Enterprise Agreement Changes Could Raise Costs, Reduce Contract Rights for Customers

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Introduction

Microsoft refreshes its volume licensing agreements every year, usually in October or November, and the changes it makes can be relatively minor or quite significant. Changes in late 2014, which apply to agreements signed from November on, are quite significant.

They include

- Changes to audit and true-up language which remove well-defined true-up rules and replace them with broad and vague terms that will impose significant new costs on most EA customers and will likely create more confusion for customers and Microsoft itself.
- New language regarding user licenses (affecting subscriptions or user add-on licenses for Office and Windows primarily) that will force customers to carefully isolate PCs Windows PCs that can be used by everyone from those that can use used only by specific users.
- More discretion for Microsoft account managers to permit or exercise certain rights, in some cases replacing programmatic rights that customers could exercise at their option.

This briefing paper summarizes these changes and provides details about the actual changes to the contract language.

We would note that EAs can be amended and Microsoft can change the language at any time, so customers will need to compare our findings (based on contract documents that have crossed our desks in the course of our work assisting customers with Enterprise Agreements) with the language in their particular contract.

We have focused here on one particular contract document, the Enterprise Agreement Enrollment, the document where we found the most substantive changes.

Attend the Webinar

Pica Communications Principal Consultant Paul DeGroot will be discussing changes to Microsoft Enterprise Agreements in a free Webinar
Feb. 11, 2015
11:00 AM - 12:00 PM PST
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Changes in True-Up Language

An EA defines a specific group of products as “Enterprise Products.” These products may only be licensed companywide in an EA and at least one Enterprise Product must be licensed to have an EA at all. Companywide means that Enterprise Products licensed by device must be licensed for all “Qualified Devices” and Enterprise Products licensed per user must be licensed for all “Qualified Users” in the organization.

The primary Enterprise Products are the Windows desktop OS, Office, and CAL suites.

Each year the customer must count the number of licenses needed to cover all “Qualified Devices” and “Qualified Users” for any Enterprise products in the agreement and pay Microsoft if the number goes up at all, a process called “truing up.”

Until now, true-ups counts were required before each anniversary of the agreement and any increase from one year to another required payment for the added licenses.

Starting in Nov. 2015 the annual increase in Qualified Devices or Qualified Users was replaced by a far broader measure: “any changes.”

We seriously hope that Microsoft does not really mean “any” change. Is a license reassignment or extension (e.g., from a retired PC to its replacement, from a departed employee to their replacement, the addition of a personal iPad to the complement of devices used by someone with a Windows User license) a change that needs to be reported at true-up time? This change deletes all definition of the relevant licensing changes, leaving it open to broad interpretation by Microsoft staff, resellers, and customers.

Danger to Customers

The probability is 100% that customers will get multiple answers from multiple advisers, as is common today. (We recently participated in a phone call in which three members of one customer's Microsoft account team managed in succession to advise the customer that a particular time frame was one year, three years, and two years. The call ended with the customer no wiser than before.)

At a minimum, Microsoft should add a qualifier to “any,” such as “any change that will result in increased licensing requirements.”

Our concern is that this language could be used to harass customers who may not be receptive to suggestions that will increase Microsoft's revenue or customer lock-in, such as cloud subscriptions. Even under the existing rules, we have seen Microsoft request data that is not relevant to the current true-up rules but could serve other purposes, such as identifying competitive threats. The new language placed no limits on what Microsoft might consider to be a “change.”

Changes to Additional Products

In an EA, “Additional Products” are any products that are not Enterprise Products. Servers, individual CALs, and some desktop applications (Visio, Project, Visual Studio) fall into this group.

Additional Products do not need to be licensed companywide, but many customers purchase them in an EA anyway, primarily because of the true-up language. They can deploy more copies of Additional Products at any time of the year and delay payment until the true-up date.

The language covering true-ups for Additional Products also changed very significantly in Nov. 2014. Instead of counting just the change in license count from year to year, as in the past, customers must true up the “maximum number of Additional Products used.” In other words, customers need to monitor their use of Additional Products constantly to get the “maximum number” correct, and may need to change some processes to control licensing costs.

