

Session 701

Software Licensing and Development from a User's Perspective

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SOFTWARE LICENSING:



From a Licensee's Perspective

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Agenda

- Introductions
- Business Issues
 - Know Deal Basics
 - Pricing
 - Leverage/Red Flags
- Legal Issues
 - General License Issues
- Product Performance
 - Acceptance/Warranty
 - Support/Risk Sharing
- Remedies for Breach of Warranty
 - Disclaimers
 - Indemnification
 - Limitation of Liability
- Product Development and Modification
- Questions and Answers

Business Issues

Know the Basics of the Deal

- What is Licensed?
 - Function/Availability
 - Off-the-Shelf/Custom
 - Hardware/Software Rqmts
 - Install/Implement
- Who is the Vendor?
 - Leverage
 - Red Flags
- How is it to be Used?
 - Internal/Distribution
- Term - Perpetual/Ltd.
- What is the price?
 - Licenses
 - Training
 - Custom/Install
 - Maintenance/Support
 - Consulting
 - Futures/Add-Ons
 - Trade-In
 - Payment/Currency
- What is the Warranty?
- What Support Req'd?

• RED FLAGS AND LEVERAGE

- New Product (not G/A)
- Needs Ext. Custom/Mods.
- Small # of Installations
- Vendor is not established
- Vendor Legal or Financial issues
- \$\$ due up front or long before installation
- Licensee perceives no alternative
- Time of year/quarter
- Size of deal vs. vendor
- New industry/sector cust.
- Previous relationship
- Quality/experience of vendor's team
- Price vs. Legal terms
- Customer Commitment to transaction
- Future revenue opportunities

Pricing

- Licenses
 - Flat, Paid Up, Periodic
 - CPU/Server
 - Named/Concurrent User
 - Transaction
 - Enterprise or Site
 - Net % of Revenue
 - Floor/Ceiling
- Training
 - Sales/Technical
- Installation
- Development
- Consulting
- Maintenance
 - % of Fees Paid
 - % of Then Current Fee
- Future or Additional Products
- Cap Increases
- Conversion (Parallel Use)

Legal Issues

General License Issues

- Shrinkwrap/Clickwrap or Bilateral Agreement
- Usage - Ltd/Unltd.
 - By Whom?
 - Affiliate
 - Outsourcer, Agent Contractor, Consultant
 - Vendors, Customers
 - Divested Affiliate
 - For What Purpose?
 - Object/Binary/Source
 - Exclusive or not?
 - Worldwide
- Transferable or not?
- Copy
 - Limited, Unlimited or Reasonable Number
 - Test
 - Archival, Back-up or Disaster Recovery
- Modify
 - Perform/Ownership
- Distribution/Sublicense
- Marketing, Evaluation, Demonstration
- Outsourcing, Time Sharing, Loan

Legal Issues

General License Issues

- Territory
- Fees
- Installation
- Support
- Training
- Indemnity
- Limitation of Liability
- Disclaimer
- Term & Termination
 - Use After Termination
- Warranty
- Remedies
 - Exclusive
 - Repair, Replace or Refund
- Default
 - Notice
 - Types of Default
 - Cure Period
 - Escalation Path/Procedure

Legal Issues Source Code

- Direct Release
- Escrow
 - Party to Agreement
 - Who Pays
 - Who is agent
- Release Triggers
 - Licensor's Material Uncured Default
 - Acquisition/Change of Control
 - Bankruptcy
 - Failure to Continue Support
 - Cease Carrying On Business

Legal Issues Confidentiality

- Mutual
- Standard for Maintaining Confidence
 - Strictest Confidence
 - Standard Practice
- Allow TP Disclosure if written agreement
- Residuals
- Time Period on Non-Disclosure
- Material Must be Marked
- Oral/Non-Tangible Confidential Information Reduced to Writing and Marked
- Include Usual Exceptions

Other Legal Issues

- Audit
 - By Whom
 - For/Of What
 - Timeframe
 - Payment and Damages
- Publicity
- Compliance with Law
- Governing Law/Venue
- Insurance
- Assignment
 - Without Notice
 - With Notice or Approval
 - Change of Control
 - As a Matter of Law
 - Express Restrictions
 - Penalty for Violation
 - Termination
 - Refund
- Consequences for Breach

Product Performance Acceptance

- Testing
 - Unit
 - System
 - Component
- When is acceptance
 - Begin Productive Use
 - Period of Time
 - Operates within specs. for X time

