
INFORMATION TECHNOLOGY AND SOFTWARE AGREEMENTS

The Basics: technology systems and gambling software are at the heart of online gambling. Negative player experience, including lengthy loading times and repeated systems failures, often lead to the loss of players to competitors, as well as additional costs and loss of time in fixing technological glitches. These pitfalls should be properly addressed from the outset when negotiating core agreements with software providers. Unfortunately these issues are often overlooked at the time, with emphasis being placed in securing a “good deal” instead of reading the small print in the contract which sets out who is liable for what when things go wrong. Below is a brief outline of things to consider before entering into any software agreement:

Be Specific: Set out exactly what you are getting for your money and what the contract actually covers. Do not rely on common sense, but spell it out. If you assume relevant documentation and guidelines are part of the deal, think again, as these will sometimes be sold separately. Make sure that you know what you are paying for and avoid any hidden or unspecified future costs. Ensure that the supplier is required to provide you with upgrades and updates for a specified and agreed fee. If you want to customise the software, make sure to negotiate and to include tailor made and precise specification guidelines as part of the contract, otherwise you may end up with customised software that does not meet your basic requirements and does not work properly on your system. Although it is impractical to agree on all terms of bespoke software (these will often only become apparent during the customisation process) you should still identify and include your key business requirements from the outset. It is not lawyers’ talk when advising you to spend more time negotiating software specifications; they are at the core of your deal and your business and make all the difference between success and failure.

Test And Test Again: At the core of any software agreement is the testing phase to assess whether the specified software is working on your system in general and in accordance with your specifications in particular. The testing phase is of particular importance for customised software. You should ensure that there is a proper testing and acceptance protocol in place with specific dates and testing periods that will allow you to test the customised software and remedy any failures or shortcomings. Make time of the essence and ensure that your obligations (i.e. payment) under the contract are not triggered until you are happy with the testing and accept the software. You should also include an early termination clause during the testing phase to allow you to exit the agreement at an early stage without repercussions, should the customised software repeatedly fail to meet your requirements.

Continuing Obligations and Support: Testing and accepting customised software is only the start; you also need to ensure that the software continues to work after you accept it. Ensure that adequate service levels are agreed upon and include “emergency schedules” in case the system breaks down or the software fails to operate. This part is often overlooked and service levels are taken for granted and (because service levels are inconsistent) it is therefore important to have service level support and emergency guidelines and penalties clearly spelled out in the agreement.

It should also be emphasised that time in correcting any failures is crucial; otherwise your site may be down or not functioning properly for a long time before the software provider remedies the fault. Minimal response times should therefore be of essence to the performance of the contract. Should the software provider fail to meet the required service level or not remedy the shortfall within the specified timeframe, include your right to terminate the agreement with immediate effect.

Regulatory Technology Standards: The gambling industry is one of the most regulated industries and it is therefore no surprise that many jurisdictions set technological standards for gambling software. You should therefore ensure that you have certified copies of all relevant licences and approvals attached to the agreement. You should also check that the software is approved and licensed by the relevant jurisdiction. If you operate online across multiple jurisdictions you should ensure that the software has been tested by an independent testing facility approved in these jurisdictions.

Players' List: Player information is a valuable asset in the online gambling sector. When you enter into an agreement with a software provider, they will most likely have access to and collect players' data. You should therefore be sure to include a provision for the ownership and return of such data on termination. Bearing in mind the all powerful data protection regulations, additional care should be taken to ensure that both sides have adequate data security arrangement in place.

And Finally: To stay on the safe side; include a general exit clause allowing you to terminate the contract early for no specific reason. This option is rarely accepted by software providers, but there is a lot to be gained by trying and it will be left to you and the skills of your lawyer to include appropriate wording to that effect.

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