

# Micro Focus Business Support Agreement

This Support Agreement applies to all Software products for which Support commences on or after 15 January 2018.

This Business Support Agreement ("Support Agreement") describes the support and maintenance services ("Support") and the terms and conditions under which Micro Focus will provide the Support to the entity purchasing Support ("you" or "Customer") from Micro Focus or an authorized reseller. "Micro Focus" or "our" shall mean the Micro Focus® legal entity authorized to license the software for which Support is purchased under this Support Agreement ("Software") in the country in which Support is provided.

## Features Summary

Support features described herein are:

- Online Self-Service Support
- Technical Support
- Software Updates

## Online Self-Service Support

Online self-service support is available around the clock, and allows you to:

- Electronically download the latest Software Updates
- Search our extensive online technical knowledge base for known problems, technical documents, manuals and documentation
- Log, track and update incidents electronically, and provide online incident reporting
- Review the list of Software currently covered by your Support Agreement

- Register to receive email notifications when Software Updates are available
- After your online incident-logging, you will receive an email or phone call from Micro Focus.

## Access Online Self-Service Support:

You can access the MySupport portal to get online self-service support at [www.microfocus.com/support-and-services/](http://www.microfocus.com/support-and-services/).

## Technical Support

### Unlimited Incident Logging

You may log an unlimited number of technical Support incidents to report errors or request product enhancements to the Software.

### Defect Support

Micro Focus will use commercially reasonable efforts to correct an error or design failure with the Software that it can reproduce on its support systems. Micro Focus will also use commercially reasonable efforts to address critical vulnerability to malicious attacks or access by providing a Software correction. However, Micro Focus may provide the correction as part of a larger Software Update instead of separately, based on the defect's prioritization or criticality. Customers may be required to install the most recent Software, fixes, patches, or service packs as part of the troubleshooting and issue resolution process. Micro Focus may not be able to produce a correction for all defects.

### Replacement License Keys

For Software that requires a license key for installation, Micro Focus will make available a replacement key for installing or reinstalling authorized licenses provided the applicable version of the Software is then generally available for distribution by Micro Focus.

## Agreement

### Micro Focus Business Support Agreement

## Support Delivery Languages

Worldwide support centers provide you with Support in English. Subject to language knowledge and resource availability, Support may also be available in Chinese, French, German, Italian, Japanese, Portuguese, or Spanish. Support outside of standard local business hours and Support for Voltage products may be provided in English only.

## Escalation Management

Micro Focus has established escalation procedures to help facilitate the resolution of complex Software product issues. If you have reasonable grounds for concern as to whether Micro Focus is dedicating sufficient

effort to resolving an issue after Micro Focus's response to a support request, you may first escalate your concern to Micro Focus's local, and then regional, and finally global support management.

## Severity Levels and Response Time Objectives

You will have the ability to select the Severity Level (as outlined in the table below) that most appropriately reflects your current status. Micro Focus reserves the right to reassign a Severity Level once problem diagnosis has commenced if it determines that such level has been inappropriately classified.

Severity Level <sup>1</sup>	1: Critical Production system is down	2: High Major feature or function failure	3: Medium Minor feature or function failure	4: Low Minor problem
Severity Level Description	Production system is down. The product is inoperable, resulting in a total disruption of work. No workaround is available.	Major functionality failure. Operations are severely restricted, although work can continue in a limited fashion. A workaround is available.	Minor functionality failure. Product does not operate as designed, resulting in a minor loss of usage. A workaround may be available.	There is no loss of service. For example, this may be a request for documentation, general information, or a Software enhancement request.
<b>Response Time Objectives</b>				
Micro Focus Business Support Monday–Sunday, 24x7 365 days per year <sup>2</sup>	1 hour	3 hours	6 hours	1 business day
Except in Japan, Standard Care will not be available for purchase as of 1 December 2018. For customers who subscribed to Standard Care 15 January 2018 or later, this Business Support Agreement will solely govern. <sup>3</sup>				
Standard Care local business hours local business days <sup>3</sup>	NA	NA	NA	NA
Response Time Objectives are typical initial response times to support requests. Micro Focus may not actually provide such response within the Response Time Objectives.				

1 Except for Software previously provided by the former software business of Hewlett Packard Enterprise and now provided by Micro Focus ("SoftwareGrp"), any 24x7x365 support will only be provided for Severity 1 issues opened by telephone. Once the severity of the issue has been downgraded, work will continue the next business day.

