



***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 retiring Select Plus agreement in July 2015, replacing 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?

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