

## How Software License Agreements Protect Your Software and Business

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A software license agreement offer a contractual remedy against the user for failing to comply with any provision in the agreement<sup>1</sup>. This is in addition to any other legal remedies that may be available, such as those under copyright law. Also, the agreement can determine the venue for any litigation which can save future costs if disputes arise. For beta software or evaluation software, the agreement should include slightly different terms most are similar to the below. Beta Agreement and other Software License Agreement legal forms are available for purchase from the author [here](#).

### Agreement Terms

#### Permitted Uses of the Software

A license agreement should state how the software may or may not be used:

- That the user may install the software on one machine or many, may make one copy or many
- That the use is exclusive or non-exclusive (whether more than one party is granted a license)
- That the software and license agreement are transferable or assignable, or not
- That the software may only be used in certain countries
- That the user may not modify, reverse engineer, rent or export

#### Acceptance and Installation of the Software

Depending on whether the software is customized or off-the-shelf, the agreement may have a provision stating what steps are necessary for acceptance and installation. As acceptance can be a tricky legal concept, agreeing to the procedures for testing and acceptance up front can often be very helpful.

#### Maintenance of the Software

Some licensors of software have maintenance programs available for annual purchase which provide bug fixes, updates and technical support paid at the beginning of each year. While the prices vary, typical annual fees are fifteen to twenty percent of the cost of the software license.

If maintenance is purchased, it can be helpful to describe in the agreement exactly what is provided. Such descriptions may include what types of software problems are given what

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<sup>1</sup> Readers are cautioned not to rely on this article as legal advice as it is no substitution for a consultation with an attorney in your state. Based on jurisdiction and time, the law varies and changes.

priority of resolution, how long resolutions of problems may take, remedies if a problem cannot be fixed, user responsibilities in the process, who may contact the licensor's technical support team, and other items.

### Customization of the Software

Projects for development or customization of software are very legally complex and you should always retain an attorney with knowledge of software development agreements for such a project. If any customizations, interfaces or integration of the software are to occur, they should be carefully set forth in an exhibit to the agreement, including description of the final software functionality, deadlines, testing, acceptance and installation.

### Ownership of the Software

The agreement should state that the user agrees that the licensing entity owns the software, customizations and updates. This serves both to give notice of the ownership to the user and also gain the user's legal agreement up front to this fact

### Payment

The agreement should set forth procedures, timelines and amounts for the software license and maintenance fees to avoid confusion and ensure prompt payment and performance of services.

### Warranties

Most software includes a warranty of at least thirty days. Good warranty provisions includes specific conditions and exceptions to the warranty which protect the licensor.

It is vital for the licensor that the agreement include the correct language as required by law, in the correct point font size (no, I'm not joking) to waive other legal warranties which are implied under the Uniform Commercial Code to the sale of products, which includes software. Despite its name, the uniform commercial code varies by state, but generally is uniform nonetheless. The UCC implied warranties include a warranty that the item will do what it is intended to do, that it may be fit for a particular promise if so stated, that it does not infringe third party rights and that the seller has proper title to sell the item.

### Termination

Under what circumstances, either the user or the licensor can terminate the software license and/or maintenance, and procedures and results of doing so should be included so that both parties have notice and agreement of their rights.

### Liability Limit

The license agreement should also limit the liability of the licensor for damages of all kinds regarding use of the software, errors or viruses in the software and other items. This wording should be drafted by an attorney to be effective. Properly drafted, this is an extremely beneficial provision to lower risk in your software business.

### Indemnification

In software licensing involving large sums of money, the licensor will typically be asked to provide an indemnification of the user for the software's infringement of any third party rights. This means that if the user is sued because the software included materials which infringed the rights of another party, the licensor must reimburse the user for all costs and expenses of this litigation.

### Conclusion

A software license agreement can offer tremendous legal benefit both in lower risk and ensuring protection of your software and legal rights. Short form and long form, including maintenance and customization, software license agreement legal forms by the author are available for purchase [here](#).