ELA Best Practices

Enterprise Software License Agreements

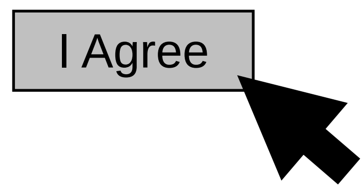
- Best Practices

- Lessons Learned

“Buying” Software

- **Software has been “commoditized” in order to simplify small repeatable transactions**
    - Pre-packaged terms and condition make buying easy for individuals – ***<u>who have very limited choices</u>***

- **Commoditization distorts the true nature of the transaction**
    - We are not buying software
    - We don’t get to own it
    - We are buying a license to use someone else's intellectual property



- **This puts focus on the importance of what that license says, and reminds us that (as a large Government agency) we have choices to exercise.**

ELA Definition

- **A *Purpose-negotiated* license to use intellectual property**
  - ***"Purpose"* implies traceability to the requirement**
  - ***"Negotiated"* implies consideration and execution of choices**

- **Some Key Elements**
  - What is included? (license Grant)
  - Who is included? (license Scope)
  - How does it protect my investment?
  - How flexible is the agreement?
  - What rights does it give me?
  - What obligations does it place on me?
  - What use restrictions does it levy?
  - What does it cost, and how do I evaluate value?

Purpose for Government

- **Reduce *Total Cost of Ownership***
- **Increase flexibility of use across the organization**
  - Unrestricted use of core products
  - License transferability
- **Provide for growth**
  - Establish discounts or priced options for future products, maintenance, services, & training
- **Solve compliance issues (get legal)**
  - Upgrade limited-use licenses
  - Clean up licenses with lapsed maintenance
- **Provide for a broad and successful implementation**
- **Eliminate application-specific (or other limited use) licenses**
- **Negotiate flat, predictable payments**

Purpose for Industry

- **Accelerate Revenue**
  - Willing to take less revenue if sooner
- **Increase market penetration**
  - De-facto standardization
- **Reduce administrative costs**
  - Single renewal each year
- **Provide for more predictable revenue**
  - Huge metric for company valuation
- **Solve compliance issues**
  - Critical issue for companies built on intellectual property
- **Move from transactional to strategic business**
  - A seat at the table
- **Develop strong reference accounts**
  - Marketing value

The Good the Bad and the Ugly

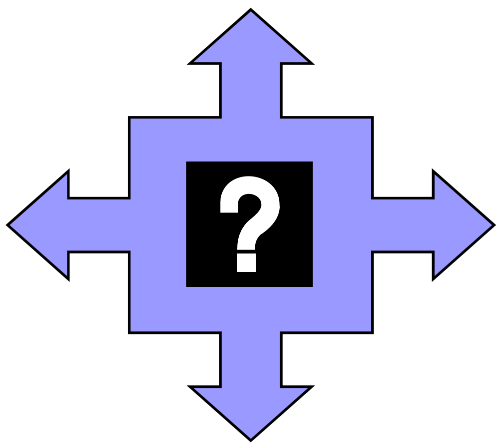
- **Why some ELA's succeed**
  - License reflects Requirement
  - Payments are fair and budgeted
  - Flexible to accommodate a changing environment
  - Licenses are supported
- **Why some ELA's Fail**
  - I don't need it (stability of requirement)
  - It's too expensive (price not fair and reasonable)
  - My vendor was acquired or went out of business (vendor stability)
- **Avoiding the Ugly**
  - There are lots of examples of success and failure with ELA's
  - Learn from others mistakes
  - Structure for success

Lesson 1: Select Good Candidates

An enterprise software agreement is a *long-term* *strategic partnership*

Is the technology essential to your mission?

Will the product Succeed In the marketplace?



Is the vendor financially stable?

Is the vendor committed to supporting the product long term?

Lesson 2: Gather Requirements Relentlessly

New product requirements are usually *easier to determine* than existing products

- Most organizations do not know how many Copies of Oracle, Microsoft, etc. they have
- Records are incomplete, not centralized
- Purchasing is not centralized

Data calls are usually *not* very helpful

- Non-responsive
- Ambiguous data calls
- Results can be skewed by expectation of an ELA

Industry can provide *significant* help

- But Government ***must*** do independent validation

Lesson 3: License Grant (What's included)

- **License only core products**
  - **(**avoid paying for products you don't need**)**
  - Corporate discount guide-lines and games

- **Focus on products in broad use across the organization**
  - Significant install base
  - Large deployment requirements