2 Certain Micro Focus products are excluded from 24x7 support. See the [Addendum to Business Support Agreement—Products excluded from 24x7x365](#)

3 See the [Addendum to Micro Focus Standard Care](#), for software products that receive 24x7 Support with Standard Care

## Software Updates

Micro Focus will make available Software Updates generally released for the Software during the time period for which you have purchased Support. Software Updates consist solely of the following with respect to Software product releases and corresponding reference manuals and user documentation:

- "Major Version" means a Software product release with significant new or improved functionality within the same Software product bearing the same name, or with a change in delivery model. For a Software product, a Major Version is designated by a change in the number to the left of the decimal point (e.g., from version 5.4 to 6),

or a year number (e.g., from 2015 to 2016), and is released for wide distribution. A license to a Major Version of Micro Focus Acu or Extend software products is not included as a Support benefit, and so must be purchased separately.

- "Minor Version" means a Software product release with corrections or minor enhancements to the product capability of the Major Version that do not change the core functionalities or material features of the Software product. A Minor Version is designated by a change in the number to the right of the decimal point (e.g., from 5.3 to 5.4) or a release (R) or month number (e.g., GroupWise 2015 R2), and is released for wide distribution.

- A "Service Pack" means a Software product release for wide distribution which includes multiple corrections, and is designated by a change to the digit to the right of the second decimal (e.g., 5.3.1 to 5.3.2), or a SP# to the right of the second decimal (e.g., 5.3 SP1).
- A "Patch" is a Software product release that includes incremental corrections and is released for wide distribution. A Patch release is designated with IP# or P# to the right of the current release, such as X.X.X IP# or P#, X.X IP# or P#, or X IP# or P#.
- A "Hotfix" means a Software product release created to resolve specific customer problems that is available from technical support. A Hotfix may be designated as X.X.X.#.
- For purposes of this provision, a Suite is a single part number that entitles the customer to multiple individual Software products that together form a complete solution. A Suite product release will take place when there is new or improved functionality within any of the individual software products bundled in the Suite. Suite versions are either designated by a change in the number to the left of the decimal point (e.g., from version 5.4 to 6) or a year number (e.g., from 2015 to 2016), or a year and month (e.g., 2016.11), and are released for wide distribution. A Suite release triggers a new Committed period in the Product Support Lifecycle for each product in the Suite, unless stated otherwise in our published Micro Focus Product Support Lifecycle information.

### Optional Advanced Support Services

The following additional options may be available for separate purchase by Customer, and are governed by the terms of this agreement and the Premium Support Addendum to the Micro Focus Business Support Agreement and Flexible Credits Terms.

- Micro Focus Premium Support offers designated, senior support engineers and support account managers who become familiar with your environment and provide enhanced response times and services.
- Micro Focus Flexible Credits are a services currency that can be purchased at any time throughout the life of your Business Support agreement, and provide a flexible way to purchase short-term Support, Education or Consulting services.

For more information about Micro Focus Premium Support or Flexible Credits, visit:

[Premium Support](#)

[Flexible Credits](#)

### Additional Terms to the Support Agreement

In addition to the Features Summary, the following Additional Terms to the Support Agreement ("Additional Terms") apply to the Support provided to you. In the event of a conflict between these Additional Terms and the Features Summary, these Additional Terms take precedence.

#### 1. Software Updates

##### A. DELIVERY OF SOFTWARE UPDATES

When Micro Focus releases Software Updates, they will be made available electronically. You may be able to select from a variety of media types.

##### B. INSTALLATION AND USE OF SOFTWARE UPDATES

Customer is responsible for any installation of Software Updates. Customer will be entitled to install and use a Software Update up to the number of licenses for which the Customer has purchased Support for the Software:

1. Subject to the terms of the end user license agreement (including any Additional License Authorizations) provided with or otherwise applicable to the Software Update; or
2. If no end user license agreement (or Additional License Authorization) is included with or otherwise applicable to the Software Update, then subject to the terms of the end user license agreement and Additional License Authorizations applicable to the Software version being updated.

Notwithstanding any terms to the contrary in this Support Agreement, any open source software embedded in or provided with a Software Update is licensed pursuant to the applicable open source license.

##### C. PLATFORM

If the Software is licensed for one specific platform (hardware/operating system combination), a Software Update for such Software is always specific to, and may only be used on, the same licensed platform. A license to use Software on a different platform, or the right to purchase such license at a discount, is not included as a Support benefit.

#### 2. New Products

A "New Product" means a Software product release with significant changes in core architecture/ features/ functionality which result in its release as a new product. It can fully replace an existing Software product and/or diverge into a material new offering from an existing Software product line/family. A New Product is not included as a Support benefit.

### 3. Service Providers

Micro Focus reserves the right to use third party service providers to assist in the delivery of Support subject to the terms and conditions of this Support Agreement.

### 4. Hardware Support

If you have a Micro Focus Hardware Maintenance on-site agreement for hardware that was purchased with the Software, Micro Focus will log a service request to the hardware support organization on your behalf.

