Software Third Party Checklist

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| Business Unit: | Central Applications (Training and Technical Support) |
| Product Name & Version: | DS2413 Read/Write |
| Person(s) Responsible for Checklist | Brian Hindman |
| Updated by: | Brian Hindman |
| Date of last update: | 18 Nov 2022 |

PURPOSE: The purpose of this Software Third Party Checklist is to establish a streamlined sequence of steps that will ensure that third-party software contained in new Maxim products is properly licensed. The completion of this Checklist will span the entire product development cycle, beginning with the requirements and system architecting phase and concluding just prior to product release.

CONTENT: This Checklist is comprised of four parts:

* [Section A](#A) contains a series of mandatory steps that must be followed and initialed for each product release. The BU will normally have responsibility for the completion of this Checklist, but not necessarily so. Decide early on who will own the completion of this checklist.
* [Section B](#B) contains a series of mandatory steps that must be followed for each component of third party software.
* [Section C](#C) contains a collection of guidance for the release of Maxim open source.
* [Section D](#D) contains a collection of guidance for negotiating commercial licenses.

JUSTIFICATION: If you plan to use third party software in a Maxim product, Maxim must have a license to the software. If we don’t have a license to the software, we may be infringing the intellectual property of the third party and Maxim will be exposed to litigation risk. An infringement lawsuit could cost millions of dollars to litigate, even if we achieve a successful outcome. Avoid this risk by ensuring that all third-party software is identified early and properly licensed.

COMPLETION: This Checklist should be completed in electronic format, and included in the Maxim product’s configuration management system for revision control, i.e. SVN.

TERMS:

Third-party software can be classified as commercial and open source.

Commercial software, also known as proprietary software and vendor software, contains copyrighted code and may also include trademarks, patented material, or trade secrets.

Open source software is software released by the author with a set of special requirements imposed on downstream distributors of the code. Open source software licenses are approved by the Open Source Initiative (OSI) and must conform to the Open Source Definition (OSD). See <https://opensource.org/osd-annotated> for additional detail.

Permissive open source, also known as non-copyleft, is open source software with minimal requirements pertaining to use, modification, redistribution, and creation of proprietary derivative works.

* Some of our customer contracts require that Maxim products do not contain any open source software.
* Unless there is a no open source restriction on our Maxim product, Maxim allows the use of the following permissive open source software without special approval:
  + MIT or MIT/X11
  + Apache License 2.0 and higher
  + BSD

Copyleft open source, also known as viral open source, is open source software with restrictions on redistribution of the code. Particularly, most copyleft open source licenses require the publication or disclosure of the source code, even for derivative works. Maxim generally does not allow the use of copyleft open source in Maxim products.

Weak-copyleft open source is an ill-defined collection of open source licenses that are more restrictive than permissive open source but less restrictive than copyleft open source. Maxim generally does not allow the use of weak copyleft open source in Maxim products because of the uncertainty.

CONTACTS:

For legal related questions, contact Maxim Legal at:

Greg Warder

[Greg.Warder@maximintegrated.com](mailto:Greg.Warder@maximintegrated.com)

Executive Director and Associate General Counsel, IP

(408) 601-3469

For software or MPLM related questions, contact the Software Excellence Team (SET) at:

Kathy Vehorn

Executive Director, Software Excellence Team

[Kathy.Vehorn@MaximIntegrated.com](mailto:Kathy.Vehorn@MaximIntegrated.com)

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Section A: Mandatory steps for each product release

**Early requirements phase**:

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| Initial | Step | Description |
| BH | 1 | Early in the design process, determine which requirements will be satisfied by third-party software. If Maxim isn’t planning to build it, it goes on the list. |
| BH | 2 | Identify the third-party software that will fulfill each of those requirements. |
| BH | 3 | Complete the mandatory steps for each component of third-party software in [Section B](#B). |
| BH | 4 | Decide as early as possible whether the Maxim software will be released as free proprietary, royalty-bearing proprietary, or open source. For open source, refer to the open source considerations in [Section C](#C). |

**Final considerations before Maxim product release**:

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| Initial | Step | Description |
| BH | 5 | Double check the code base for any new open source introduced late in the development process, with particular attention to GUI components. |
| BH | 6 | Double check the “List of Third Party Software” and update the list. You need a “List of Third Party Software” document to support every major release of the Maxim software which contains third-party software. |
| N/A | 7 | For each commercial code component in the “List of Third Party Software,” verify with Maxim Legal (contact info below) that a license agreement has been signed. |
| BH | 8 | Sanitize the code for any hard-coded proprietary or personally identifiable information, such as login credentials or server names. Also, check commented code for proprietary information. |
| BH | 9 | Make sure all source code files have the correct Maxim Copyright Notice or open source notice, which can be found on the [SET](https://confluence.maxim-ic.com/display/SET/Legal+and+Copyright+Notices) website. |
| N/A | 10 | If commercial code is included, make sure the vendor provided a list of open source components in their code and that the list has been checked for non-permissive open source licenses. Store the vendor provided list of open source components in the Maxim product’s configuration management system for revision control, i.e. SVN. |
| N/A | 11 | If the Maxim software is released as proprietary, ensure that all customers, distributors, and other recipients of the code have agreed to our Software License Agreement before shipping the Maxim code. This is accomplished by making the Maxim software available on the SET website subject to the click-through Software License Agreement. |

