

Microsoft Volume Licensing – Top True Up Tips

By Andrew Martin

Microsoft Enterprise Agreement, Enterprise Subscription, and Services Provider License Agreement (SPLA) volume licenses all provide Microsoft's customers with the benefit of a periodic, license-deployment-versus-entitlement reconciliation called a "True Up" (or, as we like to call it, a periodic self-audit). Essentially, Microsoft allows its volume customers to purchase all of the licenses for software deployed during the True Up period at the end of that period, which is particularly attractive because the risk of noncompliance is mitigated (notice I didn't use the word, "eliminated").

To really take advantage of the benefits that come from the True Up feature in these agreements, consider the following five True Up tips:

- During the enrollment, carefully consider the capabilities of your organization to periodically perform the True Up, and negotiate the True-Up term to match those capabilities as much as possible. (This can be done by redefining the Qualified Users or Industry Devices, for example.)
- Ensure those involved in negotiating the original Enrollment and those who will be responsible for conducting the True Up fully understand the nuances of True-Up order timing. (For instance: Additional Products that are not included in the original enrollment must be ordered as they are deployed.)
- Take steps to ensure the confidentiality of deployment, entitlement and other confidential information if you plan to engage with Microsoft partners to conduct the True Up (a program Microsoft calls True Up Assist).
- Go through the steps necessary to characterize the use of each product deployment. (I really can't stress this one enough—for example, a SQL Server processor license is an expensive line-item, especially if the full-version purchase wasn't necessary because the server is actually being used for development and testing purposes.)
- Use the actual True Up as an opportunity to renegotiate unfavorable terms in the volume license itself. (This is an underutilized tactic that can be particularly beneficial.)

Because the interests of resellers and Microsoft representatives do not necessarily align with that of the customer organization, and because many times the reseller and Microsoft reps do not fully understand the terms of the agreements they are selling or administering, we strongly recommend consulting with an experienced third-party before turning over any True-Up information.



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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