Product Performance Warranty

- Product Warranty
 - 90 days - 1 year
 - Media only
 - Must meet Pub. Specs
 - w/o significant prob.
 - Fix w/i X time
- Other Warranties
 - Title
 - Compatibility
 - Configuration
 - Capability
- Compliance w/Laws
- Most Favored Cust.
- Documentation
- Year 2000 (Date handling)
- Response Time
- Capacity
- Bugs, Viruses, Time Bombs (Illicit Code)
- Remedies (See, Sharing the Risks)

Product Performance Support

- Scope, Nature and Times Support Provided
- Response Time vs. Repair Time
- Severity Levels
- Updates, Upgrades, New Versions, New Releases
- Remedies (See, Sharing the Risks)

Sharing the Risks Disclaimers & Remedies

- Warranty Disclaimers
 - Error Free Operation
 - Merchantability
 - Fitness for Purpose
 - Title
 - Infringement
- Triggers for Remedies
 - Notice
 - Opportunity to Cure
 - Escalation Procedure
- Remedies
 - Repair
 - Replace
 - Refund
 - Depreciation
 - Purchase Price
 - Liquidated Damages
 - Re-Perform Services
 - Cost of Replacement

Sharing the Risks Indemnification

- Scope of Indemnification

- Mutual
- Action/Inaction of Licensor, Supplier Employee, Contractor
- Include Employee and Subcontractor Claims
- Personal Injury
- Property Damage
- Misappropriation of Confidential Information
- Breach of License Grant

- Intell. Property Rights

- Patent
- Copyright
- Trade/Service Mark
- Trade Secret
- Other Intellectual Property or Proprietary Rights

- Territory

- Worldwide
- U.S.
- Berne Convention
- Other

Sharing the Risks Remedies & Exceptions

- Obtain License
- Repair/Replace
 - Same or Substantially Similar Functionality
- Terminate License & Refund as Last Resort
 - Depreciation
 - Full Amount Paid
 - Cover/Replacement
 - Liquidated Damages
- Conditions Precedent
 - Timely Notice
 - Sole Control
 - Reasonable Cooperation
- Exceptions
 - Not Meeting Obligations
 - Actions Likely to Prejudice Licensee
 - Improper Use/Misuse
 - Modified Products
 - Use in Combination

Sharing the Risks Limitation of Liability

- **Mutual**
- **Consequential Damages**
 - Exceptions for breach of confidentiality, license grant or obligation of indemnification
- **Amount of Actual Damages**
 - Based on Fees Paid Under Agreement
 - For Product or Service in Question
 - Depreciation
 - Exclude Maintenance, Training or Consulting
 - Assumes no Damages for Non-revenue Bearing Use
 - Tied to Limits of Insurance
 - Primary/Co-Insurance
 - Fixed Amount

: Development/Modification General

- Define Objectives/Clearly Assign Responsibilities
- State Development Tasks and Deliverables
- Timetable
 - Milestones and Project Completion Dates
 - Payment
 - Consequences
- Acceptance of Deliverables
- Project Changes
- Identification of Project Problems
- Ind. Obligation to Continue Performance
- Escalation Procedure/Path
- Cleanroom

: Development/Modification Personnel & Non-Solicitation

- Personnel
 - Skill Set Description
 - Assignment
 - Firewalls
 - Assignments to Competitors
 - Reassignment
 - Key Personnel
 - Replacement for Cause & W/O Cause
 - Training
 - Compliance w/Rules
- Non-Solicitation
 - Mutual
 - Direct vs. Indirect
 - Time Period of Restriction
 - End of Agreement + X
 - After Leave Assignment
 - Include Ind. Kors.
- Remedy
 - Liquidated Damages
 - Direct Prohibition

: Development/Modification Ownership & Pricing

- New Development
 - Works for Hire
 - Assignment of Rights
 - License
 - Independent Development
- Preexisting Materials
 - License
 - Ind. Development
- Derivative Works
- Mutual Residual Rights
- Further Assistance
- Fixed, NTE or T&M
- Hourly, Daily, Blended Rates
- Expenses inc. telephone, overhead, etc.
- Payment Schedule
 - Monthly
 - Advance
 - Holdback
 - Upon Delivery or Acceptance

: Outline of a Statement of Work

- I. SCOPE AND DESCRIPTION OF PROJECT
- II. PROJECT MANAGEMENT
- III. ROLES AND RESPONSIBILITIES OF EACH PARTY
- IV. ASSUMPTIONS
- V. PRICING
INCENTIVES, LIQUIDATED DAMAGES HOLDBACK
- VI. STAFFING
- VII. PROJECT PLAN/TIMETABLE
- VIII. DOCUMENTATION AND PROGRAMMING
STANDARDS
- IX. CRITICAL MILESTONES
- X. PROJECT TIMETABLE

SAMPLE PROVISIONS FOR SOFTWARE LICENSING AGREEMENTS

DEFINITIONS

Affiliate shall mean any entity succeeds, controls, is controlled by or is under common control with Licensee's Name or an entity in which Licensee's Name maintains a substantial interest or a division or unit of any of such entities.

