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A Checklist of IT Warranty Provisions: What is Hot and What is Not

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It's the Economy Stupid

Average number of warranties negotiated
into vendor agreements by year

- 1990 → 8
- 1999 → 2
- 2001 → 28
- 2005 → 10 to 12
- Early 2009 → 35 (or whatever Customer wants)
- Today → 16 (and trending down)



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- **Global Warranties**
 - **Software Warranties**
 - **Hardware & Equipment Warranties**
 - **Healthcare Warranties**
 - **Other Warranties**
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GLOBAL WARRANTIES

- Defects
 - Ownership
 - Updates
 - Update Frequency
 - Response Times
 - Availability
 - Compatibility
 - Sunsetting
 - Vendor Statements
 - Intellectual Property
 - Functionality
 - All Prerequisites Included
 - User Materials
 - Training
 - Services
 - Quality of Maintenance Services
 - Milestone Dates
-



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GLOBAL WARRANTIES

Defects

Vendor's software and hardware products are free from material and frequent errors and defects and will function in compliance with all documentation, RFP responses, and other specifications.



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GLOBAL WARRANTIES

Ownership

Vendor has sufficient right, title, and interest in the software and hardware being sold necessary to sell or license the hardware and software to Customer.



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GLOBAL WARRANTIES

Updates

Any updates, upgrades, newer versions, and patches to the software and hardware will meet all applicable warranties under the agreement.



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GLOBAL WARRANTIES

Update Frequency

Vendor will provide no fewer than two software updates per calendar year, each of which shall address and correct all bugs and issues known to Vendor at the time the update is released.



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GLOBAL WARRANTIES

Response Times

The software and hardware will consistently and reliably provide reasonable application initialization and process response times consistent with top-end providers of competitive software/hardware.



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GLOBAL WARRANTIES

Availability

The software and hardware will be available for use by Customer at least 99.999% of the time, 24 hours per day, 7 days per week, for the entire term of the agreement (excluding limited time for Vendor updates and maintenance, of which Vendor must provide advance notice to Customer).



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GLOBAL WARRANTIES

Compatibility

The software and hardware are fully compatible and interoperable with each other and with all third-party software and hardware products that Vendor's marketing materials, product documentation, or RFP responses claim compatibility with.



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GLOBAL WARRANTIES

Sunseting

Vendor will continue to actively market and license, and will continue to provide maintenance services for, the software and hardware for at least the first 10 years after the date of the agreement.



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GLOBAL WARRANTIES

Vendor Statements

The software, hardware, and other materials sold or licensed under the agreement fully comply with all of Vendor's statements to Customer and with all product demonstrations or other sales-related exhibitions provided by Vendor.



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GLOBAL WARRANTIES

Intellectual Property

The software, hardware, and documentation do not infringe on, violate, or misappropriate any patent, trademark, copyright, or other intellectual property right of any third party or misappropriate any trade secret of any third party.



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GLOBAL WARRANTIES

Functionality

Any update to the software, hardware, or documentation will improve, and will not reduce or eliminate, any function, feature, or option present in such product at the time of the update.



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GLOBAL WARRANTIES

All Prerequisites Included

The configuration specified by Vendor contains all prerequisite products for each Vendor product purchased or licensed under the agreement.



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GLOBAL WARRANTIES

User Materials

User materials provided under the agreement are complete and accurately describe the operation and use of the software and hardware, and Vendor will continuously update the user materials to reflect any upgrades.



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GLOBAL WARRANTIES

Training

The amounts and types of training recommended by Vendor are sufficient for Customer and Customer's personnel to understand, operate, and use the software and hardware.



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GLOBAL WARRANTIES

Services

All services and deliverables will be performed, completed, and provided in accordance with all applicable warranties contained in the agreement.



Quality of Maintenance Services

The quality, reliability, and timeliness of the maintenance services during any given period of six consecutive calendar months will not be less than the quality, reliability, and timeliness of the maintenance services provided by Vendor during the first six months of the agreement.



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GLOBAL WARRANTIES

Milestone Dates

Vendor will perform and complete all of its obligations on or before the milestone dates set forth in the agreement.



SOFTWARE WARRANTIES

- Scalability
- Software Development
- 80% Similar Product
- No Data Loss
- No Viruses Or Disabling Devices
- No Vaporware
- No Open-Source Software
- No Beta Software
- Third-Party Software; Warranty Pass-Through



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SOFTWARE WARRANTIES

Scalability

The software has the capacity to scale up to meet customer's processing load.



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SOFTWARE WARRANTIES

Software Development

Vendor will spend at least X% of its gross revenues during each calendar year of the agreement on developing and actively enhancing the software.



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SOFTWARE WARRANTIES

80% Similar Product

If, within the first four years of the agreement, Vendor releases a new software product which contains 80% or more of the features and functionality of the software product purchased by Customer under the agreement, Vendor shall provide that newly released software product to Customer at no additional cost.



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SOFTWARE WARRANTIES

No Data Loss

The software and services will not result in direct or indirect loss, destruction, deletion, or alteration of any of Customer's data.



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SOFTWARE WARRANTIES

No Viruses Or Disabling Devices

The software will not contain any timer, virus, adware, keystroke logger, Trojan horse, or other disabling routine that will impair the performance of the software or cause it to be made inoperable or incapable of being used by the Customer.