### 5. Concurrent Support

#### SOFTWARE UPDATES AND MIGRATIONS

Micro Focus offers Customers the ability to install and use both a Software Update or Migrated Software and the current Software product version for a limited timeframe as further specified herein from receipt of the Software Update or Migrated Software at no additional charge ("Software Concurrent Use Period").

"Migrated Software" means the software which results from a Micro Focus authorized migration from one Micro Focus software product to another Micro Focus software product.

The Software Concurrent Use Period may not extend beyond the end of Support for the current Software version. During the Software Concurrent Use Period, you may not use the Software Update or Migrated Software outside of the same environment as the current Software version. At the end of the applicable Software Concurrent Use Period, your license to the prior version of the Software is terminated and may no longer be installed.

The default Software Concurrent Use Period shall be the "Standard" period set forth below. Micro Focus may apply a longer Software Concurrent Use Period as set forth below for certain Migrated Software but only if expressly specified by Micro Focus in writing:

- **Standard:** 3 months Software Concurrent Use Period.
- **Advanced:** 6 months Software Concurrent Use Period.
- **Complex:** 12 months Software Concurrent Use Period.
- **Exceptional:** 18 months Software Concurrent Use Period.

Notwithstanding the foregoing, there shall be no Software Concurrent Use Period for the software listed here ([www.microfocus.com/support-and-services/mla-product-exclusions](http://www.microfocus.com/support-and-services/mla-product-exclusions)) and Customer

may not have any such Software product and the Software Update or Migrated Software concurrently installed.

### 6. Purchasing and Renewal

For so long as Micro Focus continues to offer Support for a Software product, Customer may, subject to Micro Focus's acceptance, renew Support by delivering a purchase order or executing the quote for the applicable Support fees on or before each Renewal Date (defined herein). SoftwareGrp may discontinue specific Support offerings no longer generally offered by SoftwareGrp upon sixty (60) days' notice.

Unless there is a signed agreement between Customer and Micro Focus or a Micro Focus approved Customer certification to the contrary, Customer must renew support for all licenses of the Software that it has copied, used, installed, or otherwise exploited. Micro Focus agrees to limit any increases of Support fees to no more than 10% over the previous year's fees or such greater amount necessary to increase the Support fee to the then-current Support list price. If Customer reduces the number of Software licenses covered by Support, the aforementioned fee increase limit shall not apply.

If Customer allows Support to lapse or payment of the Support fee for a Renewal Period (defined herein) is not received by the due date, Micro Focus may immediately and without notice suspend provision of Support and Customer will no longer be eligible for the aforementioned limitation on price increases for the current and subsequent years set forth above. Customer may then reinstate Support in accordance with the Return to Support clause below.

### 7. Return to Support

If the Software has been on Support and Customer elects not to renew Support or allows Support to lapse for a period of time, then the following back-support and reinstatement fees will be applied in addition to 12 months of go-forward Support based on the greater of Customer's last annual Support fee or the then-current Support list price for the Software if Customer decides to return to Support:

- **Less than one year of Support lapse**—Full back-pay Support fee from the date of lapse and a reinstatement fee equal to 20% of the go-forward annual Support fee.
- **One year or greater of Support lapse**—Full back-pay Support fee from the date of lapse and a reinstatement fee equal to 20% of such back-pay Support fee.

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## 8. Product Support Lifecycle

### COMMITTED SUPPORT

Upon general availability to customers, Software products enter Committed Support, which allows access to online self-service Support, Software Updates, technical Support, defect Support, and the ability to submit enhancement requests. Committed Support will be provided for a designated minimum period of time.

### EXTENDED SUPPORT

When a Software product exits the Committed Support period, it enters the Extended Support period. During this period, Customer may access technical Support, online self-service support and Software Updates, excluding new requests for defect Support or enhancement requests.

For SoftwareGrp IT Operations Management (ITOM) products, following Committed and Extended Support, the product enters a period of Self-Help Support. During the Self-Help Support period, Customer may access online self-service resources and Software Updates, excluding new requests for defect support or enhancement requests. Technical Support is not available.

**Extended Support Plus:** For selected Software products, "Extended Support Plus" may be purchased at an additional fee to Support upon the exit of the product from Committed Support. Extended Support Plus provides continued access to Severity Level 1 defect support and critical security Software Updates. See more information at [Extended Support Plus](#).

Review policy details and updates as follows:

For SoftwareGrp ITOM products, see the [ITOM Product Support Lifecycle policy](#).

For all other Software, see the [Product Support Lifecycle policy](#).

View product specific details and end dates for all software on our [Product Support Lifecycle table](#).

## 9. License Type Upgrades and Quantity Upgrades

License Type Upgrades and Quantity Upgrades are not part of Support. For purposes of this Support Agreement:

- a. "License Type Upgrade" means upgrading from one type of license to another. An example would be moving from a site license to an area license.
- b. "License Quantity Upgrade" means upgrading to a higher count of license. An example would be upgrading from 1000 nodes to 2500 nodes.

