# Low Risk Licence Review Checklist

*for cloud services and software and data licenses*

This checklist is for low risk licence agreements for software or data (i.e. the licensed material), including for online subscriptions and other cloud services. The attached Guidelines provide further assistance.

Before considering a new licence, check the [Standard Software Catalogue](https://my.uq.edu.au/information-and-services/information-technology/software/software-catalogue) to confirm that UQ does not already have software available to meet your needs and also consider if the licensed material is fit for purpose and compliant with UQ’s [ICT policy framework](https://ppl.app.uq.edu.au/content/6.-information-and-communication-technology) and [applicable standards](https://confluence.its.uq.edu.au/confluence/display/governance/Document%2BLibrary).

This checklist should be used in conjunction with relevant procurement and briefing documentation required by the ICT Category Management team. If you need assistance you can contact the Licensing Sub-Category Manager. If you need assistance with the licence terms, contact Legal Services.

| No. | Issue | Yes | No |
| --- | --- | --- | --- |
| **1** | **USE:** **Do the terms allow UQ to use the licensed material for its intended purpose?** *Consider the following:* | [ ]  | [ ]  |
|  |

|  |  |
| --- | --- |
| * *Users (e.g. employees, contractors, students, visiting academics etc.)*
* *Set numbers vs unlimited*
* *Permitted deployment / devices*
 | * *Locations for use (country / campus / home)*
* *Commercial vs non-commercial / teaching, research, consultancy*
* *Restrictions on copies, modifications &/or outputs*
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 |  |  |
| **2** | **DURATION**: **Are the terms governing licence duration and renewal satisfactory?** *Consider start and end dates, notice periods for exit or renewal and auto-renewals.* | [ ]  | [ ]  |
| **3** | **PRICE**: **Are you satisfied the pricing terms are clear and acceptable?** *Consider how fees are calculated, changes to fees, currency (e.g. USD, AUD etc.), due dates and additional fee risks.* | [ ]  | [ ]  |
| **4** | **CLOUD SERVICES**: **Does the licence include cloud services?** *Includes online subscriptions*. *Consider the following:*

|  |  |
| --- | --- |
| * *Information security measures*
* *Incident response*
 | * *Business continuity and data backup*
* *Data access and transition out*
 |

 | [ ]  | [ ]  |
| **5** | **PRIVACY**: **Is personal information being collected, processed or stored?** *If so, consider the types of personal information, its sensitivity, if it will be encrypted, who will have access, where it will be stored and which laws apply (e.g. local and/or foreign e.g. GDPR). Refer to the Guidelines.***If so, are you satisfied the terms enable UQ to comply with its privacy obligations?** | [ ] [ ]  | [ ] [ ]  |
| **6** | **UNUSUAL TERMS**: **Are there any unusual terms?***These include terms requiring UQ to: disclose, license or assign UQ or student IP; share research; publish papers or obtain vendor approval before publishing; or promote the vendor or its products.***If so, have they been approved by appropriate UQ management?** | [ ] [ ]  | [ ] [ ]  |
| **7** | **RETENTION & DISCLOSURE RIGHTS:** **Are UQ’s rights to retain and disclose licensed materials adequate (including after termination)?** | [ ]  | [ ]  |
| **8** | **LIABILITY:** **Are the liability clauses acceptable (i.e. liability caps and exclusions, warranty disclaimers and indemnities)?** *See the Guidelines.* | [ ]  | [ ]  |
| **9** | **FOREIGN LAWS: Does the licence include foreign governing law clauses?** | [ ]  | [ ]  |
| **10** | **UQ NAME:** **Does the vendor have rights to use UQ’s name or logos?** | [ ]  | [ ]  |
| **11** | **AUDITS:** **Does the vendor have audit rights?** | [ ]  | [ ]  |
| **12** | **PARTY DETAILS:** **Are the entity details for both parties correct?** *Check the party name, ACN/ABN (or other company identifier) and address.* | [ ]  | [ ]  |
| **13** | **RENEWALS / EXTENSIONS / VARIATIONS:** **Is this an extension, renewal or variation?** *If so, consider if the terms are still appropriate and if any changes are needed.* | [ ]  | [ ]  |
| **14** | **LEGAL ADVICE:** **Did you obtain advice from Legal Services?** | [ ]  | [ ]  |

# Guidelines

The checklist is for low risk software and data licence agreements for under $100,000 over their expected life. This includes online subscriptions and other cloud services. If your licence does not fit this description you should consult with ICT Procurement. Free or low value is not necessarily low risk e.g. if a licence is usually expensive or has unusual terms.

## Reviewing terms objectively

You should review the licence terms objectively. Consider what they actually say, not what you want them to say. You should not assume the vendor understands how UQ intends to use the licensed materials. If they are used in ways that are not permitted, or by unauthorised users, UQ could be liable for breach of contract and copyright infringement.

