



Negotiating Enterprise Licensing and Cloud Services Agreements with Microsoft

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Agenda

■ Licensing Models

- Perpetual vs. Subscription
- User vs. Device

■ Agreement Types

- Microsoft Business and Services Agreement
- Online Subscription Agreement
- Enterprise Agreement and Enrollments
- Select Agreement

■ Key Legal Issues

- Transitioning to Office 365
- Limitations of Liability
- Indemnification
- Audit Rights
- Regulatory Compliance





Licensing Models – Perpetual vs. Subscription

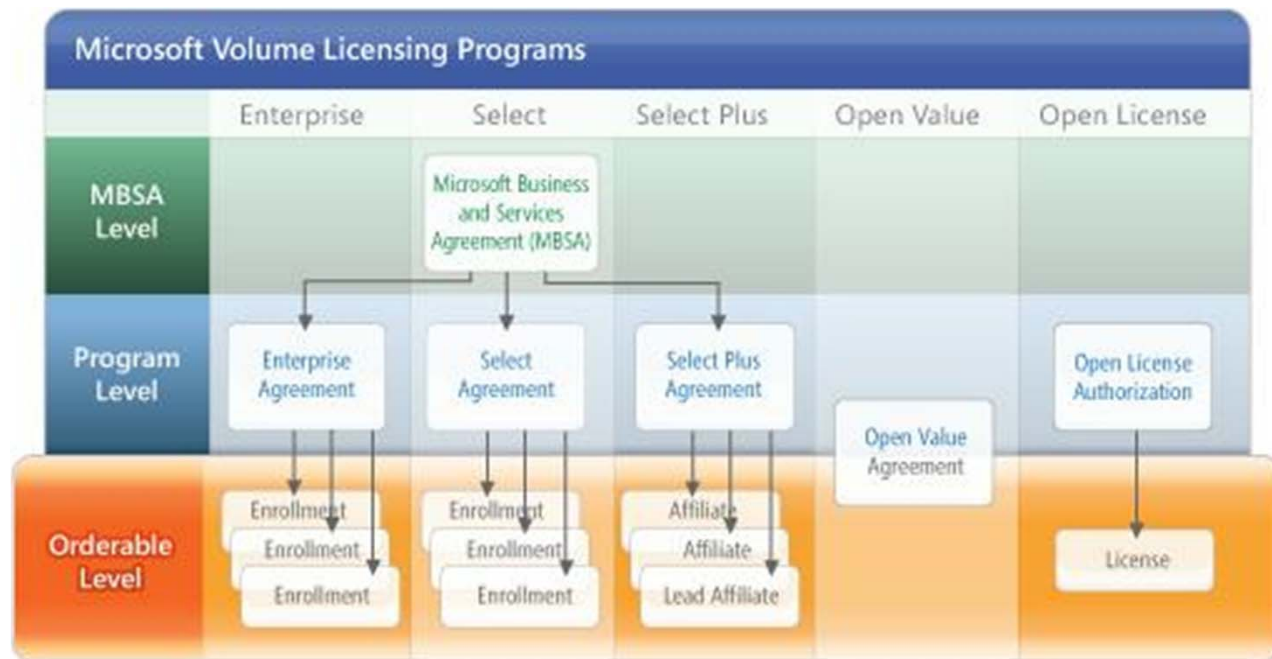
- Ability to use after payments end
- Adjustments for changes in workforce or use
- Data storage and ownership of the hardware
- Business continuity
- Accounting treatment: capital and operating expenses

Licensing Models – User vs. Device

- Multiple users per device
- Multiple devices per user
- Difficulty identifying number of users or devices

Agreement Types: Microsoft Business and Services Agreement

- Master Agreement between Microsoft and its customers





Agreement Types: Online Subscription Agreement

- Online services terms
- Acceptable use policy
- Security commitments

Agreement Types: Enterprise Agreement / Enrollments

- **Perpetual-License Enterprise Products**
 - Per device/hybrid
 - Office suites, CALs and CAL suites, Windows upgrades
- **Enterprise Cloud Suite**
 - Per user
 - Office 365 Enterprise E3, Enterprise Mobility Suite, Windows SA per User

Agreement Types: Select Agreements

- Minimum number of devices (250)
- Lack of standardization across the corporation
- No payment commitment
- Microsoft retired Select Plus agreement in July 2015, replaced it with Microsoft Products and Services Agreement:
 - Allows purchase of Microsoft Online Services
 - Allows work with multiple resellers under a single account





Key Legal Issues: Transitioning to Office 365

- Lower priced or transition SKUs
- Delayed payment dates
- Data privacy and protection concerns

Key Legal Issues: Limitation of Liability

- Calculating maximum liability
 - Usually tied to payments made under the agreement
 - Carve-outs - certain claims are not subject to the cap
- Liability risks related to security incidents

Key Legal Issues: Indemnification

- What indemnification is Microsoft offering?
- How do proposed terms compare to vendor contracting policies and procedures?
- Customers often use insurance to cover risks that would normally be addressed in indemnification provisions

Licensing Concerns: Audit Rights

- What are Microsoft's audit rights?
- Auditors interpret contractual provisions in the light most favorable to Microsoft
- Calculating percentage of compliance
- Penalties for non-compliance
- Look-back period



Licensing Concerns: Regulatory Compliance

- Financial considerations under GLBA
- Health and privacy considerations under HIPAA
- Large corporations are considering migration to hosted offerings



Questions?