



# Software Development Agreements



**TOWNSENDS** BUSINESS  
& CORPORATE **LAWYERS**

## **What I need to know about...**

### **Software Development Agreements**

#### **Developing specialist software**

A software development agreement is a contract with the person who will create specific software especially for your specifications.

If you wanted a house to be designed and built you would explain to your architect how the house should look and the special features it should have. The architect would draw up plans and oversee construction of the house in accordance with those requests.

Developing software involves a very similar process. The customer must effectively communicate what they want from the software to the software writer. A protocol is then established for the creation, checking, testing, correcting and final approval of the software.

The customer should explain in plain English what they require from the software, how it will fit into their business and what it is designed to achieve. The software writer then converts the plain English into a set of functional specifications which explain how the software will work and what it will look like. Once the customer approves them, those specifications form the basis of the product which the software writer has been commissioned to provide.

Since there is no property right in pure ideas, it is vital to have a confidentiality agreement with the software developer before you explain in too much detail what you want them to develop. You don't want the developer simply writing the software and claiming it for themselves.

#### **What should be included in the agreement?**

Whether you are the developer or the client, the software development agreement contains:

- a very clear specification of just what the software must do (it is impossible to be too detailed here)
- the developer's functional specifications and implementation procedures which involve turning the rather general specifications into a detailed list of precisely what the software must do to comply with those specifications
- procedure for approval of functional specifications and implementation procedures
- changes to specifications – how, when and who pays
- delivery schedule

- acceptance testing including definition, performance, rectification and sign-off
- price including lump sum, extra price for extra work (is the price refundable if the software doesn't perform?)
- manner and timing of payment
- project management – who are the contact points? What is their level of authority? What are the communication requirements? Are there any meetings?
- a list of the associated services of the developer, including software documentation, system design, delivery arrangements, installation, user training and support
- the client's obligations including information, timely feedback, establishment of appropriate operation platform, personnel resources, access to site and changes to requirements
- confidentiality obligations of both sides
- confirmation of ownership of the software: does the client own it or just license it?
- access to source code
- developer's product warranties
- indemnities
- limitation on liability including consequential loss exclusion
- termination provisions: when and how
- the parties' rights and obligations after termination
- dispute resolution provisions.

There is a lot to cover but if you think that it is all too hard, too much or too expensive, just imagine what it will save you if things go seriously wrong.

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