# Software License Agreement Checklist

## The following general terms should be considered when reviewing a software license agreement:

* **Grant of License:** Ensure that the definition of Licensee (the College) is broad enough to encompass all users. Review any limitations on the number of seats available, the number of copies allowed, or the definition of site (if a site license) to ensure that the College has the flexibility it needs to accommodate home use of the software by employees/students and transfer of employees/students to different license sites.
* **Payments:** Ensure that the vendor is paid as they perform under the contract and not paid full value in advance prior to performance of services.Tie payments to milestones or benchmarks such as execution of the contract, delivery of the software, installation of the software, acceptance of the software, an/or expiration of the warranty period. The College should also avoid annual payments of agreed upon support fees for extended periods in advance. Quarterly payments are preferred.
* **Warranties:**
* **Title Warranty:** The Licensor should warrant that they own the licensed software, have the right to grant the license to the College, that there is no litigation or other claims involving the software, and that there are no liens or encumbrances on the licensed software.
* **Performance Warranty:** The Licensor should warrant that the product will conform to specifications and function in accordance with sales literature, vendor documentation, and reasonable expectations. This warranty may be dependent upon acceptance testing and should extend at least one year beyond any agreed upon acceptance period. This warranty should also provide remedy for nonconformity.
* **Hardware and Operating System Warranty:** If an entire system is to be purchased, the Licensor should warrant that the software will operate fully and correctly on specified hardware, using the associated programming language and operating system, that the software is compatible with other applications run by the College as well as third party software, and that the software will operate in accordance with the specifications for multiple contemporaneous users as set forth in the specifications.
* **Installation:** Consider vendor installation of the software, requiring certification that the software has been installed correctly, and basic training for College personnel. These services should be included with the overall price.
* **Ownership of Modifications:** The College should be the owner of any modifications, customization, and/or interfaces of the software.
* **Maintenance Agreement:** The College should not enter into an agreement which is tied to a maintenance program. The College should not be compelled to purchase additional services in order to have a valid license.
* **Confidentiality:** The Licensor must be required to protect the College’s confidential information.
* **Limitations of Liability:** Licensor’s liability should be limited to no less than a multiple of license fees and other monies payable pursuant to the agreement. Tort claims, intellectual property indemnification, and breaches of confidentiality should be excluded from an damage exclusion or limitation.
* **Patents, Trademark and Copyright Indemnification:** The Licensor must indemnify, defend and hold the College harmless from all costs and expenses, including attorneys fees, related to claims for infringement or trademark, copyright, U.S. patent or other third party rights attributable to software licensed, or services provided, by vendor. Remedies should be available in the event the College is prevented from using the software because of an infringement claim and these remedies should provide equivalent functionality of the original software.
* **Error Severity Levels and Response:** Include classification of errors by severity with corresponding response times for error correction at no additional cost. The College should also have a remedy, such as liquidated damages provision in the form of a dollar amount credit against any maintenance fees in the event errors cannot be corrected.
* **Support of Previous Versions:** Seek a commitment that will provide the College with support for the version purchased for at least one year beyond the date of any new release and further commitments that the new release will retain equivalent functionality of the version purchased.
* **Support Renewal and Termination:** If the College requires maintenance services for the product/s, a five-year term, with Licensor having to give two years notice to the College if Licensor decides it will not be supporting the software and allow the College to terminate at any time.

**End**