## 10. Eligibility

Customer may purchase available Support only if Customer, if requested by Micro Focus, can provide evidence that it has rightfully acquired an appropriate Micro Focus license for the Software. Micro Focus will be under no obligation to provide Support due to any alterations or modifications to the Software not authorized by Micro Focus or for Software for which Customer cannot provide sufficient proof of a validly obtained license.

## 11. Local Availability

Support resources may not reside in Customer's local area. If Micro Focus agrees to provide on-site Support, it will be subject to travel charges, longer response times, reduced coverage hours, and a separate statement of work under Micro Focus's then current professional services terms.

## 12. Relocation

Relocation of any Software is subject to the applicable license terms for the Software and is the responsibility of Customer. Relocation of Support by Micro Focus is subject to local availability, and may result in changes to your Support fees. Reasonable advance written notice to Micro Focus of no less than thirty (30) days shall be required to begin Support after relocation. Customer may be required to execute amended or new documents as a result of relocation.

## 13. Auditing

Customer agrees to keep, and upon Micro Focus's request, provide records, sufficient to certify Customer's compliance with this Support Agreement based on the applicable license metric and license terms and conditions for the Software, which may include but are not limited to, serial numbers, license keys, logs, the location, model (including quantity and type of processor) and serial number of all machines on which the Software is installed or accessed or from which the Software can be accessed, the names (including corporate entity) and number of users accessing or authorized to access the Software, metrics, reports, copies of the Software (by product and version), and network architecture diagrams as they may relate to Customer's licensing and deployment of the Software and associated Support. Within 7 days of Micro Focus's written request, Customer shall furnish Micro Focus, or an independent auditor chosen at Micro Focus's sole discretion ("Auditor"), with a completed questionnaire provided by Micro Focus and with a written statement in a format required by Micro Focus signed by a director of Customer certifying the accuracy of any information provided. Customer shall provide representatives of Micro Focus or Auditor any necessary assistance and access to records and computers to allow an inspection and audit of Customer's computers and records, during Customer's normal business hours, for compliance with this Support Agreement.

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If Customer has, or at any time has had, unlicensed installation, use of, or access to Software Updates or has otherwise breached the license granted for a Software Update (a "Non-Compliance"), without prejudice to any other rights or remedies Micro Focus may have, including, without limitation, injunctive relief, Customer shall, within thirty (30) days' notice of such Non-Compliance to Customer, purchase sufficient licenses and or subscriptions and associated Support to cure the Non-Compliance, by paying Micro Focus's then-current (as of the date of such additional purchase) list license fees and annual Support fees for such additional licenses, plus Micro Focus's then-current (as of the date of such additional purchase) list term license and Support fees and interest (compounded at 1.5% monthly or the maximum rate permitted by applicable law if lower) for such additional licenses for the time period from the commencement of the Non-Compliance until payment with interest payable even if an invoice was not issued at the time the Non-Compliance occurred. If a material license shortfall of 5% or more is found, Customer shall also reimburse Micro Focus for the reasonable cost of such audit in addition to other amounts due. This section, and the rights and obligations appearing herein, shall expressly survive termination of this Support Agreement.

#### 14. Term and Termination

This Support Agreement will commence on the date when Micro Focus receives Customer's order for the Support or, if later, upon delivery (either via physical shipment or making the Software available for download) to Customer of the Software. This Support Agreement will continue for an initial term of one (1) year unless a different initial term is agreed to in writing by the parties (such as in a separately executed master agreement). Subject to section 18 below, this Support Agreement will be renewed at the end of each term (the "Renewal Date") for a period of one (1) year, or a different period if agreed to in writing by the parties ("Renewal Period") unless either party gives notice in writing at least sixty (60) days prior to the end of the then current term that it does not wish to renew. In addition to and without waiving any other available remedies, either party may terminate this Support Agreement upon written notice to the other for a material breach that is not cured within sixty (60) days of notice, receipt of which will be deemed to be three (3) business days following the deposit of such notice with a recognized courier. If Customer is more than ten (10) business days late in making payment, Micro Focus may suspend Support until payment is made. Upon termination of the end user license for a Software product under Support, this Support Agreement shall also automatically be terminated in relation to that Software product.

#### 15. Exclusions

Micro Focus is not obligated to provide Support under circumstances resulting from:

- a. Improper site preparation, or site or environmental conditions that do not conform to Micro Focus site specifications;
- b. Customer's non-compliance with Micro Focus's specifications, statements of work or this Support Agreement;
- c. Customer's improper or inadequate upkeep of the Software environment;
- d. Use in conjunction with Customer's or third-party's media, software, interfacing, supplies, or other products;
- e. Modifications not performed or authorized by Micro Focus;
- f. Any virus, infection worm, or similar malicious code not introduced by Micro Focus; or
- g. Abuse, negligence, accident, loss or damage in transit, fire or water damage, electrical disturbances, transportation by Customer or other causes beyond the reasonable control of Micro Focus.