For example, the old language permitted an organization to upgrade a server system on new hardware and put it into production without turning off the old system. This could permit a roll-back or offline configuration of the new system while the old system continued to handle the workload. As long as the old system is turned off before the true-up date, the customer does not need to pay extra for running both systems simultaneously.

An organization that follows this practice in a new Enrollment should be aware that this scenario will, in the future, require licensing the maximum number of servers used at any time. If at any time both the new and old systems are running, both will need to be paid for, even if one of them is taken completely out of service by the true-up date.

End of the Historic EA Bargain

Microsoft's concern is probably that many customers have used these terms to mask short-term increases in the use of Microsoft products. For example, our retail customers' EAs do not terminate in the Christmas holiday season, because retailers bring in many temporary staff and may even create “pop-up” stores to handle increases in demand. Our accounting customers' EAs do not expire during the spring tax season for the same reason. Quantifying all changes at the busiest time of year is an unwelcome addition to the IT workload, and forces customers to count thousands of temporary employees and devices as fully Qualified Users and Qualified Devices for which full payment must be made even though the software is used for only a few weeks.

Microsoft has a reasonable argument that it deserves payment for any use of its proprietary software, of course. But the right to count licenses just once a year, without regard to what happens in the intervening months, has been the most distinctive advantage of the EA. Indeed, Microsoft's primary warning to customers who threaten to not renew an EA is that license management becomes a full-time job where any delay in payment for software used is a contract and use rights violation. By signing the EA, customers can eliminate that overhead.

In effect, Microsoft long ago constructed a contract in which it did not ask for payment for short-term use as long as long-term growth is covered. That useful and profitable bargain with the customer has been terminated. The EA is now a long-term contract with constant license management requirements, just like any other Microsoft agreement.

Other Options Now Deliver Better Value than the EA

Changing this rule reduces the EA's advantage over other Microsoft volume agreements, such as Select Plus, the Microsoft Product and Services Agreement (MPSA), or Open License. The agreements require immediate payment for all software used but are more flexible than the EA in other ways. For instance, Software Assurance is not mandatory for most purchases (as it is in the EA) and customers can purchase any quantity of software they like—they are not required to add Office to all “Qualified Devices,” for example.

If customers need to constantly manage “any change” in an EA as carefully as they manage them in other agreements—in some respects this language may require even more work for EA customers than for those without EAs, who are not required to track “any changes”—these other agreements will likely provide lower overall license costs, and no higher costs for license management than the EA demands.

Protecting Yourself

All companies with EAs should ensure that two or more people in their organization have the time and skills to accurately track any change that could affect licensing. (We recommend two people to allow for smoother transitions as employees change—many agreements require a knowledge of previous licensing agreements and other issues, and that critical knowledge will be lost if one person leaves. Companies with more than 1,000 employees or PCs should devote at least one of those staff full time to the task. Very large customers (more than 50,000 PCs) may require five to eight full-time staff, depending on their business requirements and how many subsidiaries and IT sites they have.

In one respect, we welcome this change, since it may move more customers to do what they should always have done—keep track of their software use. Too many EA customers enter EA negotiations without accurate or current data about how their current software is deployed. As a result, Microsoft often makes up true-up numbers or customers cushion true-up estimates with additional licenses just to make sure they have enough, under the illusion that these tactics spare them the cost of a serious software asset management effort.

More than ever, customers will now need a professional software asset management team. We are sure that in most cases it will be less costly and less painful than the alternative.

Mixing User and Device Licensing

By now, most of Microsoft's customers are well aware of the passion with which Microsoft account teams push them to cloud services purchased via subscriptions.

Microsoft's primary concern is that Software Assurance has not demonstrated sufficient value for many customers, who are dropping it on many products without significant regret. They can continue to use the software without further payment.

Customers will be far less likely to drop a subscription after using it for a few years, since stopping payment could require uninstalling the software.