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SOFTWARE WARRANTIES

No Vaporware

The software and hardware are generally available to Vendor's other customers and are currently being used in live production environments by at least five other Vendor customers with equal or greater seat licensing and processing capacity needs.



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SOFTWARE WARRANTIES

No Open-Source Software

The software does not contain any open-source software code.



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SOFTWARE WARRANTIES

No Beta Software

The software and updates provided do not contain any "beta" code or other software or programming code that has not been thoroughly tested and successfully implemented.



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SOFTWARE WARRANTIES

Third-Party Software; Warranty Pass-Through

Any third-party software provided by Vendor under the agreement will operate in all material respects in conformance with its documentation.



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HARDWARE & EQUIPMENT WARRANTIES

- Hardware Sizing
 - Anticipated Growth
 - Warranty Pass-Through
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HARDWARE & EQUIPMENT WARRANTIES

Hardware Sizing

The hardware and any related technological infrastructure that Vendor provides or recommends is of sufficient capacity and capabilities to consistently and reliably meet the requirements of the agreement.



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HARDWARE & EQUIPMENT WARRANTIES

Anticipated Growth

The hardware specified by Vendor has sufficient capacity to accommodate a 100% increase in Customer's current processing and storage needs.



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HARDWARE & EQUIPMENT WARRANTIES

Warranty Pass-Through

Any third-party hardware provided by Vendor under the agreement will operate in all material respects in conformance with its documentation and Vendor will cause Customer to become the full beneficiary of any warranty provided by the third-party supplier.



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HEALTHCARE WARRANTIES

- Compliance with Accreditation Standards
 - Legal Compliance
 - No Sanctioned Providers
 - Compliance with 42 C.F.R.
 - Meaningful Use
 - CCHIT Certification
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HEALTHCARE WARRANTIES

Compliance with Accreditation Standards

The software and hardware will provide Customer with an information system that complies with applicable accreditation standards including those of The Joint Commission.



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HEALTHCARE WARRANTIES

Legal Compliance

Vendor complies with all applicable laws, regulations, rules, mandates, and requirements of the U.S. government and any applicable state and local governments regarding healthcare, including HIPAA, HITECH, and ARRA.



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HEALTHCARE WARRANTIES

No Sanctioned Providers

Vendor is not a sanctioned provider or subject to debarment under any federal healthcare program, including Medicare or Medicaid.



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HEALTHCARE WARRANTIES

Compliance with 42 C.F.R.

Any EHR technology provided by Vendor meets all of the conditions specified in 42 C.F.R. § 1001.952(y) and 42 C.F.R. § 411.357(w).

(These regulations provide safe harbors from the Anti-Kickback statute and Stark law that permit donations of up to 85% of the cost EHR technology - excluding hardware - to health care entities and physicians with which the donor has a referral relationship.)



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HEALTHCARE WARRANTIES

Meaningful Use

The software and hardware will enable, and will not in any way prevent, Customer's ability to meet "meaningful use" as that term is defined under ARRA and its accompanying regulations, rules, and guidance.



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HEALTHCARE WARRANTIES

CCHIT Certification

The software and hardware have achieved CCHIT certification and will continue to hold CCHIT certification during the initial term of the agreement and during any time when Customer has in place a maintenance services agreement with Vendor.



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OTHER WARRANTIES

- Legal Privacy & Confidentiality
- Vendor's Authority, Organization, Qualifications
- Litigation
- Due Diligence
- Solvency
- Cooperation
- Financial
- Personnel



OTHER WARRANTIES

Legal Privacy and Confidentiality

Because Customer may use the Software to collect data and personal information about residents of certain U.S. states and certain foreign nations, Vendor warrants that the Software is as, or more, technologically secure as the highest comparable vendor security standards; upon request from Customer, Vendor shall provide a report comparing the security standards contained in the software and hardware to the then-current highest comparable security standards offered by other vendors.



OTHER WARRANTIES

Vendor's Authority, Organization, Qualifications

Vendor is organized, validly existing, and in good standing under the laws of the state of its incorporation; Vendor has the legal and corporate power and authority to enter into the agreement and carry out its duties and obligations thereunder.



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OTHER WARRANTIES

Litigation

Vendor is not a party to any pending litigation and knows of no threatened litigation regarding its products or services.



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OTHER WARRANTIES

Due Diligence

Vendor has visited and carefully examined Customer's facility and concluded that no conditions exist which will adversely affect its ability to perform under the agreement.



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OTHER WARRANTIES

Solvency

Vendor is financially solvent and any financial information provided to Customer is true and correct.



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OTHER WARRANTIES

Cooperation

Vendor will fully cooperate with, and not interfere with, Customer's other vendors.



OTHER WARRANTIES

Financial

Vendor represents and warrants that it knows of no fact or circumstance which could reasonably be expected to cause Vendor to restate past financial statements, be removed or delisted from any applicable stock exchange, default on any bond or other indebtedness, or suffer any other materially adverse change to its financial stability as an ongoing business.



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OTHER WARRANTIES

Personnel

Vendor will perform full background checks, including criminal records checks, on all employees and subcontractor employees who will work at Customer's facility or have access to Customer's data.



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Questions?

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