

Information Technology Policy

Non-Negotiated Software Agreements

Number

OPD-SFT001A

Effective Date

February 17, 2023

Category

Office/Bureau Name

Supersedes

None

ContactRA-ITCentral@pa.gov**Scheduled Review**

February 2024

1. Purpose

The purpose of this supplemental document is to provide procedural guidance for scenarios in which a software license agreement cannot be established or negotiated.

2. Background

Agencies are required to have a software agreement in place before procuring or utilizing any Third-Party Software. These agreements should be negotiated by the Agency's Office of Chief Counsel to ensure that the terms are acceptable to the Commonwealth. There are however some scenarios in which a software agreement cannot be established or negotiated. Examples include, but are not limited to:

- Opensource or freeware
- Federal Government owned software
- Specialized equipment where the supporting software is included with the purchase of the equipment
- Software manufacturers who are not willing to modify their terms for the Commonwealth

This document provides guidance on how Agencies should proceed when this occurs.

3. Policy

Agencies shall ensure there is a software agreement in place between the Commonwealth and the publisher of any Third-Party Software that is being procured or utilized.

Agencies shall work with their Office of Chief Counsel to negotiate the terms and conditions of software agreements as follows:

- Agencies shall attempt to get the software publisher to accept the Commonwealth's terms.
- In the event the publisher will not accept the Commonwealth's terms, agencies should attempt to modify the publisher's terms to better align with the Commonwealth's terms.

If a software agreement cannot be established or the terms of the agreement cannot be adequately negotiated, agencies are encouraged to select an alternate software. In the event that another software cannot be utilized either because of mandates or business requirements, agencies shall adhere to the process outlined in section 4 of this supplemental document.

Adherence to section 4 of this document does not guarantee that the procurement or use of a software will be approved. The procurement or use of a software may be denied as part of any of the review processes included in section 4.

Note: Some of the steps outlined in the process below, such as obtaining a DGS waiver, may be completed in parallel with other steps.

4. Process

4.1 Acknowledgement of Risk

If a software agreement cannot be established or the terms of the agreement cannot be adequately negotiated, the risks involved in moving forward with the procurement or utilization of the software shall be communicated to agency business owners.

If the agency business owners have been notified of and understand the risks, but choose to move forward with procuring or utilizing the software, *OPD-SEC040A, Risk Assessment and Acknowledgement* shall be completed by the Agency Information Security Officer and signed by the appropriate agency business area contact, Agency Deputy Secretary, and Agency Office of Chief Counsel.

4.2 IT Policy Waiver

Agencies shall submit an [IT Policy Waiver](#) request against [ITP-SFT001, Software Licensing](#) via the enterprise IT Policy Waiver process as outlined in [ITP-BUS004, IT Waiver Review Process](#). The completed *OPD-SEC040A, Risk Assessment and Acknowledgement* shall be attached to the waiver request.

4.3 DGS Waiver

If the software is being procured from any statewide contract, an approved DGS waiver shall be obtained. Waiver request are to be submitted via email to the resource account: GS, IT Software RA-GSITSOFTWARE@pa.gov
Agencies shall include the following information in a waiver request:

- Order details (publisher, product, and whether it is on-premise or vendor hosted)
- Number of years this product has been ordered or used and previous PO number(s) (if applicable)
- The service the software is used for
- Description of the criticality of service
- Chief Information Officer or Chief Technology Officer approval.

DGS shall approve or deny all requests and respond via email to the original request submission.

Agencies shall attach the DGS waiver approval to the IT Investment Review submission and also to the Purchase Order to demonstrate why the quote does not contain a Software License Agreement Number.

4.4 IT Investment Request

An IT investment request is required for all new software regardless of cost. Agencies shall submit an IT investment request as outlined in [ITP-BUS002, IT Investment Review Process](#). Agencies shall include the following when submitting the IT investment request:

- Completed *SEC040A, Risk Assessment and Acknowledgement*
- Approved IT Policy Waiver
- An explanation of why an agreement cannot be negotiated

This chart contains a history of this publication’s revisions.

Version	Date	Purpose of Revision
Original	02/17/2023	Base Document