

# Checklist for Review of Commercial Software Licenses / Contracts

Base Contract Number

Contract Point of Contact

Base Period of Performance

Contracting Officer

Contract Name

Contract Officer Representative

Item #	Instruction	Yes	No	N/A
1	Review AMS clause 3.5-18, "Commercial Computer Software-Restricted Rights," which either is, or should be added into, the basic contract. Delete all clauses and terms inconsistent with AMS, (e.g. "breach," "payment," "termination," "binding arbitration." )			
2	Delete any "Governing Law" provision unless it specifies Federal law (e.g. "This agreement must be subject to the laws of the state of Michigan.")			
3	Scrutinize the document for any attempts to impose additional license fees. (e.g. if the software is to be used by anyone in the FAA not specifically identified in the agreement or contract)			
4	Check for clauses that attempt to restrict use of the software to specific machines or networks in specific locations. Delete as necessary.			
5	Delete any and all indemnity or attorney's fees provisions in contractor's favor. See Anti-Deficiency and Equal Access to Justice Acts, respectively.			
6	Delete integration or merger clauses; the FAA contract will govern the rights and responsibilities of the parties, not a stand-alone license agreement.			
7	Avoid open items (e.g. form blanks not filled in); these items must be negotiated and recorded prior to execution.			
8	No incorporation of future prices, terms, (e.g. software licenses cannot automatically renew each year if the FAA will become obligated to pay a yearly licensing fee.)			

Checklist for Review of Commercial Software Licenses / Contracts (cont)

Item#	Instruction	Yes	No	N/A
9	Delete any interest-for-late-payment terms varying from the Prompt Payment Act.			
10	Eliminate extensive warranty disclaimers, particularly disclaimers for defects in “third party products,” where a subcontractor or supplier provides input into the final contract deliverable.			
11	Delete clauses that give the contractor exclusive control over infringement litigation. The Department of Justice would represent FAA in any such litigation and expect a certain amount of control.			
12	Delete damages and/or liability clauses which are inconsistent with FAA clauses.			
13	Delete injunctive release terms that could arbitrarily stop performance.			
14	Ensure that the FAA use of copyrighted material will not be considered an infringement of the copyright.			