







Types of Software Licenses

- Still confused?
 - <http://enterprisefeatures.com/2010/08/the-difference-between-hosted-saas-software-as-a-service-and-the-cloud/>
 - Consider the metaphor of a man ordering a meal at a restaurant:
 - **Hosted Software**
 - "I brought my own food, but my house is boring. I'll give you \$25 if you let me eat my meal here, with your lively atmosphere and decor."

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Types of Software Licenses

- **Software as a Service**
 - "I like coming to this restaurant here because I can just eat the food without having to buy a kitchen, prepare the food or wash the dishes."
- **The Cloud (And here's where it gets weird)**
 - "I don't want to buy the whole meal. I just want the taste of garlic and broccoli in my mouth, and the feeling of a full stomach."

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Types of Software Licenses

- Traditional "Behind the Firewall"
 - Can include developed or customized software; think "product purchase".
 - Examples
 - Microsoft
 - Oracle
 - AutoCAD
 - QuickBooks
 - Other "off the shelf" software

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Types of Software Licenses

- Hosted/Outsourced (ASP model)
 - Think - rental car (service) as opposed to a car purchase
 - Although you can "host" software on your own computer/system/server
 - Ex - Wordpress.com – hosted blog
 - Not a download of a blog application that you operate and manage; rather, the application is hosted on an external server
 - Less work, but less control

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Types of Software Licenses

- "Cloud" – can overlap with hosted/outsourced software; remote "hosting" through Internet or wireless connection
 - Software as a Service (SaaS)
 - Platform as a Service (PaaS)
 - Infrastructure as a Service (IaaS)

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Types of Software Licenses

- Open Source
 - Access to source code and license to modify, create derivatives and distribute SUBJECT TO some element of perpetuation/obligation
 - Not public domain

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Key Provisions of Traditional Software License

- License Grant
 - Exclusive vs. Non-exclusive
 - Interplay with ownership rights
 - Non-competition restrictions may be considered

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Key Provisions of Traditional Software License

- Use Restrictions – clarity and cost
 - Number of users
 - Site/geographic restrictions
 - Hardware/CPU restrictions
 - Third-party use
 - Affiliates
 - Future Expansion
 - Sublicensing
 - Assignment

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Key Provisions of Traditional Software License

- Use Restrictions
 - Copying/back-ups
 - Confidentiality

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Key Provisions of Traditional Software License

- Use Restrictions – Modifications and the “Ownership Corollary”
 - Configuration vs. licensee customization
 - Title vs. rights of use
 - Licensee work efforts
 - Warranty impact
 - Derivative Works?
 - Royalties?
 - Distribution rights/joint licensing?
 - Impact of noncompetition restrictions

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Key Provisions of Traditional Software License

- Use Restrictions – Audit rights
 - Define boundaries and impact
 - Who conducts?
 - Licensor, licensee or third-party?
 - Potential disruption and confidentiality issues
 - When? How long?
 - Price of noncompliance? Fees? Penalties?

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Key Provisions of Traditional Software License

- Delivery (particular issue to customized software)
 - ID deliverables
 - Software
 - Documentation
 - Delivery time
 - Time of the essence?
 - Milestones?

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Key Provisions of Traditional Software License

- Installation (again, applicable to custom software)
 - ID dates/milestones
 - Who has responsibility for interface requirement and any data conversion?
 - Licensee obligations to provide personnel, data and support?

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Key Provisions of Traditional Software License

- Acceptance (part of the delivery and installation process)
 - Key in identifying shift of responsibility and payment
 - What constitutes acceptance?
 - Installation by Licensor
 - Licensee discretion subject to defined performance standard
 - Objective testing (timing, cure and who?)

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Key Provisions of Traditional Software License

- Training, Support/Maintenance and Upgrades
 - Part of base license fee or extra?
 - One price approach may result in higher overall cost
 - Can support be separated out?

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Key Provisions of Traditional Software License

- Training, Support/Maintenance and Upgrades
 - Varying levels of support? Versions?
 - Telephone/email support
 - Engineering support to correct errors/malfunctioning software
 - New software code pieces
 - Patches/updates to repair errors
 - Upgrades to improve or add functionality
 - New versions

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Key Provisions of Traditional Software License

- Training, Support/Maintenance and Upgrades
 - Training and Documentation
 - Details?
 - Number of trainers?
 - Number of training days? Where?
 - Open or customized classroom?
 - On-line training?
 - How many licensee employees can participate?
 - User materials? On-line help menus and documentation?

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Key Provisions of Traditional Software License

- Payment Terms
 - One-time payment vs. partial payments
 - For custom software, payments can tie to key triggers such as execution, delivery, installation, acceptance, etc.
 - For ongoing installation, yearly fees can apply as well as fees for upgrades

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Key Provisions of Traditional Software License

- **Warranty/Damage Terms**
 - Warranty scope/exclusions
 - Performance
 - Title
 - Compare to any indemnification provisions
 - Available remedies
 - Repair/replace
 - Refund of fees
 - Cover damages

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Key Provisions of Traditional Software License

- **Term and Termination**
 - Perpetual vs. fixed term (with renewals)
 - Termination for breach
 - Notice and cure provisions?
 - What constitutes a breach?

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Key Provisions of Traditional Software License

- **Events of Default; Opportunity to Cure**
 - Licensee Default
 - Disclosure of proprietary information
 - Impermissible modification of software
 - Failure to pay fees
 - Unauthorized distribution/use
 - Audit requests
 - Can trigger threatened legal action and requests for additional license fees

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Key Provisions of Traditional Software License

- Events of Default; Opportunity to Cure
 - Licensor Default
 - Breach of warranties
 - Breach of maintenance obligations

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Key Provisions of Traditional Software License

- Obligations on Termination – the Prenuptial
 - Licensee impact
 - Discontinue use?
 - Partial as to maintenance only?
 - Removal of licensed software
 - Return of software/source code/documentation
 - Continuing obligations?

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Key Provisions of Traditional Software License

- Obligations on Termination – the Prenuptial
 - Licensor impact
 - Adherence to licensee safety/security reqs.
 - Licensee confidential data
 - Removal by licensor or third party?

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Anatomy of a Software License

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