In the last year, Microsoft completed its move to make virtually all of its desktop products, including Windows and Office, which were previously licensed by device, available through subscriptions. User licenses for Windows and Office permit, among other things, installation of Windows Enterprise and Office Professional Plus on more than one device used by one employee.

While we generally recommend against subscription licensing, these user subscriptions can be useful for specific subsets of employees, particularly for employees who work on multiple devices from multiple locations.

However, in the latest Enrollment language Microsoft has pointedly emphasized a serious complication of purchasing subscriptions for a subset of employees: the PCs on which these users install Windows and/or Office must be clearly identified and restricted to just those users.

Since the traditional device licensing never required such strict segregation of PC hardware, few customers are prepared to manage it. By identifying this as an issue, Microsoft has signaled that customers who deploy subscriptions for a subset of users must be prepared to outline how they segregate user-licensed Windows and Office PCs from device-licensed Windows and Office PCs.

In some cases, a user may inadvertently “infect” a PC with a subscription product. An Office subscription user who sits down at another employee's computer could log into their Office 365 subscription account and trigger an installation of their subscription version of Office on the computer.

If the original user of the PC does not have a subscription, they are now prohibited from using Office on their PC until the subscription product is uninstalled and the standard device-licensed version is reinstalled.

Replacing Clear Rules with Microsoft Discretion

The primary value of contracts is that they (ideally) provide both parties clear and unambiguous rules about their relationship. They replace hand-shank agreements, imperfect recollection of what was said verbally, and vague statements of good will. They force partners to put down in writing what each will do in specific situations.

The latest Enrollment language gives Microsoft increasing discretion in how some contract issues will be handled. Instead of clear rules, Microsoft “at its discretion,” can decide which rules apply.

The new language makes it more likely that only “cooperative” customers will get certain rights. Customers that refuse to purchase Office 365 or that reduce the product counts or licenses included in an EA renewal (among many other things that account managers don't like) may find that their account manager is far less likely to grant favorable consideration in areas where he or she has discretionary control.

Situations in which Microsoft now has discretion include:

- The true-up language described above, which leaves the issue of what constitutes “any” change in licensing liability wide open to interpretation
- Adding new enterprise products or online services to an EA is now entirely a matter of discretion for a Microsoft account manager or reseller. We don't believe that this particular change should cause problems, but it is another example of this troubling trend. Why Microsoft

wants to make sure it can prevent customer from paying for more software is clearly more about controlling the customer than aiding the customer's business.

- Microsoft's right to disregard the standard true-up process and instead exercise the more draconian audit terms in the Microsoft Business Agreement.

In the latter case, Microsoft already launches audits outside of the true-up time frame, especially in the final year of an EA. This means that in the final year of the agreement, when they are preparing to negotiate a renewal, Microsoft forces customers into two true-ups/audits, one a hostile engagement with punitive fines and potential assessment of audit costs, just four to six months apart.

In many cases the audit's only purpose is to give the account team a preview of what the customer's renewal will look like, but we can attest that it imposes a costly and worrisome burden on many customers.

Our usual defense when Microsoft requests a meeting date for one of these interim audits is to suggest a meeting in about four months, when the true-up will be due. That reduces the workload to a single inventory, if it succeeds.

In the future, however, Microsoft may get more adamant about an immediate audit and will use its discretionary right to enforce it.

Detailed View of Recent Changes

We have compared the text of the current and previous EA in the table below. This table includes only items that we thought were significant, or that provide useful clarification of licensing issues without necessarily changing anything.

The major headings (“Introduction,” “Definitions,” etc. correspond to headings in the Enrollment.

We have left out most numbering and paragraph formatting, to focus on comparing contract language, but Microsoft has also moved some paragraphs around in the latest revision.

Introduction	
2014 Enrollment	2013 Enrollment
This Enrollment may only be entered into under a 2011 or later Enterprise Agreement. By entering into this Enrollment, Enrolled Affiliate agrees to be bound by the terms and conditions of the Enterprise Agreement and the Master Agreement.	This Enrollment may only be entered into under a 2011 or later Enterprise Agreement.
Comment: Primarily for clarification, this language states the "order of precedence." In effect, regardless of what the language in the Enrollment says, the Agreement and the Master Business Agreement overrule it.	