- **Obtain unrestricted use of core products**
  - Build the ELA around the core products

- **Provide pre-negotiated discounts for lesser used products**
  - Add Options for known (or potential) requirements
  - Add a BPA for unknown future requirements

Lesson 4: License Scope (Who's Included)

Define your enterprise carefully

- Broadly enough to include everyone who needs to be covered
- Tightly enough to avoid paying for outsiders
- Avoid application-specific licenses

Think ahead

- Your program will be replaced
- Your mission will change
- Government agencies will be reorganized

Provide for the ability to transfer licenses

- Consider the larger picture
- Are you a program within an Agency?
- Are you an agency within the Federal Government?
- Does your Agency depend on other agencies?
- The "enterprise" is ultimately the Federal Government (Goal)

Lesson 5: Build a Business Case

- Valuation is one of the hardest areas to address
  - How does industry value it?
- A good Business Case empowers us to assess the ELA's worth
- Being confident in the ELA's value contributes directly to a successful license

VENDOR QUOTE	BUSINESS CASE
What's it cost?	What's it worth?
Can I afford it?	Should I afford it?
What will I spend if I do it?	What will it cost me if I don't do it?

Lesson 5: Build a Business Case

Lesson 5(a): Focus on *Total Cost of Ownership*

- **Software license fees are the tip of the iceberg**
- **Also consider:**

•Maintenance

•Training

•Installation/Implementation

•On-site Support

•Distribution & Configuration Management

•Infrastructure Upgrades

•Downtime, change-over costs

•Administrative costs

BUILD A BUSINESS CASE

Lesson 5(b): Look outside the box

- **Will I need to buy hardware to support the ELA**
  - Will the ELA run on my existing hardware environment?
- **Will an upgraded hardware environment impact other software license agreements?**
  - MIPS-based licenses?
- **Which 3rd party products will no longer be needed**
  - Can I stop paying maintenance or supporting legacy products or systems
- **Are there a cost to convert to the ELA**
  - From legacy products or systems
- **Does the anticipated ELA take these things into account?**

