

**DuaneMorris**

## Overview of Software Licenses

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### Overview

- Standard License Terms
- Software Development

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How the customer explained it

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How the Project Leader understood it

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How the Analyst designed it

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How the Programmer wrote it

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How the Business Consultant described it

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How the project was documented

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What the customer really needed

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How the customer was billed

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### Standard License Terms

- License Grant
  - Exclusive
  - Non-exclusive (COTS)
  - Number of users/seats
  - Hardware limitations
  - Third party and affiliate use
  - Geographic considerations
  - Ability to make copies
  - Ability to modify
  - Assignment

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### Term

- Perpetual licenses
- Term licenses
  - Renewal automatic or by agreement

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**Deliverables**

- Identify all deliverables
  - Software/hardware
  - Project plans, schedules, training materials, documentation
  
- Define delivery of software:
  - Installation
  - Use
  - Go Live

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**Acceptance Criteria**

- Define acceptance:
  - Installation
  - Testing (metrics)

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**Performance Criteria**

- Identify minimum performance criteria
  - Speed and bandwidth
  - Amount of expected uptime
  - Server response times and capacity
  - Scheduled maintenance periods
  - Backup frequency
  - Disaster recovery plans
  
- Service level agreement

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**IP Ownership and Rights**

- Rights to content created by the vendor
  - Work for hire
  - Define scope of work for hire (address proprietary software/tools or other deliverables)
- Jointly developed software
- License to use 3<sup>rd</sup> party software
- Copyrights
- Rights of publicity

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**Confidentiality**

- Protect relevant information:
  - Customer lists
  - Trade secrets
- Extend obligations to 3<sup>rd</sup> party vendors
- Return information at the conclusion of the project
- Appropriate remedy for breach

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**Sensitive Personal information  
(financial, health care etc.)**

- Provide details on the following:
  - Security of sensitive information
  - Responsibility in the event of a security breach
    - Indemnification for a breach

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**Maintenance and Support Services**

- Consider when maintenance/support and related payments begin
  
- Identify length of expected maintenance and support
  - Cover the amount of the investment
  
- Address response times and escalation

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**Training**

- Identify the following:
  - Number of people
  - Location
  - Hours
  - Training materials
  - Type of training (live or simulation)
  - Instructor level

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**Software Escrow**

- Escrow in the event of bankruptcy or closure
  
- Review escrow agreement
  
- Ensure up to date versions of software are escrowed

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**Warranties**

- Warranty of performance
  - Time period
  - Compliance with relevant regulations or laws
  - Warranty to specification/requirements
  - Warranty to comply with documentation
  
- No viruses or disabling code
  
- Vendor has the right to license

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**Indemnifications**

- IP infringement
  
- Personal injury and property damage
  
- Breach of warranty for malicious code
  
- Third party claims
  
- Breach notification (if appropriate)

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**Limitation of Liability**

- Mutual limitations?
  - Except fraud, gross negligence, willful misconduct, breach of confidentiality, malicious code etc.
  
- Maximum amount
  
- Consequential damages
  
- Exclusion of indemnification obligations

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Events of Default and Opportunity to Cure

- Software problems
  - Notice and cure period
- Breach of confidentiality obligations
- Breach of warranties
- Breach of license grant

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Dispute Resolution

- Internal dispute resolution procedures
  - Meet and confer
  - Escalation procedures
- Choice of law
- Forum
  - If using arbitration, consider experience of arbitrators

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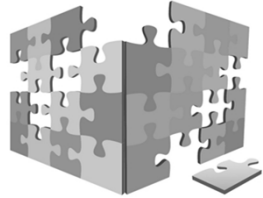
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Custom Software Development



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### Requirements/ Specifications

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- Accurately communicate and document business needs
  - Washington state example
- Identify and document reasonable project requirements
  - London Stock exchange example
- Ensure requirements are detailed and specific
  - scope creep
- Incorporate by reference all requirements



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### Schedule

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- Identify an appropriate schedule given the size and complexity of the project
  - Budget Rent-A-Car, Hilton, Marriot and AMR example



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### Project Estimates

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- Check estimates to ensure they are based on reasonable assumptions
- Document process for communicating changes

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**Payment Schedules**

- Included in the contract
  
- Linked to acceptance of deliverables
  
- Holdback?

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**Systems Development Methodology and Standards**

- Require developer to have a structured methodology for developing systems and software
  - Documented, repeatable, reliable standard reduces risk
  - Phases
    - Requirements gathering
    - Planning
    - Design
    - Documentation
    - Development/Construction
    - Testing
    - Training
    - Implementation
    - Support & Maintenance

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**Resources**

- Require developer to use industry standard architectures and tools used to develop the system
  
- Address legacy data
  - Ensure appropriate plans are made to convert data and operations from the old system to the new system

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### Staffing

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- Identify key staff
  - client
  - developer
- Require the use of employees with the proper skills and expertise
  - client
  - developer



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### Communications

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- Identify progress and problem reporting processes and schedule
- Ensure key personnel are available
- Identify deliverables and acceptance criteria
- Ensure delays are quickly communicated

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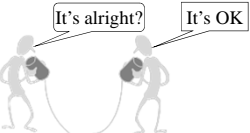
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### Testing

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- Identify inspections, reviews and walkthroughs
  - client
  - Developer
- Identify exit criteria to ensure that testing is adequate (budget, staff and performance)
  - client
  - developer
- Identify appropriate industry standard testing tools
- Identify client acceptance testing criteria



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### Project Management

- Identify management controls to:
  - plan, organize, staff, direct, coordinate, budget, control, report and re-direct the project as needed
    - client
    - developer
- Identify systems development metrics to be kept and used

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### Integration Clause

- Standard clause:
  - contract represents the parties' complete and final agreement and supersedes all informal understandings and oral agreements relating to the subject matter of the contract
- Possible problems
  - Requirements/specifications
  - Claims of fraud in the inducement

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### Questions?



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