# Microsoft Enterprise Agreements May Be a Poor Choice for Many Companies

**By Christopher Barnett**

Microsoft Enterprise Agreements may represent attractive licensing options for larger companies with dynamic IT environments for which steady growth can be projected over a three-year term. However, smaller or mid-size companies with relatively static IT environments may experience more burdens than benefits under an EA, with increased costs and audit risks being significant disadvantages to participating in the program.

- Costs. License pricing under an Enterprise Agreement typically is higher because all licenses under an EA must be enrolled in Software Assurance (SA), Microsoft's maintenance and support subscription offering (see below). In addition, the EA typically requires an enterprise-wide commitment for all Qualified Desktops (generally defined as workstation computers capable of functioning as general-purpose computing devices, as opposed to task-specific / line-of-business machines). Microsoft sometimes will allow for EA carve-outs associated with discrete subsets of workstations that may not require Office or other products included in the EA product selection. However, requests for such carve-outs are granted on a case-by-case basis and often make sense only when it is easy to segregate the excluded computers from a network inventory.

- Software Assurance. The principal benefit of SA is the fact that it allows a business to upgrade its Microsoft product deployments upon release of the newest versions, provided all licenses for those products are enrolled in the program. Companies that do not require the most current versions of those products therefore may realize less value by participating in the program. SA also may provide certain product-specific benefits, such as Roaming Use Rights for Office. Again, however, unless a company projects a need for those benefits, there may be little value in participating in the program. (Descriptions of all SA benefits are included in Appendix 2 of Microsoft's Product Use Rights (PUR) document, which is updated quarterly and available here.)

- True-Up Requirement. Under EA, installation and usage of products included in a company's Enterprise Product selection (typically, Windows OS, Office and certain server CALs) do not need to be tracked on a day-to-day basis. Instead, the company must determine its current usage and submit a true-up order on each anniversary of the enrollment during the three-year term. That may represent a benefit for businesses with dynamic IT environments that are undergoing significant growth. However, companies with more static environments may be able to track usage and order licenses as needed from month to month and therefore may see the annual, contractual true-up requirement as more of a burden than a benefit.

- Information Sharing. With retail and OEM licensing, companies generally are not required to share any significant information with Microsoft. Licenses typically are purchased and used anonymously without delivering any meaningful business intelligence to Microsoft. The opposite is true under an EA, which requires a company to deliver detailed information regarding the contracting entity and, sometimes, any affiliated entities that may use software licensed under the agreement. That level of information sharing may present both inconveniences (aggressive sales activity) and risks (data breach). It also means that the company signing an EA is placed on Microsoft's radar for audit activity (see below).



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- Audit Risk. Microsoft audits can be tremendously expensive engagements, regardless of how you calculate the costs. Internal resources are diverted to audit-related activities; external consultants or legal counsel may be hired to help defend against the audit; and shortfalls can be surprising and expensive to remedy (typically requiring licenses to be purchased at a markup over negotiated pricing levels). Under an EA, it is common for businesses to be audited by Microsoft once every 3-6 years. In addition, businesses that terminate their EAs or allow them to expire can expect to receive an audit notice shortly thereafter, regardless of when their last audit occurred. By contrast, businesses that avoid Microsoft volume licensing programs typically avoid the attention of Microsoft's auditors.

Companies that are able to realize benefits from Microsoft's EA licensing model typically exhibit all of the following characteristics:

- Large volume of workstation devices
- Dynamic, but steadily growing IT environments
- Standardization to most current versions of Microsoft product releases
- Mature SAM practices and high confidence levels in preparation for audit activity

Companies that do not exhibit one or more of the above characteristics may struggle to recognize meaningful value from an EA, as opposed to OEM/retail licensing or licensing under one of Microsoft's other, more flexible volume-licensing solutions (such as Open or Select). However, keep in mind that other volume licensing models still entail a higher level of information sharing and resulting audit risk, so they too may be less desirable for companies that are not able to confirm their license positions on demand.

**About the author Christopher Barnett:**

Christopher represents clients in a variety of business, intellectual property and IT-related contexts, with matters involving trademark registration and enforcement, software and licensing disputes and litigation, and mergers, divestments and service transactions. Christopher's practice includes substantial attention to concerns faced by media & technology companies and to disputes involving new media, especially the fast-evolving content on the Internet.

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