

Volume License Agreement

INTRODUCTION. This Volume License Agreement ("Agreement") is made between the Micro Focus entity fulfilling Your order ("Micro Focus"), and the customer accepting these terms ("Customer" or "You"). This Agreement applies to Your order submitted under Micro Focus' Volume License Agreement Program ("VLA Program"). By submitting an order under the Micro Focus VLA Program to a Micro Focus Reseller, You agree to be bound by the terms of this Agreement. This Agreement is effective on the date Your order is accepted by Micro Focus ("Effective Date").

1. **DEFINITIONS.** Capitalized terms used in this Agreement are defined as follows
 - 1.1 Documentation means any user documentation and manuals (including electronic versions) provided by Micro Focus with a Software product.
 - 1.2 Maintenance means the right to receive Upgrades and Updates for protected Software products through the coverage period, and may also include product-specific support and a training component.
 - 1.3 Price List means the Corporate Price List as published periodically by Micro Focus.
 - 1.4 Reseller means a Micro Focus-authorized entity that sells You licenses or services under the VLA Program.
 - 1.5 Software means the Micro Focus software product licensed to You under this Agreement, excluding Services Deliverables.
 - 1.6 Update means a fix or compilation of fixes released by Micro Focus to correct operation defects (program bugs) in the Software.
 - 1.7 Upgrade means any new version of Software which bears the same product name, including version changes evidenced by a number immediately to either the left or right of the decimal (e.g. SUSE Linux Enterprise Server 9.x to 10.x). If a question arises as to whether a product offering is an Upgrade or a new product, Micro Focus' opinion will prevail, provided that Micro Focus treats the product offering the same for its end users generally.
2. **LICENSING.** The license grants and restrictions for the Software are contained in the End User License Agreement ("EULA") accompanying the Software. A copy of the EULA can be obtained at <http://www.novell.com/licensing/eula>. Subject to Your payment of the applicable fees and compliance with this Agreement and the applicable EULA, Your license to use the Software will be perpetual, except as expressly provided otherwise (such as with beta products or products licensed on a subscription basis). To the extent of any conflict or ambiguity between the terms and conditions of this Agreement and the EULA, the terms and conditions of this Agreement will prevail. Ownership of Software is held by Micro Focus and/or its licensors.
3. **PROGRAM CHANGES.** The VLA Program Guide is available at <http://www.novell.com/licensing/> and forms an integral part of this Agreement. To the extent of any conflict between the terms of this Agreement and the VLA Program Guide, the terms of this Agreement will prevail. Any changes will apply

only to purchases made after the effective date of the changes. If any material change to the VLA Program Guide has an adverse effect on Your participation in it, You will be entitled to terminate Your Agreement by giving written notice to Micro Focus within 30 days after receiving notice from Micro Focus of such a change.

4. **MAINTENANCE.** Under the VLA Program, You must purchase Maintenance with each new license order. Should You elect to purchase Maintenance for existing Software licenses, all of Your licenses (installations for Linux-based products) for that product must be covered. Upon renewal, your payment of Maintenance fees will be deemed a representation of the number of licenses owned of the Micro Focus product or, for Linux-based products, the number of installations. Additional VLA Maintenance requirements are located in the VLA Program Guide. During the period for which Maintenance is fully paid for all licenses or installations, Micro Focus will provide You with the following:

Software Upgrades. If Micro Focus commercially releases any Upgrades and/or Updates during the period covered by Your Maintenance, Micro Focus will make such Upgrades and/or Updates available to You within a reasonable period of time after they become commercially available. To obtain Updates and Upgrades, You will need to subscribe, at no extra cost, to Micro Focus' Upgrade notification service. You will be entitled to install and use such Upgrades and/or Updates up to the number of licenses for which You have purchased Maintenance. Use of Upgrades is subject to the restrictions of the EULA provided with the Upgrade.