#### 16. Use of Micro Focus Service Tools for Support

Micro Focus may require Customer's use of certain Micro Focus hardware and/or software system and network diagnostic and maintenance programs ("Proprietary Service Tools") as well as certain diagnostic tools that may be included as part of the Customer's system, for delivery of support. Proprietary Service Tools are and remain the sole and exclusive property of Micro Focus, or its licensors, are provided "as is", and may include remote fault management software or network support tools. Proprietary Service Tools may reside on the Customer's systems or sites. Any open source software embedded in or provided with the Proprietary Service Tools is licensed pursuant to the applicable open source license.

Customer may only use the Proprietary Service Tools during the applicable Support coverage period and only as allowed by Micro Focus. Customer may not sell, transfer, assign, pledge or in any way encumber or convey the Proprietary Service Tools. Upon termination of this Support Agreement, Customer will return the Proprietary Service Tools to Micro Focus or allow Micro Focus to remove these Proprietary Service Tools.

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The Software may contain functionality (“Usage Hub”) that allows Micro Focus to remotely track data related to your use of the Software. The Usage Hub will only be enabled if you configure the Software product to send data to Micro Focus through the user interface. If the Usage Hub is enabled, Micro Focus will use the data transmitted for the following purposes: (i) to help the Micro Focus Support team handle support incidents more efficiently; (ii) to provide guidance to you regarding how to optimize your use of the Software product; and (iii) to make available reports with entitlement and consumption information. The data collected via the Usage Hub will not contain any Personal Data (as defined herein).

In order for Micro Focus to provide Support, Customer agrees to perform the following as needed:

- a. Allow Micro Focus to keep the Proprietary Service Tools resident on Customer’s systems or sites during the troubleshooting process and assist Micro Focus in running them;
- b. Install updates and patches to Proprietary Service Tools;
- c. Use the electronic data transfer capability to inform Micro Focus of events identified by the Software;
- d. Utilize Micro Focus-specified remote connection hardware for systems with remote diagnosis service;
- e. Provide remote connectivity through an approved communications line;
- f. **Data Backup**—To reconstruct lost or altered Customer files, data or programs, Customer must maintain a separate backup system or procedure that is not dependent on the Software;
- g. **Temporary Workarounds**—Customer will implement temporary procedures or workarounds provided by Micro Focus while Micro Focus works on permanent solutions;
- h. Notify Micro Focus if Customer uses Software in an environment that poses a potential health or safety hazard to Micro Focus employees or subcontractors. Micro Focus may require Customer to maintain the Software under Micro Focus supervision and may postpone service until Customer remedies such hazards;
- i. Create and maintain a list of all Software under Support including the location of the Software and coverage levels. Customer shall keep the list updated during the applicable Support period; and
- j. Include appropriate Micro Focus trademark and copyright notices, for any Micro Focus documentation that has been copied.

## 17. Payment

Support fees are non-refundable and Customer hereby agrees to pay all such fees by the later of (i) 30 days from the date of invoice, or (ii) for fees for a Renewal Period, by the Renewal Date. All fees shall be paid in the currency indicated on the invoice. Late payments will accrue interest at the rate of 1.5% per month compounded or, if lower, the highest rate permitted by law. Micro Focus shall have the right to recover from Customer any collection costs (including attorney’s fees) incurred by Micro Focus as a result of any late payment. The fees are exclusive of all applicable taxes. Customer will pay and bear the liability for taxes associated with this Support Agreement, including sales, use, excise, and added value taxes but excluding taxes based upon Micro Focus’s net income, capital, or gross receipts, or any withholding taxes imposed as required by law. If Customer is required to withhold taxes, it will furnish Micro Focus with receipts and documentation substantiating such payment. If Micro Focus is required by law to remit any tax or duty on Customer’s behalf, Customer agrees to reimburse Micro Focus within 30 days after notification in writing of such remittance. Customer will provide Micro Focus with valid tax exemption certificates in advance of any remittance otherwise required to be made by Micro Focus on Customer’s behalf where such certificates are applicable.

## 18. Changes

Micro Focus may, upon written notice prior to any Renewal Period, discontinue Support for a product, alter the prices as per clause 7 above, or alter terms for Support in advance of such new Renewal Period. Any such discontinuance or alterations will be deemed to amend this Support Agreement, effective beginning the next Renewal Period.