Definitions	
2014 Enrollment	2013 Enrollment
"Use Rights" means, with respect to any licensing program, the use rights or terms of service for each Product and version published for that licensing program at the Volume Licensing Site. The Use Rights supersede the terms of any end user license agreement (on-screen or otherwise) that accompanies a Product. The Use Rights for Software are published by Microsoft in the Product Use Rights. The Use Rights for Online Services are published in the Online Services Terms.	No prior language
Comment: Generally a clarification, and necessary because there are now two major use rights documents, one for software products and the other for online services.	

Order Requirements	
2014 Enrollment	2013 Enrollment
Minimum order requirements. Enrolled Affiliate's Enterprise must have a minimum of 250 Qualified Users or Qualified Devices. The initial order must include at least 250 Licenses in a single Product pool for Enterprise Products or Enterprise Online Services.	Minimum order requirements. Enrolled Affiliate's Enterprise must have a minimum of 250 Qualified Users or Qualified Devices. The initial order must include at least 250 Licenses for Enterprise Products or Enterprise Online Services.
Comment: A clarification of existing rules. Note that "Product pool" is never defined in the Enrollment, Agreement or User Rights, although it does appear in the Product Selection Form. A Pool is a major product category, primarily Systems (mostly Windows desktop OS), Applications (Office, Visual Studio, and other desktop applications), Servers (Servers and Client Access Licenses, CALs), and Online Services. In practice purposes Online Services often overlap product pools; an Office subscription can be substituted for an Office Professional Plus perpetual license in the Applications Pool, for example.	

If ordering any Enterprise Products, Enrolled Affiliate's order must include coverage for all Qualified Users and/or all Qualified Devices, ~~depending on the license type, of one or more~~ in any Product pool an Enterprise ~~Products or a mix of~~Product is ordered in. Enrolled Affiliate may elect to mix Enterprise Products and the corresponding Enterprise Online Services within a Product pool as long as all devices not covered by an Enterprise Product are only used by users covered with a per user license.	If ordering any Enterprise Products, Enrolled Affiliate's order must include coverage for all Qualified Users or Qualified Devices, depending on the license type, of one or more Enterprise Products or a mix of Enterprise Products and the corresponding Enterprise Online Services.
Comment: "As long as all devices not covered by an Enterprise Product are only used by users covered with a per user license" should give pause to any customer considering user subscriptions for Windows and Office. Among other rights, these subscriptions, assigned to users, permit installation of Windows Enterprise Edition or Office Professional Plus on PCs. In the fairly common event that an organization licenses just some users with these subscriptions, the PCs on which they install Windows and Office must be clearly identified and restricted to those users. This is especially true for Office subscriptions, since they require users to install the subscription Office software. Windows will be less problematic since the primary value of the Windows user licenses (added in December 2014) is licensing non-Windows devices for access to virtual desktop infrastructure (VDI), not installation of Windows on bare PCs, although that is permitted. But installing Windows on a bare PC via user rights will be and should be rare. Existing device licensing (via OEM licenses, re-imaging, and Windows Enterprise via SA) is relatively inexpensive, offers perpetual use rights for all users, and covers all PCs in an EA by default. Microsoft's recommended solution, of course, will be to license ALL devices and ALL users. While this removes the requirement to monitor who is using Office or Windows on specific PCs, it will cost substantially more, particularly for Office, where it will add greatly to the cost of the single most expensive product in a most EAs. And since these are subscriptions, customers will be committed to perpetual payments to Microsoft for Windows and Office.	
Adding new Products not previously ordered. ~~Enrolled Affiliate may add new Enterprise Products by entering into a new Enrollment or as part of a renewal.~~ New Enterprise Products or Enterprise Online Services may be added at any time by contacting a Microsoft Account Manager or Software Advisor. New Additional Products, other than Online Services, may be used if an order is placed in the month the Product is first used. For Additional Products that are Online Services, an initial order for the Online Service is required prior to use.	**Adding new Products not previously ordered**. Enrolled Affiliate may add new Enterprise Products by entering into a new Enrollment or as part of a renewal. New Enterprise Online Services may be added by contacting a Microsoft Account Manager or Software Advisor. New Additional Products, other than Online Services, may be used if an order is placed in the month the Product is first used. For Additional Products that are Online Services, an initial order for the Online Service is required prior to use.
Comment: In general, this change is positive, with the net effect being to allow customers to add Enterprise Products (Windows desktop OS, Office, and CALs) at any time. (Prohibiting that was never in Microsoft's interest.) The deletion at the start of the paragraph does not prohibit customers from adding Enterprise products in new agreements or at renewal—once a contract is started or opened for renewal, the parties can negotiate any terms and product set available. As before, any restriction on the addition of new products is not in Microsoft's interest. However, we are concerned that here and elsewhere in the new agreement language Microsoft has turned a programmatic requirement into a judgment call that will be made by an account manager or a Software Advisor (a reseller authorized to work with EA customers). Some account managers or Software Advisors may decide that only changes resulting in net revenue increases or that shift customers from perpetual to subscription licensing will be permitted. Others may take a different view, leading to customer confusion over what products can be permitted, as well as trolling for a Software Advisor with a more liberal view than their current one.	

