Unlimited License Agreements

An overview of the major risks you should be aware of.

An Insight Whitepaper

Introduction

Many enterprises enter into an Unlimited License Agreement (ULA) from Oracle Corporation, believing they don't have any risks to worry about. But is this true? Although ULAs are designed to alleviate many worries of software license management; you can still face large financial, legal, and operational risks.

This Insight whitepaper provides an overview of the most common issues seen at those enterprises that entered into an Unlimited License Agreement, and is written together with Insight's Strategic Business Partner b.lay.
The content of this whitepaper is based upon our experiences of the last 10 years, in which we worked with many enterprises, globally, and is grouped around the following area's:

Legal Entity Structure?

An Unlimited License Agreement (ULA) is limited to a number of legal entities. These are typically your majority owned subsidiaries, and can sometimes also include your minority owned subsidiaries, joint ventures or legal entities where you have voting rights. This limitation is described in the "Customer Definition" section of the agreement.

Acquisitions

If you acquire legal entities during the term of your ULA, these legal entities do **not** have the right to deploy the software programs as included in the ULA. In case such an acquisition results in an increase of employees or revenue which is less then 10%, you typically can ask Oracle to add these legal entities to your agreement. Oracle normally honors such a request but will need to approve this. In case Oracle approves such an "extension" of the ULA agreement, Oracle requires you to "roll-in" the existing licenses of the acquired entity and the corresponding support fees are added to the Total Support Stream. This means that the existing licenses of the acquired entity will no longer exist (since they may continue to use the programs under the ULA) and the support maintenance fees of these licenses will be added to the total support maintenance fee you pay already under the ULA agreement itself. However, if Oracle does not approve such an "extension", the acquired entity must (remain to) license the deployment of the software programs separately.

Divestures

If you decide to divest a legal entity during the term of your ULA, the divested entity is normally entitled to continue using the unlimited deployment rights for another 6 months (as long as this does not exceed the term of the agreement). After these 6 months, the divested entity would need to license the deployment of the software programs themselves. As an end-user you would however need to make sure that this "grace period" of 6 months needs to be stipulated in your agreement. If this grace period is not granted by Oracle, the divested entity needs to have licenses as of the date on which the entity is divested, since it is no longer under your "control".

How Your Legal Structure Can Pose Risks

During the ULA certification process, the deployment and usage of the Oracle programs needs to be assessed within ALL the legal entities included in the Customer Definition in order to come to a complete and accurate overview of the quantity of the then-current deployment of Oracle programs. This will be the number of licenses on which the ULA will be certified. Time pressure or misunderstandings of the agreement often lead to only the most important entities being included in the ULA certification. This means that immediately after the certification of the ULA, these legal entities, which are forgotten to be included in the certification process, do have no usage rights anymore after the certification and are therefore deploying software without a license. Operating without the proper licenses leads to the huge legal and financial risks of noncompliance.

Certification Date and Term of the Agreement?

ULAs are limited for a specific period of time, usually 2, 3, or 4 years. The terms typically state that you need to certify the number of Processors on which the software programs as included in the ULA are deployed, within 30 days after the expiration date of the ULA. A C-level representative of your organization needs to sign off this certification to ensure an accurate certification. An incorrect certification by a C-level representative is considered fraud, under international law and IP laws in most countries. Going forward, the usage rights of your organization will be fixed on that certified quantity of software licenses.

How Certification Dates And Terms Of The Agreement Can Pose Risks

The time it takes you to prepare and execute the certification of your ULA should not be underestimated. In our experience, preparations for the ULA certification should begin at least 3 to 6 months before the expiration date itself in order to certify correctly. Optimization and the maximization of your ULA should begin at least 1,5 to 1 year before the expiration date of the ULA itself. Certifying your ULA under time pressure increases the risks of an incorrect certification, resulting in "under certification" (resulting in unlicensed use of software programs after the certification) or "over certification" (considered to be "fraud"). Missing your obligation to certify on time could result in a claim that you are in breach of your contract and that your agreement will therefore be terminated.

