

## Microsoft Enterprise Agreement vs. Enterprise Subscription

By Andrew Martin

Microsoft has long offered the Enterprise Agreement (or, “EA”), a licensing scheme for organizations with 250 or more desktops that consists of a three-year term providing free software upgrades during the term of the agreement and a perpetual license for the software at the expiration of the agreement. In the past few years, Microsoft has added an additional licensing scheme – called the Enterprise Subscription – for organizations that do not necessarily need perpetual licenses. This agreement also has a three-year term and software upgrades, but includes a non-perpetual license that expires at the end of the term.

The main advantage of the Subscription over the EA is the ability to decrease their order, or “float down” during the annual true-up. For companies that expect to experience significant fluctuations in workforce over the term of the agreement, the ability to add or subtract subscriptions to match their workforce levels can be particularly attractive. By contrast, with the EA, a company is locked in to their initial order quantities with the only option being to increase their order during the next true-up period.

While the advantages of the pay-for-what-you-use model is a primary consideration, a sometimes less understood advantage of the Subscription comes from the difference in accounting methods between the two options. An EA spend is considered a capital expenditure and therefore hits the company’s balance sheet. As with any CAPEX, a company then must endure a fixed depreciation expense over the next few years, regardless of whether the company is fully utilizing its licenses. Further complicating matters is the issue of how to depreciate server software CAPEX, when a company utilizes virtualization to deploy multiple applications on a single, shared server. The Enterprise Subscription, on the other hand, is an operating expenditure reflected only on the company’s income statement. As an OPEX, business units often are freed from presenting their request to the CFO, so long as they have the budget for the purchase, and the accounting is simplified.

This is not to say that the Enterprise Subscription is a panacea. Organizations with high utilization predictability can realize significant, long-term, economic advantages by going with the EA. Companies might also find that Microsoft is more willing to [negotiate the definition of Qualified Desktops](#) or other terms in the EA that allow for closer alignment with business needs. In any case, when choosing between the two options, I recommend that IT decision-makers consult with both internal and external licensing experts when evaluating their options.



### 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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