Technical Support. Micro Focus will provide technical support services as described in the then-current, region-specific, support services guide published on <http://support.novell.com/programs/vla.html>, the terms of which are incorporated into this Agreement. The level of technical support services to which You are entitled under the VLA Program is determined at the time of purchase. In order to receive technical support for a Micro Focus Software product, all of Your licenses for that Micro Focus Software product must be covered under Maintenance.

- 4.1 **Installed Base.** To include under Maintenance licenses that are not at the current product version, You must upgrade them by purchasing the same quantity of new licenses or, if offered by Micro Focus, upgrade licenses, for the current version. Each copy must be installed on a machine corresponding to the Maintenance sku or part number describing such product or Maintenance offering (e.g., Open Enterprise Server Standard Maintenance cannot be mixed with Open Enterprise Server Priority Maintenance, nor can Customer apply Maintenance benefits received pursuant to a particular subscription offering, such as SLES for X-86, to a different platform for which the offering does not apply, such as SLES for zSeries). Any unauthorized use of Maintenance will be treated as a material breach of this Agreement. If You wish to increase the number of copies of the Software product installed, You must purchase the required Software license and/or Maintenance from a Reseller for each additional copy installed. Upon renewal, Your submission of a purchase order or payment of Maintenance fees will be deemed a representation of the number of copies of the Software receiving Maintenance benefits.

