

Microsoft Enterprise Agreements – The Fine Print

By Andrew Martin

Any Microsoft Enterprise Agreement (EA) negotiation should involve not only the organization's IT budgeting, compliance, and forecasting groups, but also in-house or outside counsel for analysis of the legal and business risks that are not necessarily front-and-center during the negotiation process. A significant obstacle in the way of fully understanding the applicable rights and obligations under the EA is knowing which agreements apply, and in which order. Many times, decision makers review only a portion of the agreements during an EA negotiation and do not appreciate how the entire document set integrates to establish the parties' respective rights and obligations.

In its most basic form, a Microsoft EA engagement consists of: 1) a Microsoft Business and Services Agreement (MBSA); 2) an Enterprise Agreement (EA); 3) an Enterprise Enrollment (Enrollment); and, 4) the Customer Price Sheet (CPS). The base agreement for this engagement is not the EA, but the MBSA—a document that typically is less closely scrutinized during negotiations. The MBSA as a master agreement that governs the entire relationship a customer has with Microsoft. It contains service warranties, IP ownership, confidentiality, audit rights, and limitations to liability—terms that are likely very important to review in order to understand associated legal risks. The EA, in turn, describes the enterprise-licensing program and includes use rights, copying and backup rights, and provisions related to license assignment and transfer as well as termination. Next, the document that is likely most familiar to anyone who has worked on an EA negotiation is the Enrollment, which typically sets out the true-up process, the specific term and effective dates, defines qualified users and desktops, pricing and payment. In the Enrollment, the customer makes its decisions regarding enrollment of affiliates and tax and financing choices. Finally, the Customer Price Sheet sets out a customer's initial order, establishes prices for enterprise and additional products, and defines yearly payments.

There are a number of additional documents that either are integrated into the EA document set by reference or can be added if the customer selects additional licensing options. For many customers, however, there is one document that generally is never offered by Microsoft and that can be the most important document in the entire bunch: the elusive EA Amendment. Customers that take the time to read and understand the standard rights and obligations offered by Microsoft in an EA will be in a better position to negotiate for an Amendment that consists of custom terms better suited to the customer's particular deployment or risk profile. Those customers that successfully negotiate an Amendment often get much more value out of their EA compared to those that sign up without a thorough understanding of the licensing relationship they are contemplating.



About the author Andrew Martin:

As an associate attorney with extensive prior experience advising information technology start-ups, Andrew's practice focuses on finding solutions for his clients' intellectual property issues. Due to his extensive experience in the software and technology industries, Andrew understands both the practical and legal issues involved in IP licensing agreements and disputes. In addition to licensing, Andrew helps his clients find new ways to use existing technologies to assist his clients in areas such as data privacy compliance. Andrew uses his diverse background which includes founding a record label and working for a world-wide concert promoter when counseling the firm's entertainment clients.

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