Documentation shall mean all written material created or furnished pursuant to this Agreement for the purpose of the use or maintenance of any Product or System including but not limited to product specifications, design documentation, user documentation, and program maintenance documentation whether such material is provided in printed or electronic form.

Installation shall mean the date on which both parties agree that the Software is fully loaded on the applicable hardware, all files have been converted and all data is available.

Software shall mean all computer programs, procedures, rules or routines in human or machine readable language which are provided or developed under this Agreement including any Source Code provided under Section 14 which may be in the form of electronic transmission, tapes, disks or other methods of recording programs and routines.

Source Code shall mean all necessary instructions, tools, documents, computer programs, or code in human or machine readable language from which object code which conforms to the applicable Specifications can be derived.

Specification shall mean the information which fully describes the capability and functionality of the Product or System as set forth in any material provided by Supplier to any of its customers including the Documentation.

PRODUCT PRICING. Exhibit A sets forth a list of Products which Licensee's Name may purchase including the prices to be charged by Supplier for such Products. Supplier agrees that the prices for such Products or similar Products shall not increase prior to December 31, 2000 and that after that date the prices for such Products or similar Products shall not increase by more than ten percent (10%) in any twelve (12) month period. Supplier will provide to Licensee's Name comparable discounts off list price for any other Supplier Products Licensee's Name may desire to purchase; however, such discounts shall not be less than thirty percent (30%) off Supplier's list price.

GRANT OF RIGHTS.

License. On the terms and conditions set forth herein, Supplier hereby grants to Licensee's Name and its Affiliates a fully paid-up, transferable, irrevocable, worldwide, perpetual license to use, copy or modify the Products provided under this Agreement. Unless otherwise agreed in writing signed by authorized representatives of both parties, this license shall be for any number of users on any number of machines at any Licensee's Name location. Licensee's Name shall have no obligation to pay any additional charges to Supplier if Licensee's Name changes the location of or machines on which the Products are used.

Divestiture of an Affiliate. If Licensee's Name eliminates its interest in a Affiliate ("Divested Affiliate"), Licensee's Name may, at Licensee's Name's discretion, with no additional charge to Licensee's Name or Divested Affiliate, allow the Divested Affiliate to temporarily (up to eighteen (18) months) continue to use any Software on Divested Affiliate's Equipment, or utilize the Software on Licensee's Name's Equipment to provide benefit to the Divested Affiliate for the purpose of facilitating an orderly transition of said Divested Affiliate to either become part of another organization or to achieve an independent status; provided that (a) such use does not exceed the use allowed under the Agreement were such Divested Affiliate to remain a part of Licensee's Name, and (b) said Affiliate at its discretion either executes a new agreement with Supplier under terms and conditions substantially similar to the terms and conditions of this Agreement or the Affiliate agrees in writing to be bound by this Agreement as in force at such time. Licensee's Name agrees that during the period of such use, all users of the Software at the Divested Affiliate will be counted toward any authorized user limit. After such period, said Divested Affiliate shall either acquire its own license or discontinue use of the Software.

ACCEPTANCE

Individual Products. Licensee's Name shall, within thirty (30) days of Installation or delivery if Installation is not required, either in writing accept each Product ("Acceptance") or provide notice to Supplier identifying in reasonable detail the Specification Non-conformities with the Product of which it is aware. Supplier shall then have ten (10) days to correct all Specification Non-conformities or to commence corrective action reasonably acceptable to Licensee's Name and proceed with due diligence to completion. Upon written notice from Supplier of the correction of such Specification Non-conformities, Licensee's Name shall have an additional thirty (30) day period in which to accept the Product or provide notice of any Specification Non-conformities. Licensee's Name may use the Products for productive purposes pending correction of any Specification Non-conformities and such productive use shall not constitute Acceptance of the Product. Licensee's Name may reject such Products if the Specification Non-conformities are not corrected within thirty (30) days after notice is provided by Licensee's Name. In such event, Licensee's Name may (i) rescind this Agreement or the applicable Order as to all or any part of the Products provided under this Agreement which have not been previously accepted or which are related to the operation of the rejected Product and receive full credit or refund against any amounts due for the rejected Products; (ii) issue a "partial acceptance" of such Products with an equitable adjustment in the price to account for such Specification Non-conformity; or (iii) pursue whatever other remedies available under this Agreement or at law or in equity.

