

A Newsletter by Budd Larner, P.C.

Issues in Software License Agreements & Negotiations

By Peter John Frazza, Esq.

At a recent three-day software licensing and negotiating seminar that I conducted, numerous issues were discussed in great detail. At the end of the seminar, attendees asked me to prepare a "Top 10 List" for their future reference. It is thus my great pleasure to present Peter Frazza's "Unabashed Top 10 Software Licensing Issues List," which had to be increased to a "Top 12 List."

1. The "Licensee" must be defined very carefully.
2. The permissible Scope of Use provision must be broad enough to cover all aspects of how your company transacts business in its ordinary course, including allowing the necessary third parties to use, access and benefit from the software.
3. Insist that Addenda not be used. If modifications must be made to the base agreement (and I strongly suggest that all companies use their own form software license agreement) then incorporate those changes into the base agreement.
4. Procure all necessary Representations and Warranties, which includes a Representation and Warranty that there is no disabling device in the software.
5. Make sure that all Maintenance and Support obligations of the Licensor are spelled out in detail in the software license agreement.
6. Make sure that the Indemnification provision is broad enough to provide your com-

pany with complete indemnification for all intellectual property claims and all claims relating to bodily injury.

7. Make sure that the Limitation of Liability provision is not applicable to (a) breaches of the Confidentiality provision, (b) breaches of the representation that the software has no disabling device, and (c) the Indemnification provision.

8. Include an Internal Dispute Resolution provision which must be utilized before either party can commence and arbitration or litigation procedure.

9. Make sure that the software license agreement is very clear as to how and when such agreement can be terminated, and if you have a perpetual license, that termination does not effect your perpetual grant.

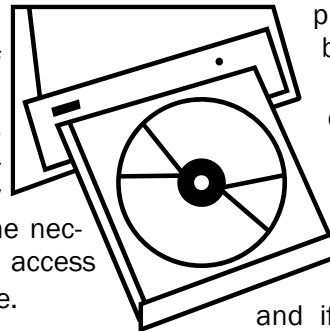
10. Include as many definitions for key terms as possible.

11. Make sure that the audit provision is fair and equitable.

12. Make sure that, if necessary, the software license agreement addresses partitioning the computers and servers; dual processing and the number of instances that are allowed.

If you thoroughly address and discuss the above twelve issues, they will necessarily lead to the other important issues that also need to be addressed. ■

This Top 10 List will lead to other important issues when drafting or negotiating software licensing agreements.



SOFTWARE LICENSING SEMINARS**KEYS TO NEGOTIATING BETTER SOFTWARE AGREEMENTS AND ADVANCED NEGOTIATING SEMINAR****SEPTEMBER 2007 LAS VEGAS**

September 26 Advanced Negotiating Seminar
September 27 & 28 Software Licensing Seminar
The Westin Casuarina Hotel, Casino & Spa
160 E. Flamingo Road, Las Vegas, NV 89109

JANUARY 2008 NEW YORK CITY

January 23 Advanced Negotiating Seminar
January 24 & 25 Software Licensing Seminar
Crowne Plaza Times Square Manhattan
1605 Broadway, New York, NY 10019

MARCH 2008 LAS VEGAS

March 19 Advanced Negotiating Seminar
March 20 & 21 Software Licensing Seminar
The Westin Casuarina Hotel, Casino & Spa
160 E. Flamingo Road Las Vegas, NV 89109

- Analyze hidden traps in vendor form license agreements.
- Review real-world licensing cases and learn from past mistakes.
- Discover the advantages of using your own form contracts in negotiations.
- Examine emerging pricing, contractual and legal issues.

For PDF brochure, please go to: <http://www.buddlerner.com/softwareseminar/SoftwareLicensingSeminar.pdf>

- Registration fee includes continental breakfast each day, luncheons, and reception the first day and all breaks.
- Excludes hotel accommodations.
- Business casual attire.
- Advanced session 9:00 a.m. - 4:00 p.m.
- 2-day seminar:- Day One 9:00 a.m. - 4:30 p.m. (reception following), Day Two 9:00 a.m. - Noon

Register online at www.buddlerner.com/softwareseminar

Budd Lerner, P.C.

150 John F. Kennedy Parkway
Short Hills, NJ 07078-2703
tele 973.379.4800
fax 973.379.7734
info@budd-lerner.com

Visit us on the Web:

www.buddlerner.com

Budd Lerner, P.C. is a law firm of approximately 100 attorneys with offices in Short Hills, NJ; Cherry Hill, NJ; New York, NY; and Philadelphia, PA. Founded in 1934, the firm provides a full range of legal services to a diverse group of clients, both domestic and foreign.