All Oracle Software Programs Included?

Despite the name, Unlimited License Agreements are in fact limited to specific license agreement. The license agreement is limited to a number of specified software programs. Organizations often however have the perception that all Oracle software programs or an entire group of software programs (e.g. Oracle Database Programs) can be deployed in an unlimited capacity under a ULA. This is not true. Only these programs specified in the agreement can be used in an unlimited capacity.

To make it a bit more complex, the Oracle software is often shipped with various (separately licensable) functionalities, and there are no technical restrictions within the software that would stop you from using these functionalities for which you are not licensed. Take the following example. Let's say you have a ULA for Oracle Database Enterprise Edition, Partitioning, Diagnostics Pack and Tuning Pack. Is everyone within your organization aware of the fact that they can't use any of the 20 other functionalities, which are shipped/downloaded together with the Oracle Database Enterprise Edition itself (e.g. database options and database management packs) without licensing these functionalities separately?

How (Other) Oracle Software Programs Can Pose Risks

It's not a surprise that things go wrong. Think about all the different departments and the multiple people that should be aware of which programs can be used in an unlimited capacity and which specific functionalities you are (and are not) entitled to use. This includes legal, purchasing, sourcing, database administrators, business application managers, anyone you outsource to, and many others. If all these people don't know the specific programs and functionalities your agreement covers, and you don't perform regular baselines to assess your then current deployment, you can quickly be in a situation in which you are breaching your contract.

All Environments And Data Centers Included?

A ULA provides typically unlimited usage rights of specific software programs for ALL your environments; so this includes development, acceptance, test, production, disaster recovery, outsourced environments etc. At the end of the agreement, you are responsible yourself to certify the total number of Processors of all these environments used within or for the business purposes of your organization. Because of time pressure, misunderstandings of the agreement, or the lack of a complete and accurate hardware and software inventory scan of your (in-house and outsourced) infrastructure, in many cases not all the environments are taken into account during the ULA certification process.

You may for example only include you production systems (and forget to include their test, development, acceptance or DR environments), or you may only include your main data centers (and forget the smaller and/or outsourced data centers in other countries). Not including all your servers and/or datacenters results in these environments being without a license, immediately after the certification process.

How Exclusion Of Environments / Datacenters Can Pose Risks

Miscounting environments can lead to huge financial exposure and other consequences of noncompliance. As an example, missing only 1 server with a total of 4 Processors on which only the Oracle Database Enterprise Edition is deployed would already result in a financial exposure of 160.000 USD (List License) Hiring a software license management company to help you perform a proper hardware and software inventory is a sound investment compared to the financial risks you may face if you forget to include certain environments or let alone whole data centers.

Counting As Per The License Metric Definition?

The software programs included in the agreement need to be certified on a certain license metric. For Oracle's Database, Middleware, and Business Intelligence programs, this is normally on a 'Processor' license metric.

Counting "Processors"

A Processor is specifically defined in the agreement, with many factors that can have an impact on the way you need to count the number of Processors on which the software is deployed, including:

- Number of CPUs
- Number of Cores per CPU
- Type of CPU
- Purchase date of the hardware
- Configuration of the hardware itself (e.g. virtualization, logical partitioning)

Not applying the right methodology, licensing rules and calculations on the number of Processors can lead to an incorrect ULA certification and can result in large compliance issues.

For example, if you have 50 servers with one single-core Intel processor each running Oracle's Database Enterprise Edition, for which you apply an Oracle Processor Core Factor of 0.5 for the Intel processors, you would certify: 50 servers x 1 processor x 1 core x 0.5 = 25 Processors However, because the servers use single-core processors, you would need to apply an Oracle Processor Core factor of 1.0 (instead of 0.5 which is only applicable for multi-core processors). Therefore, you would need to certify: 50 servers x 1 core x 1.0 = 50 Processors. The wrong application of this single Core Factor would result (after the ULA is certified) in a noncompliance of 25 Processor licenses of Oracle Database Enterprise Edition, leading to a list license fee exposure of 1.000.000 USD.

