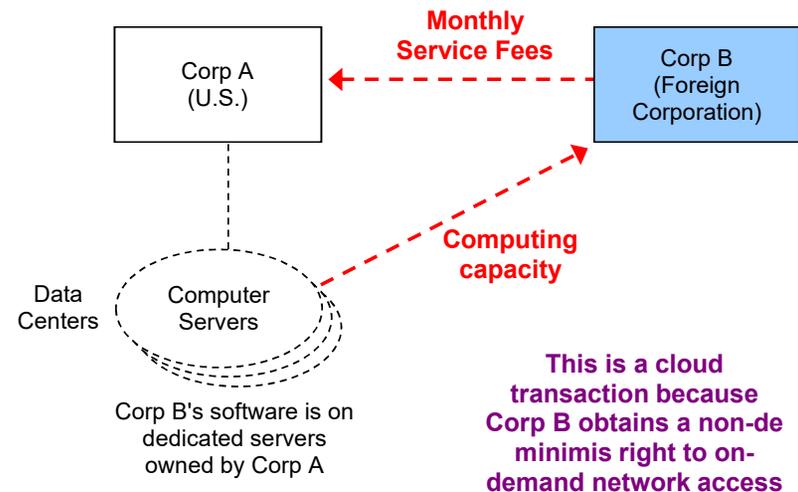


**Prop. Reg. 1.861-19(d),
Example 2**

**Supplying Computing Capacity
on Dedicated Servers:
Provision of Services**

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Corp A operates data centers on its premises in various locations. Corp A provides Corp B computing capacity on Corp A's servers in exchange for a monthly fee based on the amount of computing power made available to Corp B. Corp B provides its own software to run on Corp A's servers. In order to offer more security to Corp B, Corp A provides Corp B computing capacity exclusively through designated servers, which are owned by Corp A and located at Corp A's facilities. Corp A agrees not to use a designated server for any other customer for the duration of its arrangement with Corp B. Corp A's compensation reflects a substantial return for maintaining the servers in addition to the rental value of the servers. Corp A agrees to keep the servers operational, including by performing physical maintenance and repair, and may replace any server with another server of comparable functionality. Corp A agrees to provide Corp B with a payment credit for server downtime. Corp B has no ability to physically alter any server.



(A) As in Example 1, the transaction between Corp A and Corp B is a cloud transaction described in Reg. 1.861-19(b) because Corp B obtains a non-de minimis right to on-demand network access to computer hardware resources of Corp A.

(B) The fact that Corp A provides computing capacity to Corp B through designated servers indicates that such servers are not used concurrently by other Corp A customers. However, Corp A retains physical possession of the servers. In addition, Corp A's sole responsibility for maintaining the servers, and its sole right to replace or physically alter the servers, indicate that Corp A controls the servers. Although Corp B obtains the exclusive right to use certain servers, Corp B does not have a significant economic or possessory interest in the servers because, among other things, Corp A retains the right to replace the servers, Corp A bears the risk of damage to the servers, and Corp B does not share in cost savings associated with the servers because the fee paid by Corp B to Corp A does not vary based on Corp A's costs. The compensation to Corp A substantially exceeds the rental value of the servers. The other relevant factors are analyzed in the same manner as Reg. 1.861-19(d)(1). Taking into account all of these factors, the transaction between Corp A and Corp B is classified as a provision of services under Reg. 1.861-19(c).