Checklist - Software Development Contract

1.   **Development obligations**

     A.   Make as specific as possible.

     B.   Provision insuring Client that end result is what it needs and wants.

     C.   Defining development obligations.

2.   **Acceptance standards**

     A.   Objective criteria for acceptance.

     B.   Provide developer opportunity to cure.

3.   **Training for client to learn how to use software**

4.   **Maintenance**

     A.   Define extent of developer's obligation for on-going maintenance.

     B.   Limitations of developer's responsibilities.

5.   **Progress reports to client**

6.   **Fees**

     A.   Development fee

     B.   Additional development fee

         1.   Necessary to cover changes in scope

         2.   Handled through change order

7.   **Term and termination**

     A.   Define term

     B.   Termination

         1.   Client may want ability to terminate for at will; if so, developer wants fees accrued to date.

         2.   Termination for cause by client: failure of developer to meet milestone.

         3.   Termination for cause by developer: failure to pay.

         4.   Mutual right to terminate for breach, bankruptcy, or insolvency

8.   **Change of scope**

    A.   Developer's perspective

          1.   Make sure additional services receive additional payment.

          2.   Ability to decline changes in scope

          3.   Time and materials method for calculating fee

    B.   Client's perspective

          1.   Make original scope of work sufficiently broad to cover changes in scope.

          2.   If change in scope necessary, do as fixed fee.

9.   **Ownership of software**

    A.   Generally *work made for hire* and client owns end product

    B.   Developer should retain rights to its proprietary software incorporated in end-product.

10.   **Confidentiality**

    A.   Nondisclosure

          1.   Either absolute or based on standard of care, but minimum standard is to use same care as recipient treats own confidential information

          2.   Specific restrictions

    B.   *(Notes regarding nondisclosure agreements)*

          1.   Frequently used

          2.   Difficult to enforce because employee is bound to obtain some knowledge that cannot be "erased" from memory

          3.   Can try to enforce through non-compete restrictions as to particular employees and projects

11.   **Warranties, disclaimer, limitation of liability**

    A.   Warranties

          1.   Client wants as broad as possible

          2.   Developer wants to limit

            a.   Performance according to specifications

            b.   Ongoing performance

            c.   Non-infringement

    B.   Disclaimer: no other warranties, express or implied

    C.   Limitation of liability

        1.   Excludes special or consequential damages

        2.   Limits developer's liability

12.   **Indemnity: developer indemnifies client for acts in performing agreement.**

13.   **Independent contractor status: clearly define relationship to reflect actual circumstances.**

14.   **General provisions**

    A.   Assignment: development agreement is essentially personal service contract.

    B.   Integration

    C.   Notices

    D.   Publicity

    E.   Governing law and jurisdiction

    F.   Severability

    G.   Force majeure

    H.   Attorney's fees (optional)

    I.   Arbitration or mediation (optional)