Additional Licenses for previously ordered Products other than Online Services may be added at any time but must be included in the next true-up order. ~~Enrolled Affiliate must purchase Services and~~ Additional Licenses for Online Services must be ordered prior to use, unless the Online Services are (1) identified as eligible for true-up in the Product List or (2) included as part of other Licenses ~~(e.g., Enterprise CAL)~~..	Additional Licenses for previously ordered Products must be included in the next true-up order. Enrolled Affiliate must purchase Services and Licenses for Online Services prior to use, unless the Online Services are (1) identified as eligible for true-up in the Product List or (2) included as part of other Licenses (e.g., Enterprise CAL).
Comment: Since Online Services have their own rules, including pre-order ("reservation") requirements stated in the next sentence, these modifications appear to be primarily for clarity.	
True-up Requirements	
Enrolled Affiliate must submit an annual true-up order that accounts for any changes since the initial order or last ~~true-up order, including: (1) any increase in Licenses, including any increase in Qualified Devices or Qualified Users and Reserved Licenses; (2) Transitions (if permitted); or (3) Subscription License quantity reductions (if permitted). Microsoft, at its discretion, may validate the customer true-up data~~order. If there are no changes, then an update statement must be submitted ~~through~~ instead of a ~~formal product deployment assessment using an approved Microsoft partner~~true-up order.	True-up order. Enrolled Affiliate must submit an annual true-up order that accounts for changes since the initial order or last true-up order, including: (1) any increase in Licenses, including any increase in Qualified Devices or Qualified Users and Reserved Licenses; (2) Transitions (if permitted); or (3) Subscription License quantity reductions (if permitted). Microsoft, at its discretion, may validate the customer true-up data submitted through a formal product deployment assessment using an approved Microsoft partner.
Comment: Changes in this and the next item suggest radical modification of true-up practices and a substantive change to the EA itself. The clue here is the use of the term "any change," rather than a list of specific changes that needed to be counted, which for the most part have served both customers and Microsoft well for many years. We seriously hope that Microsoft does not really mean "any" change. A license reassignment or extension (e.g., from a retired PC to its replacement, from a terminated employee to their replacement, the addition of a personal iPad to the complement of devices used by someone with a Windows User license) is technically a change, but it has no impact on the customer's financial obligations to Microsoft. At a minimum we would like to see a reasonable qualifier, such as "any change that will result in increased licensing requirements." The previous language constitutes the most distinctive advantage of the EA, reducing Microsoft inventory to a once-a-year exercise that can dramatically reduce license management duties, which are sheer overhead, for EA customers. Indeed, Microsoft's primary warning to customers who threaten to not renew an EA is that license management becomes a full-time job where any delay in payment for new software installations is a contract and use rights violation. Microsoft's likely concern here is customers whose requirements may vary over the course of the year, such as retailers or tax accountants, who time true-ups for a low period of business activity, and for those customers the previous language was a major factor in their decision to purchase an EA. In effect, Microsoft long ago constructed a contract in which it did not ask for payment for short-term use as long as long-term growth is covered. That useful and profitable bargain with the customer has terminated. The EA is now a long-term contract with near real-time license management requirements, just like any other Microsoft agreement.	
Additional Products. For Additional Products that have been previously ordered under this Enrollment, Enrolled Affiliate must determine the maximum number of Additional Products used ~~and~~ since the latter of the intial order ~~the License difference (if~~, the last true-up order or the prior anniversary date and submit a true-up order that accounts for any~~).~~ increase.	Additional Products. For Products that have been previously ordered, Enrolled Affiliate must determine the Additional Products used and order the License difference (if any).