## Licence fundamentals

### Fixing fundamentals

If there are fundamental errors or important terms are unclear, you should seek changes. Many vendors will agree changes, particularly if they can be inserted in ‘ordering documents’ (e.g. orders, quotes or schedules) rather than changing the vendor’s standard terms and conditions. You should ensure those ordering documents can override the standard terms. Agreements often say which document takes precedence over another in the case of inconsistencies.

The most common fundamental errors are found in pricing, product descriptions, licence types or numbers, party details, licence periods or the description of authorised users (e.g. often the terms licence employees and prohibit use by “third parties”, but UQ students, visiting academics and contractors are all third parties).

### Identifying the terms

You need to gather together and review all applicable terms.

Vendors often send quotes or order forms that do not include key licence documents. There may be schedules or other attachments setting out key details (e.g. parties, product, price, licence types/numbers, duration etc.). Often standard terms and conditions and other documents are incorporated only by reference (e.g. via URL link), including product specific terms, support terms, SLAs and policies.

### Key licence rights and restrictions

When assessing the licence rights UQ needs against what the licence says, some key issues to consider include:

* Purpose: how will UQ use the software? Is it for ‘commercial’ or ‘non-commercial’ purposes, ‘internal business purposes’ or for ‘academic’, ‘teaching’ and/or ‘research’ purposes. The context and drafting is important. If UQ is doing research with industry partners UQ needs to ensure the licence permits it (e.g. it may or may not be ‘commercial research’).
* Duration: what is the licence period? Does it automatically renew? Is the licence perpetual or fixed term?
* Users: who are the users? Employees, students, contractors, research partners, honorary or visiting academics, campus visitors etc.? Except for employees, these are all third parties and licenses often prohibit use by or for third parties.
* Permissions / licence types: what does UQ need? e.g. named user, concurrent, per device, server, set number, staff FTE count, unlimited users etc.?
* Location / territory: where will the software be used? Can it be used off campus (e.g. at home, interstate or overseas)?
* Implementation: where and how can the software or data be deployed and distributed? Can it be deployed on virtual machines? On a central server? Can UQ provide access to users over intranets or the internet?
* Confidentiality: often UQ is prohibited from disclosing licensed materials to third parties (e.g. UQ students, contractors, research partners, peer reviewers etc.) or keeping licensed materials after termination. What does UQ need?
* Export control: these are common clauses preventing UQ re-exporting software to prohibited countries and users. They can cover travel and access overseas or prohibit use in Australia by UQ staff or students who are citizens of certain countries (e.g. Iran, North Korea etc.). If you need assistance, UQ has experts who advise on export control regulation.

## Cloud Services

If your licence is for an online subscription service or some other cloud service, you need to take additional care. Consider relevant UQ ICT policies, including [applicable standards](https://confluence.its.uq.edu.au/confluence/display/governance/Document%2BLibrary) and relevant ICT Procurement Framework requirements. If needed, you can consult with the Licensing Sub-Category Manager.

Key issues for cloud services include:

* loss of or unauthorised access to UQ’s data;
* UQ’s access to its data (given a third party is storing it and controls UQ’s access); and
* privacy compliance (given a third party is processing / storing personal information).

## Privacy

If the software or vendor will access, collect, store or process personal information, you should consider the following and determine if the terms are appropriate:

* Can UQ manage privacy compliance without reliance on the contract terms?
* Will personal information be accessed or transferred outside Australia?
* Is the risk of unauthorised access, use or disclosure low, moderate or high?

Under the *Information Privacy Act 2009* (Qld) (‘**IP Act**’), if the vendor will deal with personal information for UQ (e.g. collect, process or store it for UQ or transfer it to UQ) then UQ must take all reasonable steps to ensure the vendor is required to comply with certain obligations under the Act *as if it were UQ*. If UQ does not take these steps, then UQ is responsible for the vendor’s noncompliance with those obligations under the IP Act.

If personal information will be processed or transferred outside Australia, vendor terms are often inadequate and changes are needed to enable UQ to comply with the IP Act (by ensuring the vendor has appropriate privacy obligations).

UQ may not need specific contract terms for privacy compliance if, for example, the system enables students to deal with the vendor under its terms and provide their information directly to the vendor (and the vendor is not transferring the personal information to UQ). Specific contract terms are often needed if any personal information is processed or stored overseas.

You can discuss the issues with UQ’s RTI & Privacy Coordinator. Legal Services can assist if contract changes are needed.

## Unusual terms

‘Unusual terms’ typically relate to UQ’s intellectual property (e.g. research, publications, software developments or outputs). They go beyond just covering UQ’s use of the vendor’s software or data.

They can expose UQ to significant risks and should generally be removed. Vendors will often delete them or negotiate changes. ICT Contract sub-delegates should be made aware of any risks.

They include terms requiring UQ to:

* share, licence or assign its research, publications or other IP (including terms allowing vendors to use UQ’s research) – these can be particularly risky for UQ;
* seek vendor approval to publish papers;
* provide research or academic papers to the vendor (including before publication);
* promote the software or vendor (UQ merely acknowledging use of the licensed material is generally acceptable but anything beyond that should be discussed with UQ finance to check if there are issues e.g. taxable supplies).

