

Considerations for License Agreements in the Healthcare Industry

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What kind of license are we
talking about?

FAST 5 CONSIDERATIONS

1. Who is the contract with?
2. Who will use this product & how will it be used?
3. What happens when contract ends, or access is suspended?
4. Do you get/need maintenance & support?
5. Should you be concerned about Open Source?

1. Who is the Agreement with?

Example 1:

“... and **Health Company** with its primary offices at 1234 Main St., Boise, ID 83702 and its Subsidiaries (collectively, “Licensee”). “Subsidiary” shall mean any entity which is directly or indirectly more than fifty percent (50%) owned by Health Company, whether such entity exists as of the Effective Date hereof or is hereafter created.”

Example 2:

“... and Health Company, an Idaho corporation whose principal place of business is at 1234 Main St., Boise, ID 83702 (“Client” or “you”).”

Click-wrap Example:

If you are agreeing to this Agreement not as an individual but on behalf of your company, then “**Customer**” or “**you**” means your company, and you are binding your company to this Agreement.

2. Who will Use this product? How will it be used? Is this permitted under the contract? Will PHI be exchanged or stored?

Bad Example: All title and copyrights in and to the Software (including but not limited to any images, photographs, animations, video, audio, music and text incorporated into the Software), the accompanying printed materials, and any copies of the Software, are owned by Licensor or its suppliers. ***This EULA grants you no rights to use such content.*** You may not reverse engineer, de-compile, disassemble, alter, duplicate, modify, rent, lease, loan, sublicense, make copies of, create derivative works from, distribute or provide others with the Software in whole or part, transmit or communicate the application over a network.

Better Example: Licensee may not (i) make copies of the Licensed Software or Documentation except as necessary or useful for Licensee to exercise the licenses and rights granted under this Agreement and for back-up, archival, and/or disaster recovery purposes, or (ii) modify, create derivative works, translate, decompile, or create (or attempt to create) by reverse engineering or otherwise, the source code from the object code for the Software. Licensee may not remove, modify or obscure any notices of proprietary rights in the Software, the media on which its contained or related user documentation or other materials.

3. Contract Ends or Access Suspended

- ❖ Data issues upon termination
 - Return OR destroy
 - PHI?
- ❖ Workflow disruption for suspension
 - Conditions
 - Notice?
 - Duration

4. Maintenance and Support

- ❖ Worst case scenario—what is the big picture impact?
 - Does this interact with other workflow tools? Will technical updates be a disruption?
- ❖ What do you need? Is that what you are getting?
 - Uptime obligations, technical support (by whom?), updates, response times.

Potentially Problematic Example:

Licensor may, from time to time, and for a fee, replace, modify or upgrade the Software. When accepted by you, any such replacement or modified Software code or upgrade to the Software will be considered part of the Software and subject to the terms of this EULA (unless this EULA is superseded by a further EULA accompanying such replacement or modified version of or upgrade to the Software). This EULA is a license of the Software only, and Licensor does not assume any obligation to provide maintenance, patches or fixes to the Software. Licensor further disclaims any obligation to provide support or to prepare and distribute modifications, enhancements, updates and new releases of the Software.

5. Should I be concerned about Open Source?

Maybe.

- ❖ How/what is this product used for?
- ❖ What OS is included?
- ❖ Contractual issues
- ❖ Support issues
- ❖ Security concerns

Questions?