

Client-Licensed Microsoft Software in Hosted Environments

By Christopher Barnett

Hosting services customers often want to use licenses that they have acquired to deploy Microsoft software on a service provider's servers. Those customers need to be wary about such deployments, as applicable license terms may restrict their ability to deploy the products offsite. However, the service provider needs to be doubly cautious. After all, the software is sitting on the provider's servers – not the customer's – so the risk of exposure associated with improper licensing is higher. This is especially true in environments licensed under a Services Provider License Agreement (SPLA), since the [exposure associated with SPLA audits](#) is calculated retroactively over the period during which the provider was licensing hosted deployments.

The two principal options to address such a proposal from the provider's perspective are dedicated deployments or becoming an Authorized Mobility Partner:

- **Dedicated Deployments.** Microsoft may allow service providers to deploy customer-licensed software on their infrastructure, but only if they meet certain restrictions that may make the hosting relationship less cost-effective. Those restrictions are:
 - The software must be installed on a physical server dedicated to one customer, with no other customers able to access the server.
 - Per product, software hosted for that customer must be licensed either under the customer's agreement or under the SPLA. In other words, for example, one deployment of SQL Server cannot be licensed under the customer's Select Agreement with all other SQL Server deployments licensed under the provider's SPLA.
 - The customer must accept full responsibility for ensuring that products deployed under its licenses are properly licensed.

Given the fact that shared-infrastructure deployments are more common for most service providers, the above restrictions can make customer-licensed deployments impracticable.

- **Authorized Mobility Partner.** Alternatively, the service provider can sign a License Mobility Through Software Assurance Addendum to its SPLA, pursuant to which it will become an "Authorized Mobility Partner." At that point, the provider is eligible to use shared infrastructure to host Microsoft products licensed under its customers' Volume License agreements, provided those customers comply with the License Mobility requirements in the Product Use Rights (PUR). License Mobility deployments do not need to be reported to the provider's SPLA reseller in its monthly reporting.

However, that addendum entails additional obligations that are not part of the default SPLA terms:

- The provider must "display educational materials for License Mobility through Software Assurance" during the sales process to all customers.
- The provider must retain information Microsoft provides regarding its customers' License Mobility verification status (and then provide that information to Microsoft in the event of an audit).
- The provider must cooperate with Microsoft to investigate and remedy "any potential non-compliance" related to its customers' use of License Mobility benefits.
- The provider must terminate hosting services related to License Mobility benefits if Microsoft determines that a customer is out of compliance with the requirements for those benefits.

- The provider may not move a customer's software deployed under License Mobility benefits from one server farm to another server farm more frequently than once every 90 days.

For many service providers, remaining competitive in the marketplace – which increasingly demands flexibility with regard to third-party software deployed in The Cloud – is worth the cost of the additional burdens associated with becoming an Authorized Mobility Partner. However, businesses need to weigh their options carefully before committing themselves to either licensing model.



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.

Get in touch: cbarnett@scottandscottllp.com | 800.596.6176