Comment:
The previous change covered Enterprise Products, and this covers all other products (primarily servers, plus some desktop applications and CALs), which are known as “Additional Products” in an EA.
“Determine the maximum number of Additional Products used” cements Microsoft's intention to require customers to constantly monitor their use of all Microsoft software purchased in an EA and to pay for the maximum number of licenses in use at any point during the year, not just the change from one anniversary date to another.
This language is functionally identical to the language in the Server and Cloud Enrollment, introduced in early 2014, and is a major reason to not use the Server and Cloud Enrollment.
From a license management perspective, the requirements in the EA are now identical to those in Select Plus and other agreements.
Many of our customers are barely able to count the software in use once a year; this language makes it a full-time monitoring task for one or more people. To our knowledge, no software asset management tool currently provides accurate counts of all Microsoft products running or installed. For some products, like Windows Server and SQL Server, raw counts of the number of running instances are not a good measure of licensing exposure, since many running instances in virtual environments don't require licenses.
The new language could raise software asset management costs for many customers by an order of magnitude.

Enrolled Affiliate must report all Transitions. Transitions may result in an increase in certain Licenses to be included on the true-up order and a reduction of other Licenses for prior orders. Reductions in Licenses will be effective at end of the Transition Period. ~~Associated invoices will also reflect this change.~~ For Licenses paid upfront, Microsoft will issue a credit for the remaining months of Software Assurance or Subscription Licenses that were reduced as part of the Transition.	Enrolled Affiliate must report all Transitions. Transitions may result in an increase in Licenses to be included on the true-up order and a reduction of Licenses for prior orders. Reductions in Licenses will be effective at end of the Transition Period. Associated invoices will also reflect this change. For Licenses paid upfront, Microsoft will issue a credit for the remaining months of Software Assurance or Subscription Licenses that were reduced as part of the Transition.

Comment:
One of the rare constants of Microsoft licensing is that the company places as much license management responsibility as possible on the customer, leaving Microsoft free to ignore the messy and often arbitrary details until audit time. In this case, Microsoft has created a new way for customers to drop the ball. Customers must always check their invoices or Customer Price Sheets to make sure that Microsoft has not made an error (we find them in about 10% of CPSs), but such errors will now be more difficult to detect because Microsoft finds it difficult to fully itemize all changes.

1) For Subscription Licenses that are part of an Enterprise-wide purchase, Licenses may be reduced if the total quantity of Licenses and Software Assurance for an applicable group meets or exceeds the quantity of Qualified Devices or Qualified Users (if ordering user-based Licenses) identified on the Product Selection Form, and includes any additional Qualified Devices and Qualified Users added in any prior true-up orders. Step-up Licenses and add-on subscription licenses do not count towards this total count.	1) For Subscription Licenses that are part of an Enterprise-wide purchase, Licenses may be reduced if the total quantity of Licenses and Software Assurance for an applicable group meets or exceeds the quantity of Qualified Devices identified on the Product Selection Form. Step-up Licenses do not count towards this total count.