- 4.2 **Ordering Maintenance and Subscriptions.** Unless the Price List allows You to purchase multi-year Maintenance or subscriptions for the relevant Software product, Maintenance and subscription fees will be calculated and paid for on an annual basis. All Maintenance and subscription fees are paid in advance. Each Maintenance and subscription period shall expire at the end of a one-year period (or the end of the multi-year period), no matter when during such period the Maintenance or subscription was purchased, unless Micro Focus and Customer agree to synchronize the Maintenance or subscription.
- 4.3 **Refunds.** If this Agreement is terminated due to Micro Focus' breach of this Agreement, Micro Focus will refund any Maintenance fees paid for the time period past the first day of the month following the termination date. Maintenance fees are not refundable except as expressly provided in this Agreement.
- 5. SERVICES.**
- 5.1 **Support, Consulting or Education Services.** Your optional purchase and Micro Focus' delivery of Services, such as technical support, consulting or education ("Services") under the Agreement, are subject to the following terms, unless otherwise agreed in a separate agreement specifically covering those Services.
- 5.2 **Statement of Work.** The parties may choose to enter into a Statement of Work ("SOW") that describes the Services and may cover items such as project scope, code, documentation, media and other objects ("Deliverables"). Any such SOW will be governed by this Agreement's terms.
- 5.3 **Completion Criteria.** Services will be deemed complete unless within 10 days after delivery, You give Micro Focus written notice of aspects in which the Services do not meet the SOW requirements. Upon receipt of such written notice, Micro Focus will use commercially reasonable efforts to make such changes as will be required to correct any deficiencies; if Micro Focus is unable to correct the Services within a reasonable period of time, Micro Focus or You may terminate the relevant SOW and Micro Focus shall provide a refund of the amount You paid for the Services Micro Focus did not correct.
- 5.4 **License.** Subject to payment of applicable fees for Services and Deliverables, Micro Focus grants You a nonexclusive, nontransferable, worldwide, perpetual license to reproduce and internally use the Deliverables. All proprietary rights notices must be faithfully reproduced and included on all copies (including any modifications or adaptations allowed by this Agreement or any SOW). Except as expressly provided otherwise in this Section or any SOW, Micro Focus (and/or its licensors) owns all right, title and interest, including all intellectual property rights, in any Deliverable developed, delivered and/or used by Micro Focus in the performance of any Services. Neither this Agreement nor any SOW changes ownership of any pre-existing materials.
- 5.5 **SOW Continuance.** If a SOW extends beyond the term of the Agreement, this Agreement will continue in effect solely with respect to such SOW.
- 6. ORDERING AND DELIVERABLES.**
- 6.1 **Orders.** You must place an order for the appropriate number of Software licenses and related Maintenance through a Reseller. The price You pay for Software and support services will be the price you negotiate with Your Reseller. You must place an order for the appropriate number of new Software licenses and associated Maintenance within 30 days after first use of the licenses. You must place an order for the appropriate renewal Maintenance or subscriptions at least 5 days prior to the expiration date of Your then-current Maintenance or subscription ("Order Due Date"). Orders submitted after the Order Due Date will incur a late order fee equal to as much as 10% of the renewal Maintenance and subscription fee due. The late order fee is in addition to annual Maintenance fees, late payment interest, and other obligations that may be due and payable. EXPIRING SOFTWARE SUBSCRIPTIONS AND SOFTWARE MAINTENANCE ARE AUTOMATICALLY RENEWED FOR AN ADDITIONAL 12 MONTHS AT THE THEN-CURRENT RENEWAL CHARGES UNLESS, AT LEAST 30 DAYS PRIOR TO THE SUBSCRIPTION OR MAINTENANCE EXPIRATION DATE, MICRO FOCUS RECEIVES, EITHER DIRECTLY FROM YOU OR THROUGH YOUR RESELLER, YOUR WRITTEN NOTIFICATION THAT YOU DO NOT WANT TO RENEW. YOU AGREE TO PAY SUCH RENEWAL CHARGES. YOU FURTHER AGREE THAT YOUR RESELLER OR MICRO FOCUS MAY INVOICE YOU WITHOUT A PURCHASE ORDER FOR FEES OTHERWISE OWING UNDER THIS AGREEMENT.
- Payment terms for any orders submitted directly to Micro Focus under this Agreement shall be net 30 days from the date of Micro Focus' invoice. Payments made later than the due date will accrue interest from the date due to the date paid at the lesser rate of 1% per month or the maximum allowed by applicable law.
- 6.2 **Taxes.** VLA fees are exclusive of all applicable taxes. You will pay and bear the liability for taxes associated with VLA deliverables, including sales, use, excise, and added value taxes but excluding taxes based upon Micro Focus' net income, capital, or gross receipts, or any withholding taxes imposed such as a withholding tax on a royalty payment made by You where such withholding is required by law. In the event You are required to withhold taxes, You will furnish Micro Focus all required receipts and documentation substantiating such payment. If Micro Focus is required by law to remit any tax or duty on Your behalf or for Your account upon delivery, You agree to reimburse Micro Focus within 30 days after Micro Focus notifies You in writing of such remittance. You will provide Micro Focus with valid tax exemption certificates in advance of any remittance otherwise required to be made by Micro Focus on Your behalf or for Your account where such certificates are applicable.
- 6.3 **Delivery.** Unless otherwise agreed to, the Software (including its documentation) will be delivered to Customer in binary (electronic) format through electronic software distribution. For delivery from the USA to destinations within the USA, delivery terms are FCA (Free Carrier, INCOTERMS) Micro Focus' dock. Micro Focus will ship ground only and prepay freight from Micro Focus' dock to Your forwarder or named

destination. All other freight arrangements will be billed to You. For delivery from the USA to destinations outside the USA, delivery terms are DAP-POE (Delivery At Place – Port of Entry, INCOTERMS). Micro Focus will select a carrier and will prepay shipping and handling charges. You will be responsible for all applicable import duties and value added tax, goods and services tax, or other similar taxes and fees. For delivery within Europe, the Middle-East and Africa ("EMEA"), delivery terms will be CPT (Carriage Paid To Destination, INCOTERMS). Micro Focus will select a carrier, prepay the freight and invoice You for freight and any handling costs. Destinations for EU countries will be Your nominated delivery point; for non-EU countries, destination will be the point of import. CPT does not include the payment by Micro Focus of taxes or any applicable import duties.