## 19. Limitation of liability

- a. NOTHING HEREIN SHALL LIMIT EACH PARTY’S LIABILITY FOR FRAUD OR FOR DEATH OR PERSONAL INJURY RESULTING FROM ITS NEGLIGENCE, OR TO ANY EXTENT NOT PERMITTED BY LAW.
- b. SUBJECT TO CLAUSE 19(A) ABOVE, NEITHER MICRO FOCUS NOR ITS SUPPLIERS SHALL BE LIABLE FOR:
  - INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR DAMAGES, OR
  - ANY REGULATORY FINES, OR LOSS OF PROFITS, BUSINESS, OR DATA, WHETHER DIRECTLY OR INDIRECTLY ARISING UNDER OR RELATING TO THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR DAMAGES.

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- c. SUBJECT TO CLAUSE 19(A), ANY LIABILITY OF MICRO FOCUS OR ITS SUPPLIERS SHALL BE LIMITED IN THE AGGREGATE TO THE AMOUNT PAID BY CUSTOMER FOR THE CURRENT SUPPORT PERIOD FOR THE SOFTWARE (NOT TO EXCEED 12 MONTHS), INCLUDING ANY OPTIONAL SUPPORT SERVICES DURING THAT PERIOD. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION, INCLUDING CONTRACT, WARRANTY BREACH, OR TORT.

#### 20. Warranties

- a. **Software Warranty:** The warranty terms applicable to the Software supported under this Support Agreement are as provided in the applicable end user license agreement.
- b. **DISCLAIMER:** EXCEPT AS EXPRESSLY DESCRIBED IN AN APPLICABLE END USER LICENSE AGREEMENT, MICRO FOCUS DISCLAIMS AND EXCLUDES ALL EXPRESS, IMPLIED, AND STATUTORY WARRANTIES, REPRESENTATIONS, AND CONDITIONS WITH RESPECT TO SOFTWARE PRODUCTS, SUPPORT, SERVICES AND DELIVERABLES PROVIDED UNDER THIS SUPPORT AGREEMENT, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, GOOD TITLE, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. MICRO FOCUS DOES NOT WARRANT THAT THE SUPPORT, SERVICES OR ANY DELIVERABLES WILL BE WITHOUT DEFECT OR ERROR.

#### 21. Confidentiality

The party receiving Confidential Information may only use it for the purposes of this Support Agreement and 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 that are obligated to comply with these confidentiality obligations. "Confidential Information" means any information that (i) is marked in writing as confidential, or (ii) if disclosed orally or visually, is designated orally at the time of disclosure as "confidential," or (iii) ought reasonably to be regarded as confidential having regard to its nature and purpose. 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 clause; or (d) rightfully received by the receiving party from a third party without obligation of confidence; or (e) released for disclosure with the disclosing party's written consent. Confidential Information may be disclosed by a party if required to be disclosed by law, regulation, or court order provided that, to the extent permitted by law and reasonably feasible under the circumstances, the receiving party provides to the disclosing party prior written notice of the intended disclosure and

an opportunity to respond or object to the disclosure, and cooperates with the disclosing party, at the disclosing party's reasonable request and expense, in any lawful action to contest or limit the scope of such required disclosure. These confidentiality obligations will survive 5 years after Support Agreement termination and survive indefinitely as to Confidential Information that constitutes trade secret information under applicable law or contains Personal Data (as defined below). Micro Focus retains the right to use its knowledge and experience (including processes, ideas, and techniques) learned or developed in the course of providing Support.

#### 22. Miscellaneous Provisions

- a. **Governing Law.** If Support is provided in North America, all matters arising out of or relating to this Support Agreement are governed by the laws of the state of Delaware. If Support is provided in France, Germany, Italy, Japan or Spain, all matters arising out of or relating to this Support Agreement are governed by the laws of the country in which the Support services are provided. In the rest of the world, the laws of England govern all matters arising out of or relating to this Support Agreement. The aforesaid applicable law shall apply without regard to conflicts of law provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods. Any suit, action, or proceeding arising out of or relating to this Support Agreement shall be subject to the exclusive jurisdiction of the courts of the country determining the applicable law, except that the courts of the State of California shall have exclusive jurisdiction in North America. Each party agrees to be subject to the abovedescribed jurisdiction and waives any right it may have to object to such venue, including objections based on personal jurisdiction or inconvenient forum.
- b. **Compliance.** Each party will comply with any applicable law or regulation related to its performance under this Support Agreement, including a party's obligations under data protection laws.
- c. **Entire Agreement.** Unless otherwise agreed in writing by the parties, this Support Agreement constitutes the entire agreement between Micro Focus and Customer with respect to Support, and supersedes any prior representations and communications, whether oral or written. This Support Agreement may be modified only in writing signed by both parties. The terms of any purchase order or similar document will not modify this Support Agreement.
- d. **Force Majeure.** Neither party will be liable for performance delays nor for non-performance due to causes beyond its reasonable control; however, this provision will not apply to Customer's payment obligations.