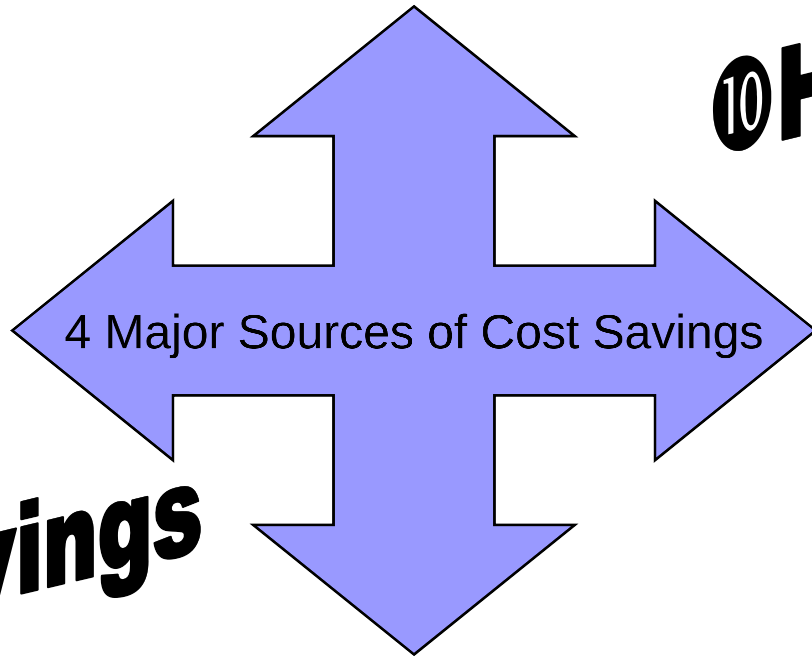
BUILD A BUSINESS CASE

Lesson 5(c): Distinguish between hard and soft savings

Reduced License Cost

⑩ Hard Savings

“Standardization” benefits

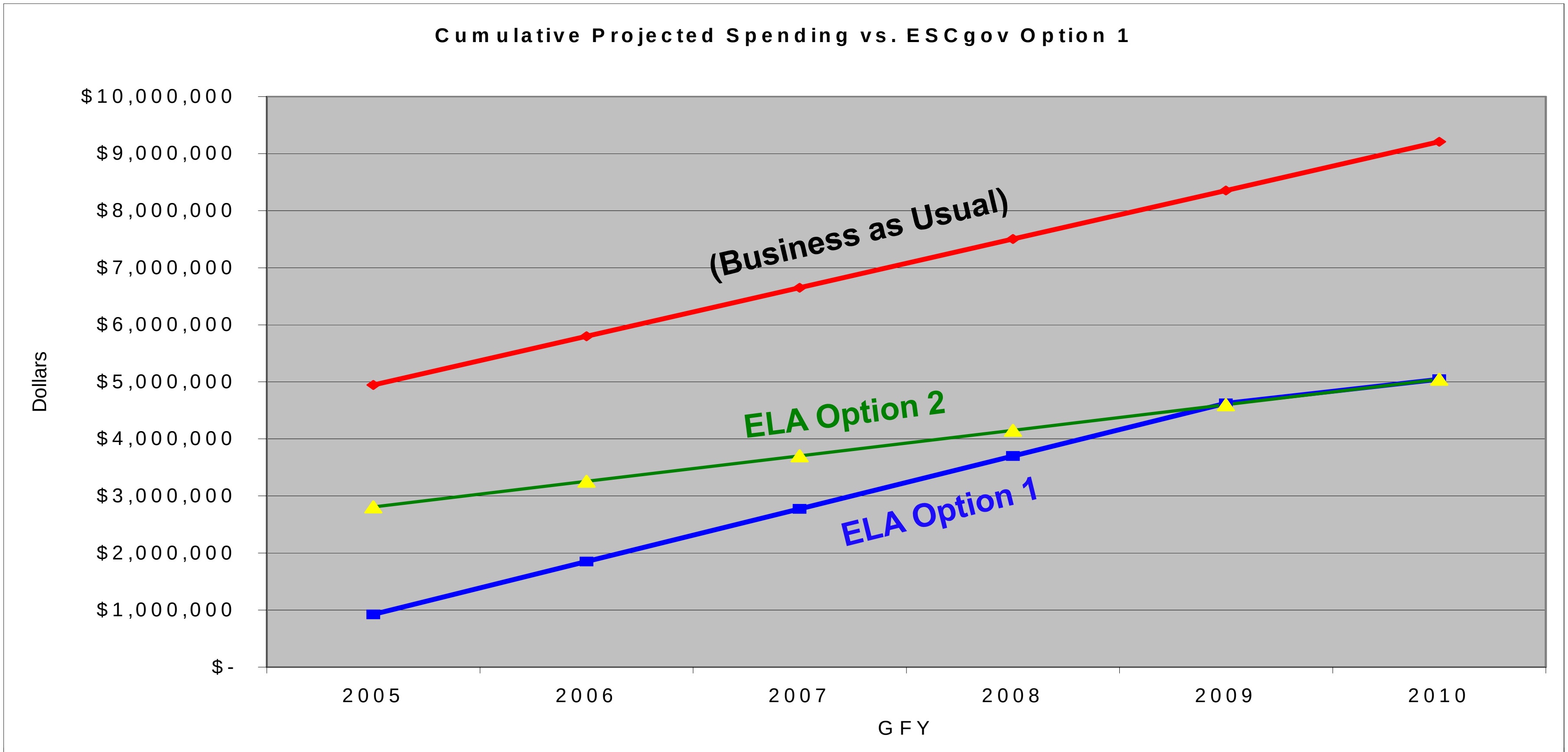


Reduced Maintenance Cost (recurring)

⑩ Soft Savings

Reduced Administrative Costs (recurring)

Lesson 5(d): Define the Cost of *NOT* doing the ELA



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Lesson 6: Read the Small Print

- Software companies use a host of so-called" standard" terms which are designed to benefit the ***software company***, ***Not the customer***

Negotiate or ***Eliminate***

- Scope of license grant
- Restrictions on transferring licenses
- Restrictions on processing other workloads
- Required Maintenance
- Platform Restrictions
- Onerous license tracking or reporting requirements
- Term licenses
- Restricted or Application-specific licenses

Lesson 7: Negotiate Support Options

- **Drives Down Cost**
  - Maintenance costs are typically 15% to 25% of the software price (and recur every year, often with escalation)
  - **This is the major driver in your life-cycle cost**

- **Protects your Investment**
  - Negotiate options for as many years as possible
  - Remember that these are *options* that establish the most you will pay
  - **The fastest way to de-value your ELA is to lose control of maintenance costs**

- **Helps Budgeting**
  - Give yourself the benefit of knowing your costs well in advance

Lesson 7: Size and Timing Matter

- End of vendor quarters & years

  -Better deals are available at the end of the financial quarter or year due to commission structures and management pressure to meet financial goals

- Larger *buys (or contracts) drive larger discounts*

"Anticipated demand" as reflected in BPA's, IDIQ's or GSA schedules do not achieve "breakthrough discounts"

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Lesson 8: Understand Revenue Recognition

- **Understand Vendor Revenue Recognition**
  - ***Accounting regulations require that a software sale***

    -Must be purchased in the current period, as evidenced by PO

    -Must be shipped (often accepted) in the current period, as evidenced by shipment record, signed DD250, etc.