Installed And Running

The ULA certification clause typically states that all the Processors on which the software programs are installed AND running need to be included in the certification, while the standard Oracle Processor definition states "installed and/or running". By using the phrase "installed AND running," Oracle intends to avoid customers installing large amounts of software on certain desktops/laptops/servers, which are not actually used to increase the number of licenses they can certify at the end of the agreement. But how do you determine what is only installed within your network and what is really running or in use? For example, if you see in your Database that there is a table called Sales or Costs which is owned by the user called SH that is making use of the database option Partitioning. Can you conclude that you are using Partitioning and need to certify this usage? The answer is no: Sales and Costs are standard sample schemas in the Oracle Database itself, making use of Partitioning by default. As such, this "usage" does not require licensing for Partitioning and should therefore not be included in your ULA certification.

Server Virtualization

Virtualization can make the certification process even more complicated, and getting even one thing wrong can lead to huge risks. Oracle differentiates different types of virtualization and separates these in "Soft Partitioning (e.g. VMWare) " and "Hard Partitioning (e.g. LPAR's)".

Think for example about that a VMWare cluster you are using in conjunction with Oracle's software. Do you know how to count the number of processors on which you need to certify, if you deploy the software in a virtual VMWare cluster? All physical processors and/or cores of the physical machines, which are part of the VMWare cluster, must be counted. BUT, any of the 23 separate licensable database options and database management packs which you may use in conjunction with your database in that virtualized environment would also need to be certified **or separately licensed** in the same amount as the database licenses. It's not uncommon that we see customers certifying a large amount of Processors on which the Oracle Database Enterprise Edition is deployed, not realizing themselves that their (unintended) usage of a database option (for example Advanced Compression) requires them to license the database option separately as well for the same amount of Processors on which they have certified their Database ULA.

Another example you can think of is the use of IBM Logical Partitioning (LPAR) in conjunction with Oracle's software. Do you know how to count the number of processors on which you need to certify if you deploy the software in logical partitions (LPAR's) in a dedicated capacity or in a shared resource pool? And are you aware of the fact that for capped Sun Solaris Containers the number of cores required to be licensed/certified should be determined by calculating: (ncpus or pset.max) / (number of threads per core) = cores to be licensed. And what would you need to do if you host hardware through companies like Amazon? Would you need to include these as well in your certification?

Conclusion?

Unlimited License Agreements can be an exceptional arrangement for your organization that can provide a lot of benefits, as long as you are aware of these major (and other) important details and as long as you can manage the risks related to it. Software license management companies like Insight support you in managing your ULA so you can do more and worry less. Our services make sure you can maximize the value of your ULA without any fears of legal, financial or operational risks.

Contact us through joost.bakker@insight.com to learn more about how we can support you!

About The Authors

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Joost Bakker

Joost joined Insight, your Trusted Advisor, as a global account manager in August 2008. After 3 years he returned back to his roots in Oracle licensing as he worked for Oracle 6 years prior to Insight. Joost uses his knowledge of 6 years in Oracle License Management Services (LMS) to educate, equip and enable software end-users in their challenges with regards to proper software license management.

Joost started in November 2002 as an Oracle Licensing Consultant, after which he fulfilled the role of Benelux Manager for a period of 2½ years. Hereafter Joost was involved in the Strategic Accounts team for LMS in EMEA, where he serviced the international key accounts for Oracle in EMEA. Joost holds a bachelor degree in Company Economics and IT from the Hogeschool Enschede in The Netherlands.

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Richard started in October 2005 as an Oracle Licensing Consultant, after which he fulfilled the role of Regional LMS Director for the Europe South region (including Belgium, Netherlands, Luxembourg, France, Spain, Italy and Portugal) for a period of 4 ½ years. In this role, Richard managed a team of 40 licensing consultants and was responsible for setting the strategic direction of the LMS organization. Richard holds a master degree in IT, from the University of Amsterdam in The Netherlands.

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