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| Initial | Description |
|  | Initial this item, skip Section B, and go to [Section C](#C) if there is **no third-party software** in this Maxim software product release. |

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Section B: Mandatory steps for each component of third-party software

Note: Fill out a copy of this page for each third-party component.

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| --- | --- | --- |
| Describe the functionality provided by this software: | .NET Framework version 4.8 |  |
| Vendor: | Microsoft |  |
| Software name and version: | .NET Framework version 4.8 (https://dotnet.microsoft.com/en-us/download/dotnet-framework/net48) |  |
| Commercial or open source: | Open Source (MIT) |  |

**Mandatory Steps**:

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| Initial | Step | Description |
| BH | 1 | Consider both commercial and open source alternatives from more than one vendor. |
| N/A, BH | 2 | Contact Maxim Legal (contact info below) once you are ready to move forward with a vendor. |
| N/A, BH | 3 | Put a Mutual NDA in place before sharing or receiving confidential information, which includes details of the third-party software and details of our Maxim use case. Request a new NDA on Maxim’s Onit System, found under Maxim Single Sign On. |
| BH | 4 | Evaluate any third-party software before committing it to your design. This may require an additional Software Evaluation License from the vendor. |
| BH | 5 | Before making a final decision:  >Open source- scan any open source alternative for non-permissive open source licenses  >Commercial- get ballpark pricing from the vendor to facilitate financial analysis. |
| BH | 6 | For open source software, check with Maxim Legal (contact info below) if any open source license other than permissive is found. Maxim allows the use of some permissive open source licenses without special permission, but Copyleft and weak Copyleft are evaluated on a case-by-case basis. |
| N/A, BH | 7 | For commercial software, make sure to meet with Maxim Finance to ensure the commercial price is acceptable. |
| N/A, BH | 8 | If commercial software is selected, reach out to Maxim Legal early to initiate the Software License Agreement. Keep in mind that a complex inbound OEM agreement can easily take six months to close. See [Section D](#D) for guidance on vendor negotiation. |
| BH | 9 | Once the third-party software selection is finalized, make an entry in the “List of Third Party Software” document. |
| N/A, BH | 10 | For each third-party software selection made, also designate a “plan B” source for the same functionality, even if that means building it in-house. |
| BH | 11 | Update this form if your selection of third-party software changes. |

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| Describe the functionality provided by this software: |  |
| Vendor: |  |
| Software name and version: |  |
| Commercial or open source: |  |

**Mandatory Steps**:

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| --- | --- | --- |
| Initial | Step | Description |
|  | 1 | Consider both commercial and open source alternatives from more than one vendor. |
|  | 2 | Contact Maxim Legal (contact info below) once you are ready to move forward with a vendor. |
|  | 3 | Put a Mutual NDA in place before sharing or receiving confidential information, which includes details of the third party software and details of our Maxim use case. Request a new NDA on Maxim’s Onit System, found under Maxim Single Sign On. |
|  | 4 | Evaluate any third party software before committing it to your design. This may require an additional Software Evaluation License from the vendor. |
|  | 5 | Before making a final decision:  >Open source- scan any open source alternative for non-permissive open source licenses  >Commercial- get ballpark pricing from the vendor to facilitate financial analysis. |
|  | 6 | For open source software, check with Maxim Legal (contact info below) if any open source license other than permissive is found. Maxim allows the use of some permissive open source licenses without special permission, but Copyleft and weak Copyleft are evaluated on a case-by-case basis. |
|  | 7 | For commercial software, make sure to meet with Maxim Finance to ensure the commercial price is acceptable. |
|  | 8 | If commercial software is selected, reach out to Maxim Legal early to initiate the Software License Agreement. Keep in mind that a complex inbound OEM agreement can easily take six months to close. See [Section D](#D) for guidance on vendor negotiation. |
|  | 9 | Once the third party selection is finalized, make an entry in the “List of Third Party Software” document. |
|  | 10 | For each third party selection made, also designate a “plan B” source for the same functionality, even if that means building it in-house. |
|  | 11 | Update this form if your selection of third party software changes. |

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Section C: Considerations for the release of Maxim code as open source

All releases of Maxim code as open source must be approved by a Managing Director or higher.