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- e. **Ownership.** Micro Focus (or its suppliers) have and will retain title and all ownership rights to the Software, Software Updates, and any other deliverables. This Support Agreement does not prejudice any Micro Focus rights arising from breach of an applicable Micro Focus end user license agreement or Micro Focus intellectual property rights. Provision of Support to Customer does not constitute agreement by Micro Focus that Customer is in compliance with such relevant terms and/or laws.
  - f. **Assignment.** Customer may not assign this Support Agreement, or any of its rights or obligations thereunder. Micro Focus may assign all or a portion of this Support Agreement to another company within the Micro Focus group of companies, or to a purchaser of all or substantial part of the assets of Micro Focus.
  - g. **Severability/Waiver.** If a provision is invalid or unenforceable, the remaining provisions will remain in effect and the parties will amend the Support Agreement to reflect the original agreement to the maximum extent possible. No Support Agreement term shall be deemed waived and no breach deemed consented to or excused unless such waiver or consent is in a writing signed by a party's authorized representative. No consent to or waiver of a breach shall constitute a consent to or waiver of any different or subsequent breach.
  - h. **Export.** Support, Software Updates, and any other deliverables may be subject to export controls and the trade laws of the U.S. and other countries. The parties agree to comply with all applicable export control regulations.
  - i. **U.S. Government users.** This clause is applicable only to U.S. government users. Any software or documentation delivered under this Support Agreement are "Commercial Items" (as defined at 48 C.F.R. §2.101) and licensed to U.S. Government end users only as Commercial Items and only with rights granted pursuant to this Support Agreement and the applicable end user license agreement.
  - j. **Independent contractors.** This Support Agreement creates no relationship of joint venture, partnership, association or principal and agent between the parties. Nothing in this Support Agreement and no course of dealing between the parties creates an employment or agency relationship or partnership between a party and the other party or its employees or agents. Each party shall be solely responsible for all employment benefits for its employees.

### 23. Personal Data

Customer acknowledges that the provision of Personal Data to Micro Focus is not generally required in order for Micro Focus to provide the Support Services. However, in the event that any data is provided by

Customer to Micro Focus during the course of providing the Support Services, which could be designated as 'Personal Data' by Applicable Privacy Law, then the following terms will apply to the Processing of any such Personal Data by Micro Focus:

In any such case, the Customer warrants that:

- (i) it shall provide Micro Focus with full co-operation in relation to Micro Focus's compliance with Applicable Privacy Law; and
- (ii) it has complied with all its obligations under Applicable Privacy Law and any other applicable data protection requirements relevant to the Personal Data provided to Micro Focus in the course of providing the Support Services.

Customer agrees to indemnify and defend at its own expense Micro Focus against all costs, claims, fines, damages or expenses incurred by Micro Focus or for which Micro Focus may become liable due to any failure by Customer or its employees or agents to comply with any of its obligations under this clause.

Customer authorizes Micro Focus to obtain, hold and Process the Personal Data as set forth in and required for the performance of this Support Agreement.

**1. Definitions.** The following terms shall have the meaning set out below:

- a. 'Applicable Privacy Law' means any privacy or data protection laws or regulations applicable either to Customer as a Data Controller or Micro Focus as a Data Processor, including but not limited to the EU General Data Protection Regulation (EU) 2016/679 ("GDPR"), and equivalent or associated national law, as dictated by context.
- b. 'Customer Personal Data' means Personal Data that is provided by or on behalf of Customer to Micro Focus in connection with the Support Services described hereunder.
- c. 'Data Controller' means the natural or legal person which, alone or jointly with other, determines the purposes and means of the Processing of Personal Data.
- d. 'Data Processor' means a natural or legal person which Processes Personal Data on behalf of the Data Controller.
- e. 'Data Subject' means an identified or identifiable natural person.
- f. 'Personal Data' means any information relating to a Data Subject.
- g. 'Personal Data Breach' means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise Processed.

## Agreement

### Micro Focus Business Support Agreement

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h. 'Processing' means any operation or set of operations which is performed on Personal Data, whether or not by automated means.

