



B r i e f

Licensing Overview for Outsourcers and Managed Service Providers

Discussion

Microsoft provides for two distinct types of software use rights relevant to outsourcers and managed service providers (collectively, “outsourcer(s)”) – internal use and use for commercial software services. Internal use rights are provided in the following types of licenses: Original Equipment Manufacturer (OEM) license that accompanies hardware, Full Packaged Product (FPP) from a reseller, and the Microsoft volume licensing programs (Open, Select, and Enterprise Agreement (EA), collectively “VL”). These licenses are for use of Microsoft software internally by the contracting entity. Outsourcers cannot acquire and use these types of licenses to provide outsourced software services to their customers. The Services Provider Licensing Agreement (SPLA) (<http://www.microsoft.com/serviceproviders/licensing/>) provides use rights for commercial software services, permitting outsourcers to offer commercial software services such as web hosting, application infrastructure services, and application hosting to their customers.

Licensing Choices

Scenario	Process	Type of License	Licensee
(1) Outsourcer provides IT management services to the customer which acquires its own licenses.	<ul style="list-style-type: none"> Customer acquires licenses. Outsourcer manages and services the customer's IT, including software licenses. 	Internal Use (OEM, FPP, or VL)	Customer
(2) Outsourcer acquires licenses on behalf of the customer as part of outsourcer's IT management services.	<ul style="list-style-type: none"> Outsourcer acquires licenses on behalf of customer. Outsourcer manages and services the customer's IT, including software licenses. 	Internal Use (OEM, FPP, or VL through Open)	Customer
(3) Outsourcer authorized to acquire licenses under the customer's Select agreement or EA in order to provide IT management services to the customer.	<ul style="list-style-type: none"> Outsourcer and customer sign the Select Outsourcer Enrollment or the EA Outsourcer Enrollment with Microsoft. Outsourcer becomes an enrolled affiliate under the customer's Select Agreement or EA. During the term of the enrollment, the Outsourcer acquires licenses for customer's benefit. Upon expiration of the enrollment, the licenses must be transferred to the customer or they automatically expire. 	Internal Use (VL through Select and EA)	Outsourcer during the term of the Outsourcer Enrollment
(4) Outsourcer provides hosted software services to the customer.	<ul style="list-style-type: none"> Outsourcer signs the SPLA with Microsoft. Outsourcer sublicenses non-perpetual use rights to the customer for applicable Microsoft software. Outsourcer reports the customer's software usage to Microsoft on monthly basis and pays associated monthly license fees.. 	Commercial Services (SPLA)	Outsourcer

Q&A

QUESTION: If an outsourcer purchases hardware that comes preloaded with Microsoft software, can that software be used to provide software hosting services to an end customer?

ANSWER: No, the OEM End User License Agreement (EULA) prohibits commercial hosting. An outsourcer cannot purchase hardware with Microsoft software and use the software to provide software hosting services to its customers. However, an outsourcer can manage and service hardware with Microsoft software that is acquired either by the customer or by the outsourcer on the customer's behalf. Microsoft software and the associated license that comes with the hardware can only be transferred as part of a transfer of the hardware.

QUESTION: Can an outsourcer purchase software licenses through the Open license program or the retail channel (full packaged product) and use those licenses to provide software as a service to an end customer?

ANSWER: No, once again, the end user use rights in these types of licenses are internal use only and prohibit commercial hosting. However, if an outsourcer acquires these licenses on behalf of the customer, the outsourcer can manage and service the software and associated licenses.

QUESTION: How can an outsourcer assist the customer with acquiring and managing software licenses?

ANSWER: If the outsourcer wants to provide IT management services, they can either acquire the licenses under a Select or EA Outsourcer Enrollment, or acquire the licenses on behalf of the customer through hardware acquisitions, retail FPP, or the Open License program. If the outsourcer wants to provide hosted software services, they must sign the Services Provider Licensing Agreement (SPLA) with Microsoft.

QUESTION: Can licenses be transferred between an outsourcer and its customer?

ANSWER: Each type of license has its own rules around license transfer. OEM software licenses must be transferred with the hardware on which the software was originally installed. FPP licenses must be transferred with everything that came in the retail box. Open licenses must be transferred in conjunction with the entire Open agreement. Details about license transfers under a Select agreement or EA can be found at http://www.microsoft.com/licensing/downloads/license_transfer.doc. However, if a customer transfers its licenses to an outsourcer, the outsourcer cannot use those licenses to provide outsourced software services to the customer. Those internal-use licenses may only be used internally by the licensee: the outsourcer after the transfer.

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