Less obvious language like UQ “sharing” or “allowing” use still equates to UQ licensing its IP to the vendor. Terms such as “assign” or “transfer” can transfer ownership of UQ’s IP to the vendor. ‘Feedback’ clauses are often acceptable but should be reviewed with care to check they do not capture UQ IP.

## Retention and disclosure rights

Who needs access? Often confidentiality clauses and other terms will not allow UQ to disclose licensed materials to third parties or to retain licensed materials after the agreement ends. If UQ needs to, you might need changes.

Confidentiality clauses that prohibit use by or disclosure to third parties may not prevent use by students, contractors or others if the terms are *very clear* elsewhere that they are allowed to use the licensed materials.

For data licences, UQ may need to include extracts in publications or retain and disclose data for peer review or research verification purposes, including after the agreement ends. Often simple changes are needed to cover this.

## Liability (caps, exclusions, disclaimers and indemnities)

It is common for vendors to exclude warranties and liability and to cap their remaining liability to annual fees paid. Vendors will often agree to a liability cap for UQ, particularly smaller vendors. Licenses also often require UQ to indemnify vendors against various risks, including third party claims related to UQ’s use.

You should review the *Financial and Contract Sub-delegations – Procedure* (PPL 1.10.01b), particularly section 3.3.4 and brief the relevant ICT Contract sub-delegate on any identified risks or concerns.

You can also review the ‘*Liability - Indemnities*’ Fact Sheet on the Legal Services website.

## Risk Assessment

You should consider the risks the software and the agreement create for UQ. For example:

* How important is the software or data? Who needs to use it? What are risks around loss and unauthorised access?
* Will sensitive UQ information be collected, stored or processed by the software, the vendor or other third parties?
* Does UQ need to modify the licensed material or interface with it? Do the terms allow this?
* Is the software or data expensive or would it be expensive if UQ paid normal commercial rates?

If valuable or sensitive data or UQ IP is involved, you need appropriate security safeguards against loss or damage and to prevent unauthorised access, use and disclosure.

If the licensed material is expensive, it increases UQ’s potential liability for unauthorised access or misuse.

## Party details and due diligence

Check the party details are correct. UQ’s official name and ABN is “*The University of Queensland ABN 63 942 912 684*”. If the vendor is an Australian entity (or has an ABN or ARBN), you can search company names, business names and other details at [https://asic.gov.au](https://asic.gov.au/) and check ABNs at [https://abr.business.gov.au](https://abr.business.gov.au/).

For more information on due diligence see UQ’s *Procurement Policy* (PPL 9.40.01) and the *Delegations Policy* (PPL 1.10.01a), in particular, the *Financial and Contract Sub-delegations – Procedure* (PPL 1.10.01b).

You can also review the ‘*Contract Review Basics*’ Fact Sheet on the Legal Services website.

## Other issues

### Negotiations

Negotiations can take time and often there are pressing business demands. However, vendors are often willing to negotiate changes, even to their ‘standard’ terms. You should not avoid negotiation if important terms need fixing or important issues are not adequately covered. Changes can often be made by simple edits.

### Whole of UQ

UQ is a large organisation with many organisational units. Agreements usually apply to the whole of UQ, sometimes with unintended consequences. You should consider potential risks and whether UQ already has arrangements with the vendor. Signing a new agreement could affect existing arrangements.

### Changes to terms or products and early termination

Often licences permit vendors to change licence terms or product features, or terminate the licence, at any time or on notice. Consider if these risks are acceptable and how UQ can monitor changes if UQ will not be specifically notified of a change.

### Benchmarking & publicity prohibitions

Licences often include a prohibition on UQ disclosing product benchmarking results or making public statements about the vendor or its products. You should ensure UQ’s users are aware of these kinds of prohibitions, particularly if they might be testing the products or publishing papers that may comment on product functionality or performance. UQ could be liable for any damage to the vendor’s reputation resulting from UQ’s breach of these prohibitions.

### Foreign entities and laws

UQ often has to deal with foreign vendors, creating additional risks. Often licences will state they are governed by the laws of a foreign jurisdiction and/or that disputes must be resolved by courts or arbitration in a foreign jurisdiction. Australian lawyers generally cannot advise on foreign laws.

Risks include uncertainty regarding foreign laws that might apply, the high cost of making claims overseas to enforce rights or recover damages and the risk that UQ could be forced to defend proceedings in a foreign jurisdiction. These are usually acceptable risks for a low risk licence, particularly if there are no local alternatives. However, you should consider if the software or its use may expose UQ to significant risks and whether you should seek further advice.

## UQ Policies

You should consider applicable UQ policies and procedures including, for example:

* Procurement (PPL 9.40.01);
* Delegations (PPL 1.10.01a);
* Conflict of Interest (PPL 1.50.11);
* Enterprise Risk Management (PPL 1.80.01); and
* UQ’s ICT policies e.g. Information and Communication Technology (PPL 6.20) or Cyber Security (PPL 6.30).