- 6.4 **Title & Risk of Loss.** For shipment within the United States, title to any deliverables, exclusive of Micro Focus' rights to intellectual property, and risk of loss will pass to You upon delivery to Your carrier. For shipments from the U.S. to outside the U.S., title to and risk of loss will remain with Micro Focus until the shipment arrives at the importing country's entry port (or at a bonded warehouse within Canada or Mexico if Customer so requests shipment). For shipments within EMEA (i.e. originating in Ireland), title to and risk of loss passes to You at the Irish shipment point. If You insure shipment, the insurance will protect Micro Focus' interest until title passes as set forth above. Notwithstanding the above provisions, no title to Master Software is transferred to You.
- 6.5 **Price and Product Changes.** Micro Focus may revise the Price List at any time to (a) change the suggested list prices for Software, Maintenance, and other services or deliverables, and (b) add or delete Software licenses or other services or deliverables available for purchase.
- 6.6 **Audit.** You will keep complete and accurate records of all Software use. Micro Focus may at its expense and upon no less than 5 working days written notice audit Your installation, use, or access of the Software and Your related records and VLA payments. As part of such audit, Micro Focus is entitled to obtain physical and electronic data concerning all Software installation, use, and access at each of Your offices, regardless of their location. At Micro Focus' option, the audit may be conducted at Your facilities or from a remote location. An audit may be conducted either by Micro Focus or by its authorized representative, and will not interfere unreasonably with Your business activities. An audit entity will be conducted no more often than once per calendar year at a location, unless a previous audit disclosed a material discrepancy. If an audit shows You have underpaid fees, You must promptly purchase from Micro Focus at list price sufficient licenses and Maintenance to support the actual deployment, including Maintenance for the time period of the shortfall. If an audit shows You have underpaid amounts owing by more than 5%, You will also within 30 days pay the reasonable expenses of the audit.

7. TERM AND TERMINATION.

- 7.1 **Term.** This Agreement will begin on the Effective Date and will remain in effect until Micro Focus' Maintenance obligations under any order accepted by Micro Focus under this Agreement are fulfilled.

7.2 **Termination for Cause.** Either party may terminate this Agreement (and Your VLA Program participation) upon written notice for the substantial breach by the other party of any material term, if such breach is not cured within 30 days following receipt of written notice of breach from the non-breaching party.

7.3 **Effect of Termination.** Upon termination of this Agreement for any reason, Your right to acquire VLA Software licenses or Maintenance under this Agreement will immediately terminate. However, unless Your VLA Program participation and this Agreement is terminated by reason of Your violation of Micro Focus' intellectual property rights, Your right to continue to use any perpetual licenses will not be affected, including any Upgrades and Updates to which You were entitled under Maintenance.

8. LIMITED WARRANTY.

8.1 **Software.** Micro Focus warrants that the Software (including Upgrades) will conform substantially to the specifications in the Documentation, provided: (a) the Software is not modified by anyone other than Micro Focus, unless authorized by Micro Focus in writing; (b) You notify Micro Focus in writing of the nonconformity within 90 days after You first acquire a licensed copy of the Software version; and (c) the Software is installed in a compatible environment. In this Section, "conform substantially" means that the Software conforms to the material specifications in the Documentation. Micro Focus' only obligation under this warranty, at its option, is to either cause the Software to conform substantially with its specifications or to refund to You the amount paid to license such Software (or, for an Upgrade, the annual Maintenance fee entitling You to the Upgrade) upon Your return of all the Software. In the event of a refund, Your license to use the Software will automatically expire.

8.2 **Services.** Micro Focus warrants that any Services purchased under this Agreement via signed SOWs will be performed in a professional manner in accordance with generally accepted industry standards. As files may be altered or damaged in the course of Micro Focus providing technical services, You agree to take appropriate measures to isolate and back up Your systems. This warranty will be effective for 30 days following completion of the Services, in accordance with Section 5.3 above. Upon receipt of written notice of breach of this warranty, Micro Focus' obligation is to correct the Services so that they comply with this warranty. If Micro Focus is unable to correct the Services within a reasonable period of time, Your sole remedy is to terminate the relevant SOW and obtain a refund of the amount You paid to Micro Focus for the Services Micro Focus is unable to correct.

