

5 KEY POINTS WHEN PURCHASING SOFTWARE

Businesses spend thousands of dollars a year on software and SaaS system purchases and upgrades, yet continue to fall into the familiar trap of immediately signing pre-printed or online “form” license agreements designed to protect the vendor, not the purchaser. Some of these “form” agreements are non-negotiable but many can be modified upon request. From the perspective of the purchaser, here are five important points to consider before signing:

1. Permitted Users. How is this term defined? Workforces are increasingly made up of independent contractors, “temp” hires and even volunteers. Is use of the software limited only to “employees” of the purchaser? What if the “users” are actually employed by a corporate affiliate or management company? Tailoring standard “user” language to suit your particular situation can avoid problems later if there is a software user audit.

2. Training & Support. Is the support more than a helpdesk? Is support personnel locally available if you need onsite help? Is training included in the license fee and if so, how many hours? Is it provided onsite or remotely? Negotiating adequate support and training is essential especially if the system is “mission critical” to the purchaser’s business.

3. Security & Encryption. Does the system comply with the security or encryption requirements required in your industry? Ask the vendor to include a warranty to that effect and that your data will be stored and transmitted in a compliant manner. It is not a good sign if the vendor appears unsure of the requirements or unwilling and you should probably look to other vendors.

4. Indemnity. An indemnity protects you if someone claims that your use of the system violates their intellectual property rights. An indemnification clause typically requires the vendor to either settle the claim or pay to provide a legal defense for the customer. Having a properly worded clause in the license can help the purchaser avoid costly attorney’s fees affiliated with defending itself in a lawsuit, and require the vendor to fund a settlement or pay any damages awarded to the claimant.

5. Assignability. If a reorganization, merger or sale of the company occurs, it is important for the purchaser to have the ability to freely assign its rights under the license without the vendor’s consent. Negotiating these exceptions to a “no assignment” clause can prevent headaches later on, such as vendor delays in providing the consent, “consent” fees or a renegotiation of rates.

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