System Acceptance. Licensee's Name shall within thirty (30) days after Installation of all of the Products which constitute a System and certification that the System is ready for Acceptance testing provide written notice either accepting the System or identifying in detail all Specification Non-conformities of which it is aware. Supplier shall then have ten (10) days to correct all Specification Non-conformities or to commence corrective action reasonably acceptable to Licensee's Name and proceed with due diligence to completion. Upon written notice from Supplier of the correction of such Specification Non-conformities, Licensee's Name shall have an additional thirty (30) day period in which to accept the System or provide notice of any Specification Non-conformities. Licensee's Name may use the System for productive purposes pending correction of any Specification Non-conformities and such productive use shall not constitute acceptance of the Product. Licensee's Name may reject such System if the Specification Non-conformities are not corrected within thirty (30) days after notice is provided by Licensee's Name. In such event, Licensee's Name may (i) rescind this Agreement or the applicable Order as to all or any part of the System and receive full credit or refund against any amounts due for the rejected Products; (ii) issue a "partial acceptance" of such System with an equitable adjustment in the price to account for such Specification Non-conformity; or (iii) pursue whatever other remedies available under this Agreement or at law or in equity.

WARRANTIES

Title. Supplier warrants that it is the sole owner of all right, title and interest in and to the Products provided under this Agreement, including all patents, copyrights, trade secrets, trademarks, and other proprietary rights as well as all confidential information contained therein or if Supplier is not the sole owner of such rights that Supplier is an authorized licensee thereof and that it is authorized to enter into this Agreement.

Compatibility. Unless Supplier notifies Licensee's Name in writing prior to acceptance of the applicable Order, Supplier warrants that all Products provided under this Agreement shall be data, program and communications compatible with all other Products provided under this Agreement as well as other products which the Specifications state can or are to be used in operation of a System.

Configuration. Unless Supplier notifies Licensee's Name prior to acceptance of the applicable Order, Supplier warrants that the Products or Systems ordered shall be deemed to include, at no additional cost to Licensee's Name, any and all parts, items or other Products necessary for the Product or System to operate according to its Specifications and all such parts, items or other Products shall be provided at the time of delivery of the Product or System.

Capability. Supplier warrants that it is financially capable of fulfilling all requirements of this Agreement, that there are no legal proceedings against it that could threaten performance of this Agreement, that Supplier is a validly organized entity with the power to enter into this Agreement, and that Supplier is not prohibited by any loan, contract, financing arrangement, or similar instrument from entering into this Agreement.

Conformance to Specifications. All products provided to Licensee's Name hereunder shall for one (1) year after Acceptance ("Warranty Period") perform in accordance with the Specifications. Should any Product fail to perform in accordance with the Specifications during the Warranty Period, Supplier shall repair or modify the Product to

meet the Specifications within thirty (30) days of notification to Supplier of such nonconformance. If the nonconformance materially affects Licensee's Name's ability to use a System, Supplier shall correct such nonconformance within two (2) days. If Supplier cannot fix such nonconformance within sixty (60) days of notification for a Product and ten (10) days of notification for nonconformance which materially affects Licensee's Name's ability to use a System, Licensee's Name may terminate this Agreement in whole or in part, return the Products or System(s) subject to such termination, and receive a refund of all amounts paid for such Products or Systems(s).

Compliance with Laws. Supplier agrees that it shall comply with all federal, state, and local laws, rules, regulations, and ordinances applicable to this Agreement.

Similar Prices, Terms and Conditions. Supplier represents and warrants that all of the prices, terms and conditions being provided hereunder are equivalent to or better than the terms being offered by Supplier to its current customers. If, during the term of this Agreement, Supplier enters into an agreement with any other customer providing such customer with a more favorable term, condition, or price, this Agreement shall be deemed appropriately amended to include such term, condition or price to Licensee's Name, and the parties will execute such documentation as may reasonably be required by counsel evidencing such amendment. Supplier shall promptly provide Licensee's Name any refund or credits thereby created.