#### 2. Terms.

- a. The following Processing may be performed by Micro Focus in relation to the Support Services:
  - i. **Subject-matter of Processing:** The Processing of Customer Personal Data by Micro Focus as set forth below.
  - ii. **Nature and purpose of Processing:** The nature and purpose of Processing of Customer Personal Data by Micro Focus shall be that which is incidental to the provision of Support Services, as Customer Personal Data may be included in log files or other information sent to Micro Focus for this purpose.
  - iii. **Duration of Processing:** The duration of the Processing of Customer Personal Data by Micro Focus shall be the term of the term of the Support Services Agreement.
  - iv. **Type of Personal Data:** The type of Customer Personal Data Processed by Micro Focus shall be that which may be included in log files or other information provided by the Customer to enable Micro Focus to provide Support Services, and include ip addresses, email addresses, and other online identifiers which may be considered Personal Information.
  - v. **Categories of Data Subjects:** The Data Subjects shall be the subjects of the Personal Data as provided by Customer.
- b. Customer and Micro Focus acknowledge that, for the purposes of Applicable Privacy Law, Customer is the Data Controller and Micro Focus is the Data Processor of any Customer Personal Data processed pursuant to this Agreement.
- c. When Processing Customer Personal Data, Micro Focus shall implement and maintain appropriate technical and organizational measures in such a manner (i) to ensure a level of security appropriate to the risk to the Customer Personal Data when it is Processed by Micro Focus and (ii) to enable Micro Focus to assist Customer in the fulfilment of its obligations to respond to requests from Data Subjects exercising their rights under Applicable Privacy Law. Customer acknowledges the sufficiency of such measures in light of the nature, scope, context, purposes and risks in respect of the processing of the Customer Personal Data.
- d. If Processing Customer Personal Data involves the transfer of Customer Personal Data outside of the EEA, the terms of the **EU Standard Contractual Clauses for Controller to Processor**

**Transfer** shall govern. If Processing Personal Data that includes Protected Health Information, as defined in the Health Insurance Portability and Accountability Act of 1996 and successor regulations thereto, the terms in the **Business Associate Agreement** shall govern.

- e. Micro Focus shall not engage another Data Processor to Process Customer Personal Data as part of the Support Services to be performed by Micro Focus or on behalf of the Customer or as instructed by the Customer (a "Sub Processor") without Customer's prior written authorization (not to be unreasonably withheld or delayed), except that Customer is deemed to have authorized Micro Focus to utilize any Sub Processors that are already in use as of the Support Agreement Effective Date. Micro Focus shall inform Customer of any intended changes concerning the addition or replacement of Sub Processors at least 15 days prior to such intended change: if Customer fails to notify Micro Focus of its objection to the addition or replacement, Customer shall be deemed to have authorised such Sub Processor.
- f. Micro Focus hereby agrees that it shall:
  - i. Process the Customer Personal Data only on documented instructions from Customer, including with regard to transfers of Customer Personal Data to a third country or an international organization, unless (1) required to do so by European Union or EU Member State law to which Micro Focus is subject; in such a case, Micro Focus shall inform Customer of that legal requirement before Processing, unless that law prohibits such information on important grounds of public interest or (2) in its opinion, an instruction given by or on behalf of Customer infringes Applicable Privacy Law, in which instance Micro Focus shall immediately inform Customer of such opinion;
  - ii. Ensure that persons authorized to Process the Customer Personal Data on behalf of Micro Focus have committed themselves to obligations of confidentiality or are under an appropriate statutory obligation of confidentiality;
  - iii. Assist Customer in ensuring compliance with the Customer's obligations regarding: (1) the security of Customer Personal Data (GDPR Art. 32-34); and (2) data protection impact assessments and prior consultation (GDPR Art. 35-36); taking into account the nature of Processing carried out by Micro Focus and the information available to Micro Focus;

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- iv. Following the end of the provision of the Support Services, delete or return all Customer Personal Data held by Micro Focus unless Applicable Law requires Micro Focus to retain a copy of the Customer Personal Data; if Customer fails to provide written instructions within 180 days of the end of the provision of the Support Services, Micro Focus shall be entitled to delete all or part of the customer Personal Data; and
- v. Subject to the Customer and/or its representatives signing suitable undertakings of confidentiality, make available to Customer all information necessary to demonstrate Micro Focus' compliance with its obligations under GDPR Article 28, and allow the Customer and/or its representatives to conduct audits (including inspections) during normal business hours Micro Focus shall co-operate with such audits in a reasonable manner, and such audits shall be limited to one per 12-month period, except that Customer shall be permitted to conduct an additional audit after a Personal Data Breach.
- g. Subject to paragraph 2.d above, where Micro Focus engages a Sub Processor to carry out specific Processing activities on behalf of Micro Focus, Micro Focus shall ensure that any such Sub Processors are contractually bound by the same data protection obligations as set out above. Where that Sub Processor fails to fulfil its data protection obligations, Micro Focus shall remain fully liable to Customer in respect of any breach of this Personal Data clause that is caused by an act, error or omission of such Sub Processor.
- h. The Customer agrees to adhere to its obligations as Data Controller in accordance with Applicable Privacy Law.

#### **Addenda to This Agreement**

Due to the breadth of the Micro Focus software portfolio, certain Micro Focus software products offer additional or different Micro Focus software support services. The latest list of all available addenda can be found at the following location:

**[www.microfocus.com/support-and-services/maintenance-and-support-agreements/](http://www.microfocus.com/support-and-services/maintenance-and-support-agreements/)**