Chapter 2 - Hardware and Software

Software License

When you obtain a copy of a computer program it is often referred to as a "purchase". However, it is not a purchase but acquiring a license to use the software. The software maker retains all rights to the source code and the original technology. The terms of the license disclose whether one can transfer the license or software to another person. Some permit transfer, others do not. The term of the license is usually perpetual. The license to use the source code of the program is usually never granted.

Steps to acquiring hardware and software from an integrated systems vendor.

- Issue a Request for proposal (RFP). This essentially invites bids from vendors tailored to your specifications. It should include requests for pricing, financing, warranties and ownership rights.
- Specifications and Implementation. The contract should include detailed system specifications. Legal counsel should review it. The implementation section should include timelines, personnel assigned to project and the scope of their authority.
- Status reports and meetings. Weekly meetings should be held with all key personnel to ensure that the timelines are being followed. Meetings should continue until it is installed, tested and operating in a live environment.
- Staffing. Ensure that the key implementation personnel for the vendor stay during the entire installation period.
- Install by module or the entire system. Will it be easier to make a complete changeover or should the software and hardware be installed in module?
- Test, test and retest. Ensure that a viable test with an appropriate number of records is conducted. The vendor's representative should be present during the test. Before final acceptance ensure it is operating as nearly as possible under projected conditions. If you will have 300,000 database records with images make sure that a test is done using that many records and images before final acceptance.
- Warranties. Insert a well-defined warranty clause into the contract. What is the length of the warranty? Is it parts only or parts and labor?
- Remedies for Breach. The remedies for a breach of contract must be practical. Time requirements for correction of the problem should be included.
- Limitation of liability. Generally limits a vendor's responsibility to the price of the software or hardware.
- Ownership of the system. Ownership rights of the system should be clearly spelled out. This is especially true regarding creation of web sites since there is oftentimes-original graphics included in the project.
- 3rd Party Rights Infringement. The contract should address the issue of a possible 3rd party asserting rights to any part of the project such as software or graphics.

- Confidentiality. Include a confidentiality clause to ensure the vendor does not disclose trade secrets or business practices of your firm.
- Price and Payment. There are several options but generally payments are tied to completion of certain parts of the project. The final payment should be after the system is tested and accepted.
- Post installation Support. Set out in detail how system failure will be handled during the warranty period. What is the acceptable response and downtime? What happens if the first level of technical support cannot solve the problem?
- Maintenance Contract. Negotiate the maintenance contract while you are negotiating the purchase, installation, etc. while your negotiating leverage is the strongest. Some of the issues to consider are commencement date, options to extend, price increases, support details - response time, days of the week, problem resolution, on-site support and maintenance for prior hardware and software components.