8.3 **Non-Micro Focus Products.** Micro Focus does not warrant non-Micro Focus products. Any such products are provided on an "AS IS" basis. Any technical or warranty service for non-Micro Focus products is provided by the product manufacturer in accordance with any applicable manufacturer's warranty.

8.4 **Disclaimer of Warranties.** EXCEPT AS EXPRESSLY SET FORTH IN THESE LIMITED WARRANTY SUBSECTIONS, MICRO FOCUS AND ITS RESELLERS MAKE NO WARRANTY OR REPRESENTATION REGARDING ANY

SOFTWARE OR SERVICES. TO THE EXTENT ALLOWED BY APPLICABLE LAW, MICRO FOCUS AND ITS RESELLERS DISCLAIM AND EXCLUDE ALL OTHER EXPRESS, IMPLIED, AND STATUTORY WARRANTIES OR CONDITIONS, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, GOOD TITLE, AND NON-INFRINGEMENT. MICRO FOCUS DOES NOT WARRANT THAT THE SOFTWARE OR SERVICES WILL BE WITHOUT DEFECT OR ERROR, SATISFY YOUR REQUIREMENTS, OR PROVIDE UNINTERRUPTED USE OF THE SOFTWARE.

9. LIABILITY LIMITATIONS.

- 9.1 Indirect Damages. TO THE EXTENT ALLOWED BY APPLICABLE LAW, NEITHER MICRO FOCUS NOR CUSTOMER WILL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES WHETHER UNDER CONTRACT OR IN TORT (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR INTERRUPTION OF BUSINESS, LOSS OF BUSINESS, LOSS OF PROFITS AND LOSS OF USE OF DATA) RELATED TO OR ARISING OUT OF THIS AGREEMENT, EVEN IF THE BREACHING PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS SECTION DOES NOT APPLY TO VIOLATIONS BY EITHER PARTY OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS.
- 9.2 Direct Damages. Micro Focus' liability for damages of any type arising out of or related to this Agreement shall be limited to the greater of 1.25 times the actual amounts paid by You for the licenses, service, or deliverable in question, or US\$10,000. This subsection does not apply to any damages for personal injury or tangible property caused by the negligence or willful default of Micro Focus.