Illicit Code. Supplier expressly represents and warrants that any and all Software provided under this Agreement shall not: (i) contain hidden files; (ii) replicate, transmit or activate itself without control of a person operating computing equipment on which it resides; (iii) alter, damage or erase any data or computer programs without control of a person operating the computing equipment on which it resides; or (iv) contain any key, lock or node which will disable, prevent or reduce the function of any Product or System or which will require maintenance. If any Software shall have any of the foregoing attributes, Supplier shall be in material default under this Agreement and shall indemnify and hold harmless Licensee's Name from any and all losses, claims, damages, liability, or suits which result therefrom.

Documentation. Supplier warrants and represents that the Products and all modifications or amendments thereto and any Source Code which Supplier is required to provide pursuant to this Agreement shall be sufficient in detail and content to allow an appropriately skilled programmer to understand fully, modify, enhance and correct errors in the Software without reference to any other materials or information.

Year 2000 Compliance. Supplier represents and warrants all of the Products provided by Supplier under this Agreement are Year 2000 Compliant. Supplier agrees to cooperate in good faith with Licensee's Name with respect to Year 2000 issues by sharing information with Licensee's Name about the status and progress of Supplier's Year 2000 compliance work and with respect to testing and validation. Year 2000 Compliant means: manages and manipulates data involving dates with full representation of year and century (i.e. YYYYMMDD) or employs standard windowing techniques both internally and externally to its systems; and follows standards for acquisition, storage, presentation, and handling of dates including provisions for leap years. This applies to data stored and retrieved, reports, screens, and data that are sent or received.

Response Time. With respect to each on-line transaction, the Software, in conjunction with the Hardware, shall receive, process and respond in no greater than _____ seconds for _____% of the time, and in no instance greater than _____ seconds, from the time the transaction is completely keyed into a terminal until the appropriate Software response appears on the terminal;

Capacity. The Software can maintain, use, update, and otherwise process, without adversely affecting its response time or other performance of Licensee's Name's current systems.

SUPPORT SERVICES. Supplier will provide all maintenance necessary to keep the Products and the System operating according to the Specifications and shall provide to Licensee's Name all enhancements and updates to the Products it provides to any of its other customers ("Support Services"). Supplier will provide Support Services for the Products during Licensee's Name's normal business hours unless otherwise agreed in writing by the parties. Response to Product or System problems shall be as set forth in Section (Warranty Section). The initial fee for Support Services shall be set forth in the Order. Prices for Support Services shall not increase by more than six percent (6%) in any twelve (12) month period. If Supplier fails to provide Support Services as set forth herein,

Licensee's Name shall be entitled to reimbursement for its actual damages up to a full refund of all amounts paid under this Agreement.

LICENSEE'S NAME'S MODIFICATIONS. Licensee's Name shall have the right, in its own discretion, to independently modify the Software for its own purposes and use, through the services of its own employees or of independent contractors, provided that same agree not to disclose or distribute any part of the Software to any other person or entity or otherwise violate Supplier's proprietary rights therein. Licensee's Name shall be the owner of any such modifications. Supplier shall not incorporate any such modifications into its software for distribution to third parties unless it first agrees to pay Licensee's Name a reasonable royalty, pursuant to mutually agreed upon terms.

INDEMNIFICATION

General. Supplier shall defend, indemnify, and hold harmless Licensee's Name, its parents, subsidiaries, affiliates, and their respective employees, agents, officers and directors from and against any and all losses, damages, injuries, causes of action, claims, demands and expenses, including attorneys fees and expenses, of whatsoever kind and nature arising out of or on account of, or resulting from, any intentional or negligent act or omission of Supplier, its employees, agents or subcontractors.

Intellectual Property Rights. Supplier warrants that each Product and System provided under this Agreement shall not infringe or violate any patent, copyright, trademark, trade secret or other propriety right of any third party or contain the confidential information of any third party ("Intellectual Property Rights"). If any third party makes a claim against Licensee's Name asserting or involving any Intellectual Property Right of that third party related to any Product or System provided under this Agreement, Supplier agrees that it will defend, indemnify, and hold harmless Licensee's Name, at its own expense, from and against any and all claims, actions, causes of action, liabilities, suits, judgments, liens, awards, and damages of any kind and nature whatsoever (hereinafter "Claims") and expenses, costs of litigation and attorneys fees related thereto, or incident to establishing the right to indemnification, to the extent such Claims arise out of the infringement (or alleged infringement) or violation of any Intellectual Property Rights of any third party; provided however, that Licensee's Name gives Supplier prompt notice in writing of the Claims and/or institution of such Claim. If Supplier is meeting its obligations under this Section, Supplier shall control the defense of any suit resulting from the Claim, including appeals, negotiation, and the right to effect a settlement or compromise thereof provided such control does not prejudice Licensee's Name's rights. Licensee's Name shall reasonably cooperate with Supplier in the defense or settlement of any such Claim. If a judgment is obtained against Licensee's Name's use of any Product or System, Supplier shall promptly modify or substitute the Product or System which provides Licensee's Name with the same functionality and meets the Specifications of the original Product or System. Supplier shall not have liability for infringement to the extent that such Claim is based on the use, license, or sale of the Product or System in combination with other products not furnished by Supplier, the use of the Product or System in a manner not authorized by Supplier, or the modification of the Product or System by Licensee's Name where without such combination, use or modification the Claim would not have arisen.

