Product licensing agreements, whether the product is software, hardware, or simple consumer goods, center around two major legal areas: contract law and trademark law.

The distributor license - a common product licensing agreement - is a complicated agreement whose drafters must take extra care to delineate each party's rights and responsibilities else costly litigation is the surefire end-result.

Here's what a typical distributor agreement should have:

1) The parties (obviously).

2) The Services: This is a detailed description of each party's responsibility to the other. For example: Party A agrees to distribute software in New York for party A. In return, Party B agrees not to license any other parties to distribute the software in New York. Perhaps party B will also be responsible for updating and providing customer warranties for the software? That's ultimately up to the parties...

3) The Payment: Who pays whom? At what intervals? What are the penalties for late payments? Who is responsible for dealing with the end-client, collecting on invoices, etc...?

4) Additional Warranties: This is where the parties make additional promises to one another. This is also where a good attorney will anticipate and provide for as many contingencies as possible: should an unanticipated contingency occur, costly litigation becomes inevitable (e.g., the distributor's state passes a new tax on the type of product distributor sells and the agreement fails to provide which party bears the burden of this new tax). Best Advice: Do not rely on internet forms, especially for large value agreements; hire a lawyer who knows your industry and, therefore, knows what can go wrong.

5) Proprietary Rights: This is the trademark law section. The agreement should clearly state which intellectual property belongs to which party. After several years of working together and using one another's logos on your products, the lines between who owns what can get blurred.

6) Limitation on Liability: This is usually standard language where each party agrees not to hold the other liable for standard failures under the agreement (you can't disclaim non-standard failures, like setting fire to the warehouse).

7) Term (time): This is self-evident.

8) Termination: This is also very important and requires sound legal counsel. How a relationship terminates and what continuing rights and responsibilities the parties have are just as important and litigation-prone as how the agreement begins.

9) Arbitration and Choice of Law: These are optional but highly recommended. A strong arbitration clause will ensure that any disagreements go to arbitration. While arbitration can get costly, such costs do not come near the years-long engagement of motion practice, discovery and appeals you see in traditional litigation.

In sum, the main goal of a well-drafted agreement is to provide for as many contingencies as possible in order to avoid future disputes and certainly to avoid costly litigation over such disputes.

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