    -Must reasonably expect to be paid within 364 days or within the companies internal policy (usually 30 days to 90 days)

    -Must contain no contingencies or terms that jeopardize revenue recognition (payment terms, ramping, cancellation provisions, etc)

- **Understanding "Rev Rec" will enable you to how concessions are valued by industry, and make you a better negotiator**

- ***Understanding "Rev Rec" will teach you how to ask for concession in ways that are more likely to be successful***

Lesson 9: Structure for Success

1. **BPA (Based on anticipated demand)**
    - Establishes a price below a common benchmark (GSA)
    - Does not achieve the best discounts
        - Discount based on incremental buy versus entire requirement
        - Flexibility comes at a higher price
    - Does not substantially reduce administrative costs
2. **Phased Purchase**
    - Better discounts based on aggregated annual buys
    - Does not leverage the entire (multi-year) requirement
    - Can slow deployment until all licenses are purchased
3. **Up-front Purchase**
    - Lowest license cost
    - Can be hard to execute due to funding constraints
    - Higher risk since money is 100% gone in year 1
4. **Lease (perpetual license)**
    - Low license cost like an up-front purchase (the “trade”)
    - Flexible because Government can opt out if need evaporates
    - Flexible because payments are planned and budgeted
    - Provides all licenses up front with perpetual ownership at completion of the plan
    - Usually the lowest (executable) life cycle cost
    - Frees up funds for other initiatives

Lesson 9: Structure for Success

ELA Structure	RISK	Flexibility	Cost	Explanation	Best Use
Up-front Buy	HIGH	LOW	LOWEST	High Risk because all funds are gone in first year. Lowest Cost results from up front cash. Low Flexibility because booked transactions are hard to modify (unless to increase)	Demand is known, solid, and unlikely to change (Database, Middleware)
Software Subscription	Shared	Medium	LOW	Shared Risk: Contractor makes up-front investment to initiate service, Government pays periodically in arrears as service is delivered. Medium Flexibility Government gets preferred payment terms and ability to increase service level. But decreasing service can be problematic. Low Cost results from steady, predictable spend	Demand is steady, ongoing. Requirement for service-based delivery.
Utility Service	Shared	HIGH	Medium/Low	Shared Risk: Contractor makes up-front investment to initiate service, Government pays on an as-used basis. High Flexibility: Government gets preferred payment terms and the ability to increase or decrease service level. Low Cost results from only paying for actual consumption.	Firm requirement, but demand varies over time. Also, fee for service organizations needing to allocate costs.
BPA	LOW	HIGH	HIGHER	Low Risk: Government pre-negotiates price, but does not guarantee any purchase value. High Flexibility: Government may purchase as much (or little) as it needs as demands arise. High Cost: Vendors reluctant to offer steep discounts in the absence of a funded order	Demand is small but growing. Future demand is uncertain. Government can benefit from consolidating purchase activity and administration.

Lesson 10: You have the most Leverage

- **<u>Before</u> the deal is inked**
  - Don't rush the acquisition and then try to fix the ELA from a position of weakness. Consider these lessons before you sign.

- **When you act like a large enterprise**
  - Avoid the BPA trap.
  - Do the hard work of aggregating requirements and pooling funds. Then buy from a position of strength and confidence

About ESCgov

- *ESCgov is a premiere provider of enterprise software license agreements (ELAs) for public sector agencies. ESCgov brings expertise with ELA valuation, negotiation and best practices. ESCgov is committed to producing fair and reasonable agreements that facilitate long-term technology partnerships between the parties.*

- *ESCgov's study of the often conflicting business environments of Government and industry has led to the use of a number of contractual structures designed bridge these environments in productive partnership. These structures may include managed service agreements, utility pricing, and share-in-savings contracts and leasing. In all cases ESCgov seeks to leverage best practices and lesson- learned to avoid pitfalls, streamline acquisition and encourage partnership. ESCgov is committed to the concept that true expertise breeds simplicity. Contracts should be easy to understand. Value should be clear.*

- *For additional information, visit www.ESCgov.com*