INSURANCE During the term of this Agreement, Supplier shall maintain general liability, automobile, employer's liability, errors and omissions and fidelity insurance in amounts of at least two million dollars (\$2,000,000) per occurrence as well as Worker's Compensation insurance as required by applicable law, all of which insurance shall be primary coverage not contributing with any policy maintained by Licensee's Name. Supplier shall notify Licensee's Name thirty (30) days prior to any cancellation or reduction in such insurance coverage. Within ten (10) days of receipt of a written request from Licensee's Name, Supplier shall furnish certificates from its insurers evidencing effective insurance coverage as required by this Section. On all certificates of insurance, Licensee's Name, its parents, affiliates and subsidiaries shall be named an additional insured with a cross-liability endorsement.

SOURCE CODE

Delivery of Source Code. In addition to any rights Licensee's Name may have under this Agreement, upon the occurrence of any of the events set forth in Section 14.2, Supplier shall, within ten (10) days after written notice from Licensee's Name, provide to Licensee's Name, at no additional cost, one (1) complete copy of the Source Code including all Documentation and tools necessary for the use thereof used in the preparation of any Software licensed or otherwise acquired by Licensee's Name under this Agreement on machine readable media in a format usable by Licensee's Name. If delivery is required by Section 14.2 (a), (d), or (f), Supplier shall only be entitled to delivery

of the specific software to which such delivery event applies. Licensee's Name shall then be permitted to use the Source Code under the conditions set forth in this Agreement. Supplier agrees to pay to Licensee's Name any reasonable fees, costs or expenses (including reasonable attorneys' fees) incurred by Licensee's Name to enforce its rights under this Section 14.

Source Code Delivery Events. The right of Licensee's Name to the Source Code shall arise upon the occurrence of any of the following events: (a) all or any material part of such Source Code is made generally available by Supplier to any of its customers; (b) Supplier ceases, for any reason, to carry on business in the usual manner including Supplier's failure to provide Support Services; (c) Supplier is in material default under this Agreement which default remains uncured for a period of thirty (30) days after receipt of written notice from Licensee's Name to Supplier; (d) sale of all or substantially all of the assets which relate to the Software; (e) institution of bankruptcy, receivership, insolvency, reorganization, dissolution, liquidation, or similar proceedings by or against Supplier or all or any substantial part of its property under any Federal or State law or (f) Supplier ceases to or fails to provide Support Services for any Software.

TRADE-IN AND CONVERSION

Trade-In Credit. At any time during the five (5) year period commencing with the date of Acceptance, Licensee's Name may elect to return the Product to Supplier for a credit which may be applied against future Product acquisitions. This credit will be calculated by reducing the original fee paid for the applicable Product by one-sixtieth (1/60) for each month or partial month elapsing between the date of Acceptance and Licensee's Name's return of the Product to Supplier.

Conversion. For the purpose of changing the Software from one operating system environment to a different operating system environment, Supplier will extend the rights of this license to the new operating system environment during the conversion period by having Licensee's Name pay a dual use fee not to exceed two percent (2%) per month of the license fee for the new Software.

TRAINING

Supplier shall be responsible for providing Licensee's Name and its employees with such training in the operation and maintenance of the Products and/or System as Licensee's Name may reasonably request. Such training shall be provided at the location designated by Licensee's Name by instructors who are satisfactory to Licensee's Name and knowledgeable in the operation and maintenance of the applicable Products and/or System. Such training shall initially be provided on the schedule and for the fees set forth in the applicable Order. Training fees shall include facilities charges, training materials and travel expenses for instructors. Additional training shall be provided at the same rate or at a rate not to exceed an increase of six percent (6%) in any one (1) year period.