 ➤ The agreement should specify which jurisdiction's laws will govern the agreement and any disputes that may arise.

➤ **Dispute Resolution:**
 ➤ Understand how disputes will be resolved (e.g., negotiation, mediation, arbitration, litigation).




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14



➤ **Payment Terms:**
 ➤ **Price:** Clearly state the total price and payment schedule.
 ➤ **Late Payment Penalties:** Be aware of any penalties for late payments.

➤ **Service Level Agreements (SLAs):**
 ➤ **Performance Metrics:** If applicable, SLAs define the performance standards and expectations for the software.
 ➤ **Response Times:** Understand the expected response times for issues or problems.



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15




- **Confidentiality:**
 - **Protected Information:** Identify any confidential information that is subject to protection under the agreement.
 - **Obligations:** Understand the obligations of both parties regarding confidentiality.
- **Data Ownership and Privacy:**
 - **Data Ownership:** Clarify who owns the data generated or processed by the software.
 - **Data Privacy:** Understand how the software provider will handle and protect user data.
 - **Data Security:** Ensure that the agreement includes provisions for data security and protection.



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16



3. NEGOTIATING SOFTWARE CONTRACTS

To successfully negotiate software contracts, understand your needs, research the market, prioritize key terms, communicate effectively, and be prepared to walk away if necessary. Here's a more detailed breakdown of key strategies:

- **Know Your Needs and Prioritize:**
 - **Define your objectives:** What are your critical needs and requirements for the software and the contract?
 - **Identify priorities:** Determine which terms are non-negotiable and which are open to discussion.
 - **Consider future needs:** Think about scalability, potential expansion, and long-term usage.



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17






- **Conduct Thorough Research:**
 - **Research the vendor:** Understand their reputation, track record, and customer reviews.
 - **Compare pricing models:** Analyze different pricing structures and identify the best fit for your needs.
 - **Review service level agreements (SLAs):** Understand the vendor's commitments regarding uptime, performance, and support.
 - **Familiarize yourself with key terms:** Understand the implications of clauses related to licensing, ownership, support, and termination.




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18




- **Ask questions:** Don't hesitate to clarify any ambiguities or concerns.
- **Seek professional advice:** Consult with legal counsel or contract experts if needed.
- **Communicate Effectively:**
 - **Be assertive and confident:** Clearly articulate your needs and expectations.
 - **Listen actively:** Pay attention to the vendor's perspective and concerns.
 - **Build rapport:** Establish a positive and collaborative relationship.




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19




NEGOTIATE STRATEGICALLY:

- **Negotiate the scope:** Ensure the contract covers all your requirements and avoids unnecessary costs.
- **Ask for discounts or concessions:** Explore opportunities to reduce costs or improve terms.
- **Be prepared to walk away:** Don't settle for an agreement that doesn't meet your needs.
- **Consider the total cost of ownership (TCO):** Evaluate not only the initial price but also ongoing costs like maintenance and support



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20




4. MUST AVOID VS. MUST HAVE

A Must:

- Take your time to properly review the proposed contract
- Invite stakeholders, including the benefiting business units, deployment team, procurement team, purchasing team, legal team, network team, and reseller (if applicable)
- Understand fully what you are agreeing to
- Know your business units needs
- Know your company's short/long-term goals
- Negotiate discounts based on quantities, and term of contract

Avoid:

- Rushing (Haste makes waste)
- Going it alone (review with other stakeholders, including the benefiting business units, deployment team, procurement team, purchasing team, legal team, network team, and reseller (if applicable))
- Signing (Saying 'I do') without understanding fully what you are agreeing to
- Automatic Renewals
- Increase costs for net new purchases beyond the baseline cost in the agreement
- Purchasing more than you need at the time (you can always purchase additional licenses beyond the baseline contracted unit price). Verify usage trends!
- Purchasing a license that you don't need for a discount



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21

WHAT STEPS DO I TAKE TO ONBOARD A NEW CONTRACT?