10. GENERAL.

- 10.1 Choice of Law. All matters arising out of or relating to the Agreement will be governed by the substantive laws of the State of Utah without regard to its choice of law provisions, unless the laws of the state, province, or country of Your domicile require otherwise, in which case the laws so required will govern.
- 10.1.1 However, if Your principal residence is in (a) a member state of the European Union or (b) a member state of the European Free Trade Association (c) the Republic of South Africa, or (d) Canada, the governing law is that of the country of Your principal residence (and for Canadian customers, the law of the Province of Ontario). If Your principal residence is in any other country in Europe the applicable law will be the law of the Federal Republic of Germany. If Your principal residence is in the Middle-East or Africa (except South Africa), the applicable law will be the law of England. To the extent allowed by applicable law, the terms of the United Nations Convention on the International Sale of Goods will not apply, even where adopted as part of the domestic law of the country whose law governs the relationship.
- 10.1.2 Each party will, at its own expense, comply with any applicable law, statute, administrative order or regulation. Any suit, action or proceeding arising out of or relating to the Agreement may only be brought before a court of appropriate jurisdiction in the state whose law governs this Agreement under the terms of this Section. If a party initiates legal proceedings related to this Agreement, the prevailing party will be entitled to recover reasonable attorney's fees.
- 10.2 Assignment. Neither party may transfer or assign any Agreement right or obligation without the prior written consent of the other. Either party may, with written notice to the other party, assign the Agreement to the surviving entity in the case of a merger or acquisition. If Micro Focus transfers a Software Product to a third party, it may assign Agreement rights or obligations related to that product to the third party. Micro Focus may assign the Agreement or obligations with respect to a specific product to its parent company or an entity under common control with the parent company.
- 10.3 Confidentiality Obligations. The receiving party of Confidential Information will exercise reasonable care to protect any Confidential Information from unauthorized disclosure or use. The receiving party may disclose Confidential Information only to its employees or agents with a need to know such information and will inform such employees and agents by way of policy or agreement that they are bound by confidentiality obligations. "Confidential Information" means the terms of this Agreement and any other information that (i) if disclosed in tangible form, is marked in writing as confidential, or (ii) if disclosed orally or visually, is designated orally at the time of disclosure as "confidential." Confidential Information will not include information (a) already in the receiving party's possession without obligation of confidence; or (b) independently developed by the receiving party; or (c) that becomes available to the general public without breach of this Agreement; or (d) rightfully received by the receiving party from a third party without obligation of confidence; or (e) released for disclosure by the disclosing party with its written consent; or (f) required to be disclosed by law, regulation, or court order. These confidentiality obligations will survive 3 years after expiration or termination of this Agreement. Micro Focus retains the right to use its knowledge and experience (including processes, ideas, and techniques) learned or developed in the course of providing any services to You.
- 10.4 Publicity. You agree that Micro Focus may use Your participation in the VLA Program as a commercial reference unless You otherwise inform Micro Focus in writing.
- 10.5 Entire Agreement. This Agreement sets forth the entire agreement and understanding between the parties as to its subject matter. This Agreement supersedes all prior and contemporaneous agreements, proposals and statements on this subject matter. Micro Focus may change the terms of this Agreement by giving You notice by letter, email or other written publication. Such change applies as of the date Micro Focus specifies in the notice. You agree that you have consented to any such change if You do not notify Micro Focus in writing, prior to the effective date specified in Micro Focus' written publication, that You disagree with the change. Except as otherwise stated herein, this Agreement may only be modified in writing signed by authorized representatives of each party. Purchase order terms will not modify the Agreement unless the parties agree otherwise in writing.
- 10.6 Severability/Waiver. If a provision is invalid or unenforceable, the remaining provisions will remain in effect and the parties

will amend the Agreement to reflect the original agreement to the maximum extent possible. No waiver of any contractual right will be effective unless in writing by an authorized representative of the waiving party. No waiver of a right arising from any breach or failure to perform will be deemed a waiver of any future right.

10.7 Notices. Notices to a party must be in writing and sent to the party's address provided above or such other address as a party may provide in writing. Notices may be delivered in a format reasonably chosen by the notifying party.

10.8 Force Majeure. Neither party will be liable for delay or failure to perform that arises out of causes beyond the reasonable control and without the fault or negligence of such party. A party will give prompt notice of any condition likely to cause any delay or default.

10.9 Survival. The provisions of this Agreement, which by their nature extend beyond termination of the Agreement, including Sections 2, Licensing, 6.6, Audit, 8, Limited Warranty, 9, Liability Limitations, and 10, General, will survive termination of the Agreement.

10.10 Intellectual Property Rights/Remedies. Nothing in this Agreement waives or limits extra-contractual rights or

Customer agrees to the terms of this Agreement and has caused it to be accepted by an authorized representative.

remedies available to Micro Focus to protect its rights in the Software, including those available under U.S. copyright law, international treaties, or national copyright and intellectual property laws of the countries in which You may use the Software.

10.11 Export Compliance. Any products or technical information provided under this Agreement may be subject to U.S. export controls and the trade laws of other countries. The parties agree to comply with all export control regulations and to obtain any required licenses or item classification to export, re-export or import deliverables. The parties agree not to export or re-export to entities on the current U.S. export exclusion lists or to any embargoed or terrorist supporting countries as specified in the Export Administration Regulations (EAR). The parties will not use deliverables for prohibited nuclear, missile, or chemical biological weaponry end uses as specified in the EAR. Please consult the Bureau of Industry and Security web page: www.bis.doc.gov before exporting or re-exporting items subject to the EAR. Refer to: www.novell.com/info/exports/ for more information on exporting Software. Upon request, Micro Focus can provide information regarding applicable export restrictions. However, Micro Focus assumes no responsibility for Your failure to obtain any necessary export approvals.