Comment:
The “groups” mentioned are used primarily to set initial pricing, but are re purposed here to determine how much subscription licenses can be reduced. This is one of the few advantages of subscription licensing—the right to do a “true-down” in the event of staff or device reductions. This language clarifies that subscriptions added via the true-up process are also eligible to be trued down and that add-ons, such as the new Windows user add-on licenses aren't counted. In general this makes sense, since these user licenses are tied to Windows device licenses that are not eligible for true downs.

2) For Enterprise Online Services in a given Product pool that are not a part of an Enterprise-wide purchase, Licenses can be reduced as long as the initial order minimum	2) For Enterprise Online Services that are not a part of an Enterprise-wide purchase, Licenses can be reduced as long as the initial order minimum requirements are maintained.

<table>
<tr><td>requirements are maintained.</td><td></td></tr>
<tr><td colspan="2">Comment:
Restricts true-down counts to their respective product pools. This change may be confusing to customers, since product pools are not exactly the same as the product “groups” used in other true-down calculations. However, the change is relatively innocuous.</td></tr>
<tr><td></td><td></td></tr>
<tr><td>Verifying compliance. Microsoft may, in its discretion and at its expense, verify compliance with this Enrollment as set forth in the Master Agreement.</td><td>No previous language.</td></tr>
<tr><td colspan="2">Comment:
One of the most egregious conflicts in the EA has long been the contrast between the relatively benign true-up language in the Enrollment, and far harsher language in the Master Business Agreement, an umbrella agreement that covers both EAs and Select Plus.
The EA said that customers can inventory licenses once a year and pay up at the end of the year for any additional licenses, at an attractive true-up price.
The Master Agreement, in contrast, says Microsoft can send in an auditor any time on 30-days notice and, if the auditor finds underlicensing of 5% or more, the customer must pay a 25% penalty on top of the regular license price for any software it must purchase to become compliant. It must also pay for the audit.
We have advised customers for years to amend their agreements to say that, notwithstanding any language in the Master Agreement, verification will take place under the terms of the Enrollment's true-up language.
This addition explicitly confirms the internal contract contradiction by warning customers that Microsoft may exercise the more draconian verification terms in the Master Business Agreement.
It is also unclear how verifying compliance with the Enrollment via the Master Agreement language will be at Microsoft's expense. Most likely, the audit will be at Microsoft's expense only as long as the customer is not underlicensed. Audit costs will still be on the customer's shoulders if they exceed the 5% grace.
As in other cases, the decision as to whether the customer gets a true up per the Enrollment or an audit per the Master Agreement is up to Microsoft's discretion.</td></tr>
<tr><td></td><td></td></tr>
<tr><td>As long as Enrolled Affiliate continues to qualify for the same price level, prices for each Product or Service will be fixed throughout the applicable initial or renewal Enrollment term. Price levels and prices are reestablished at the beginning of the renewal term. However, if Enrolled Affiliate qualifies for a different price level during the applicable initial or renewal term, Microsoft <u>may at its discretion</u> establish a new price level for future new orders either upon Enrolled Affiliate’s request or on its own initiative. Any changes will be based upon price level rules in the Product Selection Form.</td><td>As long as Enrolled Affiliate continues to qualify for the same price level, prices for each Product or Service will be fixed throughout the applicable initial or renewal Enrollment term. However, if Enrolled Affiliate qualifies for a different price level, Microsoft will establish a new price level for future new orders either upon Enrolled Affiliate’s request or on its own initiative. Any changes will be based upon price level rules in the Product Selection Form.</td></tr>
<tr><td colspan="2">Comment:
Again, Microsoft has a firm contractual right—to qualify for a better discount if the customer's Qualified Device or User count warrants it—and supplanted it with a discretionary choice. If this is a balanced contract, either party should have discretion. There are no cases where a customer can exercise discretion to reduce its cost or increase its leverage.</td></tr>
</table>

Other Services from Pica Communications

Enterprise Agreement Negotiations

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