The standard Maxim outbound open source license is the MIT/X11 license. Contact [SET](https://confluence.maxim-ic.com/display/SET/SET+Home) for the current copyright notice to be used to create MIT/X11 open source.

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| Initial | Description |
|  | Initial this item and go to [Section D](#D) if you do not intend to release this Maxim software product as open source. |

**Outbound open source considerations**

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| Initial | Step | Description |
| BH | 1 | Why do you want to open source the Maxim code, i.e. what is the business justification? If there is no viable justification, keep the Maxim code proprietary. |
| BH | 2 | If we release this as open source, do the benefits outweigh the risks? Risks include competitive knowledge given to competitors and uncontrolled derivative works. |
| BH | 3 | Would it be damaging to Maxim if one of our competitors got a copy of our source code? |
| N/A,  BH | 4 | Is there any possibility that we may decide to charge a fee for this software at a later date? Once Maxim code is released as open source, it is very unlikely that anyone would ever pay for it in the future. |
| N/A,  BH | 5 | Is anything in the code patentable? If so, keep the code proprietary. Even if we don’t pursue the patent, we should protect the invention as a trade secret. |
| N/A,  BH | 6 | Do we want to control the downstream distribution of the Maxim software? We can’t control the distribution of our code if released as open source. |
| N/A,  BH | 7 | Do we want to control the ability to create derivative works from the Maxim software? We can’t prevent others from creating derivatives of our code if released as open source. |
| N/A,  BH | 8 | Do you have a plan for further development once the code has been released as open source? If so, who will do the development and how often will new versions be released? |
| BH | 9 | Which open source license will you use? The Maxim default is the MIT X11 permissive license. If you plan to use an open source license other than the default MIT X11, contact Maxim Legal. |
| BH | 10 | If there are open source third-party components in the Maxim code, are the licenses compatible with the open source license you chose? Contact Maxim Legal if unsure. |
| N/A,  BH | 11 | Does the Maxim code contain any third-party commercial components with license restrictions preventing Maxim from releasing our code as open source? If we breach a third-party agreement our license will likely be revoked. |

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Section D: Guidance for vendor negotiation for inbound third-party software

If you choose to use commercial software, you should initiate the licensing process as early as possible.

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| Initial | Description |
| BH | Initial this item and skip the rest of Section D if you do not intend to include any commercial software in this Maxim software product release. |

The following list contains considerations and best practices for commercial software licensing.

**Third party negotiation guidance**

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| Initial | Step | Description |
|  | 1 | Determine as early as possible the budget for any third-party components. This may be comprised of both an upfront spend (prepay) and an ongoing royalty. |
|  | 2 | Software vendors love prepays. If you have no budget for a prepay, don’t negotiate a prepay. This is a deal you can’t pay for, so take it off the table at the onset. |
|  | 3 | Negotiate the appropriate license duration from the vendor. For example, if your Maxim code is being distributed with a perpetual license, make sure the vendor inbound license is also perpetual. |
|  | 4 | Make sure the royalty structure is created such that royalties can be counted with certainty. If you plan to distribute Maxim software and receive revenue on a per unit basis, make sure the inbound license royalty is also per unit of Maxim product. A mismatch will be disastrous to Maxim. |
|  | 5 | If the vendor is providing support for their code, make sure the term of vendor support equals or exceeds the term of support we are offering to our customers on the product. |
|  | 6 | If the vendor is not providing support for their code, determine whether the third-party component can be supported internally at Maxim or whether Maxim will need to hire another third party to provide support. |
|  | 7 | If Maxim is taking responsibility for supporting any commercial or open source components, determine whether the code can be supported in-house. If not, start the support vendor selection and retention process in parallel with the software license. |
|  | 8 | Ask the vendor for a list of open source components in their software. Make sure this list does not include any Copyleft or weak Copyleft. If it does, reach out to Maxim Legal before signing any license agreement with the vendor. |
|  | 9 | Make sure the vendor does not impose any restrictions on their code that are incompatible with Maxim’s product distribution plans. These restrictions will show up in the software license agreement and also the vendor’s EULA. Check with Maxim Legal if you are uncertain. |
|  | 10 | Where possible, build interfaces to a vendor’s commercial code rather than creating a tight integration. It may be necessary in the future to remove and replace a vendor’s code. |
|  | 11 | Find out the vendor’s software release cadence and decide how frequently to update the vendor’s code in the Maxim product. It may be necessary to ask the vendor to support a version of their code beyond their normal end of support period if Maxim doesn’t update frequently. |

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