5. PROCESSING SOFTWARE CONTRACTS

A clearly defined software contract process should be documented in easily accessible 'Contract Management' policy and procedure.

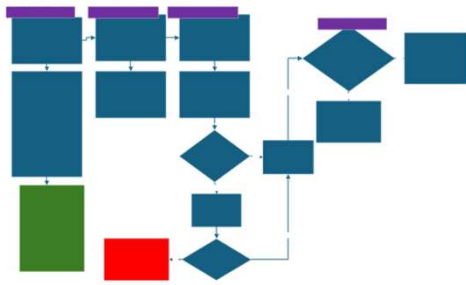


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22

Contract processing workflow diagram

- What are the prerequisites of your legal team before you submit a contract for initial review?
- What are the requirements for the software publisher to do business with your company?



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23

6. RENEWING SOFTWARE CONTRACTS & ANNUAL EXECUTIVE SOFTWARE CONTRACT REVIEWS

- Know contract renewal dates by tracking in a contract management solution.
- Avoid waiting until the last minute to renew software contracts.
- Remember that a renewal is different than the annual software payment due.
- Before you renew, verify actual usage.
- Don't hesitate to reach out to the users and support analysts at least 120 days before the renewal date; to determine if they have concerns or recommendations about the software renewal. This is also a good time to have the software publisher provide an executive and/or analyst overview of entitlements and a roadmap of new features, etc.
- Ask the publisher for an entitlement report. Compare the entitlement report with your internal software asset management discovery reports; you may need to true up or true down.



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24



7. CONTRACT MANAGEMENT SOLUTIONS

It is imperative that your organization implement and manage a contract management system.
Information that should be tracked:

- Contract Identification Number
- Contract Vendor/Publisher Name
- Contract term (start/end dates)
- Contract Sponsor
- Contract Department
- Contract Cost Center
- Vendor Address, Phone, Email, Contact Name, Contact Email, Contact Title
- Contract Description
- Attach: EULA, MSA, BAA, W-9, license quotes, purchase orders, invoices
- Legal team resource name
- Vendor Identification Number



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25



8. KEY ASPECTS OF IAITAM'S CONTRACT MANAGEMENT:

IAITAM's contract management focuses on ensuring compliance with legal, regulatory, and licensing requirements related to IT assets, including vendor management, risk assessment, and proactive lifecycle management

- **Contract Negotiation and Execution:**
 - IAITAM's best practices guide organizations in negotiating favorable contracts with vendors, ensuring clear terms and conditions.
- **Contract Compliance:**
 - Organizations need to ensure that contracts are followed and that all parties are meeting their obligations.



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26



8. KEY ASPECTS OF IAITAM'S CONTRACT MANAGEMENT (Continued)

- **Provides Guidance on Contract Monitoring and Performance:**
 - Regularly monitoring contract performance helps identify potential issues and ensures that vendors are meeting their obligations.
- IAITAM's best practices also cover the processes for renewing or terminating contracts, ensuring a smooth transition and minimizing risk



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27

9. AI FOR CONTRACT REVIEW SOFTWARE

ChatGPT would not be a good resource for reviewing your contract in full. It might help you get started by listing industry-specific terms/issues to get you started with your own review of the contract's terms, but nothing comes close to having an actual attorney review.

➤ How does AI review contracts?

- Contract review AI uses contextual analysis to go beyond a simple search function. The AI can find elements like dates and clauses but also understand them as they relate to the contract and the boundaries you establish.

➤ What is generative AI for contract review?

- Automated Contract Reviews. Contract review powered by generative AI uses machine learning algorithms trained on vast legal datasets. This allows it to scan contracts with superhuman speed, flags potential risks, and highlights key terms for your review



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28



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29

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Credits (References)

Types of Software Licenses

<https://www.revenera.com/blog/software-monetization/software-licensing-models-types/>

Negotiating Contracts

- Google Gemini
- Microsoft Co-Pilot
- ChapGPT
- IAITAM



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30



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