

# **Software Licensing**

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# Software as 'Goods'

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A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. [Sec 4 of Sales of Goods Act]

Tata Consultancy Services Vs. State of Andhra Pradesh, 1996 - Software has a tangible and intangible component - which can be classified as movable property - and hence considered as 'goods'

# Parties of the Contract

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## **Licensor**

entity or the individual who will grant access and use of the licensed software – the delivery of the software by the licensor is important

## **Licensee**

entity or the individual who will have access to and use of licensed software – the acceptance of the software by the licensee is important

# Use of the Software

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## **Object Code**

'use' shall mean the ability to run, execute, display, duplicate and distribute internally the licensed software in its object code format

## **Source Code**

'use' shall mean the right to modify and create derivatives of the source code

## **Web-based Application**

'use' shall mean the right to access, run, execute and display the remote software

# Use of the Software

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Certain acts not be infringement of copyright - (1) The following acts shall not constitute an infringement of copyright, namely -

(aa) the making of copies or adaptation of a computer programme by the lawful possessor of a copy of such computer programme from such copy -

[Sec 52 of Copyright Act]

# Use of the Software

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(i) in order to utilize the computer programme for the purpose which it was supplied; or

(ii) to make back-up copies purely as a temporary protection against loss, destruction or damage in order only to utilize the computer programme for the purpose for which it was supplied;

[Sec 52 of Copyright Act]

# Use of the Software

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## Limiting the Scope

limiting the use of software to a class of computers or geographic site or specific seats – so that the licensor can charge a fee if the licensee expands or changes the use

## Derivative Work

prohibition of the creation of derivative works without the copyright owner's permission

## Reverse Engineering

prohibition from decompiling and recompiling the licensed software

# Warranty

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(1) A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty.

(3) A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated.

[Sec 12 of Sales of Goods Act]

# Warranty

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## General Warranty

the licensor has a legitimate right to license the software including any third party software, and that the software will operate in all material respects with the functional specifications and current documentation

## System Warranty

the licensee should require that the licensor to represent and warrant that the system as a whole will operate within the parameters of certain service level

# Warranty

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## Software Warranty

the licensor should warrant that all software will meet certain performance standards and the software is free from defects in materials and workmanship

## Services Warranty

the licensee should warrant that all services will be rendered in a professional and workmanlike manner, where the agreement contemplates a services component, such as support and maintenance

# Warranty

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## Documentation Warranty

the licensor should warrant that the documentation accurately describes the functional and operational characteristics of the software as delivered to the licensee and that the documentation is detailed and complete

## Interface Warranty

the licensor should warrant that it will assist the licensee in the licensee's development of any application programming interface (APIs) between third party systems and the software

# Warranty

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## **Compatibility Warranty**

the licensee should include a warranty that any enhancements to the software will be compatible with the licensee's existing version of the software

## **Data Integrity Warranty**

as part of an ancillary services agreement, a licensee may request that the licensor convert its existing data and have the licensor warrant that the data will be converted accurately and completely

# Warranty

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## Software Obsolescence Warranty

the licensee should seek to obtain a representation and warranty that the licensor is committed to enhancing the software in the future and that the licensor has no plans to discontinue the development, marketing, maintenance or support of the software

## IP Warranty

the licensor must warranty that the software will not infringe on any third party IP rights – if the licensor were to include an open source code in the deliverable, such a warranty becomes critical