BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“BAA”) is entered into by and between Customer (“Covered Entity”), and Micro Focus (as defined in the Business Support Agreement (“Business Associate”), is applicable only to the processing of PHI (as defined below) by Micro Focus in the provision of Support, as defined in the Business Support Agreement.

RECITALS:

WHEREAS, the Covered Entity is subject to the federal Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. §§ 1320d – 1320d-8 (“HIPAA”), as amended from time to time, and is required to safeguard individually identifiable health information that the Covered Entity creates, receives, maintains, or transmits (hereinafter “Protected Health Information” or “PHI”) in accordance with the requirements HIPAA establishes and also the requirements set forth in the Health Information Technology for Economic and Clinical Health (“HITECH”) Act and their respective implementing regulations;

WHEREAS, Covered Entity desires to disclose PHI to Business Associate and/or allow others to disclose PHI to Business Associate, on Covered Entity’s behalf, to perform functions or activities on behalf of, and/or provide services as described in the Business Support Agreement to Covered Entity; and

WHEREAS, Covered Entity and Business Associate understand that they must enter into this BAA so that PHI may be disclosed to Business Associate and to allow Business Associate to perform functions or activities on behalf of, and/or provide services as described in the Business Support Agreement to Covered Entity that requires the use or disclosure of PHI.

NOW, THEREFORE, in consideration of the Parties’ continuing obligation to each other and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

I. Definitions

The following terms shall have the meaning ascribed to them in this Section. Other capitalized terms shall have the meaning ascribed to them in the context in which they first appear. Terms used but not otherwise defined in this BAA shall have the same meaning as those terms in the federal Standards for Privacy of Individually Identifiable Health Information, 45 CFR Parts 160 subpart A and 164 subparts A and E (the “Privacy Rule”); the federal Security Standards for the Protection of Electronic Protected Health Information, 45 CFR Parts 160 subpart A and 164 subparts A and C (the “Security Rule”); and the Notification in the Case of Breach of Unsecured Protected Health Information, 45 CFR Part 164 subpart D (the “Breach Notification Rule”) (collectively the “HIPAA Rules”).

(a) Breach. “Breach” shall have the same meaning as the term “Breach” as defined in 45 CFR § 164.402.

(b) Business Associate. “Business Associate” shall have the same meaning as the term “Business Associate” in 45 CFR § 160.103 and, as used in this BAA, refers to Business Associate in its capacity as an entity that creates, receives, maintains, or transmits Protected Health Information in providing services to a Covered Entity.

(c) Covered Entity. “Covered Entity” shall have the same meaning as the term “Covered Entity” in 45 CFR § 160.103 and, as used in this BAA, refers to the Covered Entity identified above.

(d) Individual. “Individual” shall have the same meaning as the term “Individual” in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).

(e) Protected Health Information. “Protected Health Information” or “PHI” shall have the same meaning as the term “Protected Health Information” in 45 CFR § 160.103, and shall refer to PHI obtained from Covered Entity or created, received, maintained, or transmitted by Business Associate on behalf of Covered Entity, including any PHI that is created, received, maintained, or transmitted in an electronic form (“Electronic PHI”).

(f) Required By Law. “Required By Law” shall have the same meaning as the term “Required By Law” in 45 CFR § 164.103.

(g) Secretary. “Secretary” shall mean the Secretary of the Department of Health and Human Services or his/her designee.

(h) Security Incident. “Security Incident” means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system” as defined at 45 CFR § 164.304.

(i) Unsecured Protected Health Information. “Unsecured Protected Health Information” or “Unsecured PHI” shall mean Protected Health Information that is not rendered unusable, unreadable, or indecipherable to unauthorized persons through the use of a technology or methodology specified by the Secretary in the guidance issued under section 13402(h)(2) of Pub. L. 111-5, as defined at 45 CFR § 164.402.
II. Obligations and Activities of Business Associate

(a) Uses and Disclosures of PHI. With respect to each use and disclosure of PHI Business Associate makes pursuant to this BAA, or otherwise, Business Associate agrees as follows:

(1) Business Associate agrees not to use or disclose PHI other than as permitted or required by this BAA or as Required by Law. To the extent that Business Associate performs any of Covered Entity’s obligations under the Privacy Rule, Business Associate will comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such obligation.

(2) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this BAA.

(3) Business Associate agrees to report to Covered Entity any use or disclosure of PHI not provided for by this BAA of which it becomes aware.

(4) If applicable, in accordance with 45 CFR §§ 164.504(e)(1)(ii) and 164.308(b)(2), Business Associate agrees to enter into written BAA with any subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of Business Associate, and the terms of such agreements shall incorporate substantially similar restrictions, conditions, and requirements that apply to Business Associate through this BAA.

(5) At the sole cost and expense of the Covered Entity, Business Associate agrees to make available and provide Covered Entity with access to PHI to meet the requirements under 45 CFR § 164.524. The obligations of Business Associate in this paragraph apply only to PHI in Designated Record Sets in Business Associate’s possession or control as such term is defined at 45 CFR § 164.501. Such access shall be in a timely and reasonable manner, as agreed upon by the Parties.

(6) At the sole cost and expense of the Covered Entity, Business Associate agrees to make any amendment(s) to PHI that Covered Entity directs or agrees to pursuant to 45 CFR § 164.526 at the request of Covered Entity, in a time and manner reasonably agreed upon by the Parties. The obligations of Business Associate in this paragraph apply only to PHI in Designated Record Sets in Business Associate’s possession or control as such term is defined at 45 CFR § 164.501.

(7) Business Associate agrees to make its internal practices, books, and records, including any policies and procedures, relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity, available to the Secretary, in a time and manner reasonably agreed upon or designated by the Secretary, for purposes of the Secretary determining a Covered Entity’s compliance with the Privacy Rule.

(8) Business Associate agrees to maintain and make available, in a time and manner reasonably negotiated between the Parties, the information required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI, as necessary to satisfy Covered Entity’s obligations under 45 CFR § 164.528.

(b) Securing Electronic PHI.

(1) Business Associate agrees to use appropriate safeguards and comply with applicable and mandatory requirements of the Security Rule set forth at 45 CFR §§ 164.308, 164.310, 164.312, and 164.316 with respect to Electronic PHI to prevent the use or disclosure of Electronic PHI other than as provided for by this BAA.

(2) Except as permitted by this Section, Business Associate shall promptly report to Covered Entity any Security Incident of which Business Associate becomes aware with respect to Electronic PHI Business Associate creates, transmits, receives or maintains on behalf of Covered Entity. Parties recognize, however, that a significant number of meaningless attempts to access, without authorization, use, disclose, modify or destroy PHI in Business Associate’s systems will occur on an ongoing basis and could make a real-time reporting requirement formidable for Parties. Therefore, Parties agree that the following are illustrative of unsuccessful Security Incidents that, if they do not result in a pattern of Security Incidents or the successful unauthorized access, use, disclosure, modification, or destruction of PHI or interference with an information system, will only be reported upon request on an aggregated basis:

(i) Pings on a firewall;
(ii) Port scans;
(iii) Attempts to log on to a system or enter a database with an invalid password or username; and
(iv) Malware (e.g., worms, viruses).
(c) **Notification of Breaches of Unsecured PHI.** Business Associate will notify Covered Entity of Breaches of Unsecured PHI without undue delay after the Discovery of such a Breach of the Covered Entity’s Unsecured PHI, as those terms are defined at 45 CFR Part 164 subpart D. Business Associate’s notice to the Covered Entity shall include the applicable elements as set forth at 45 CFR § 164.410(c).

### III. Permitted Uses and Disclosures by Business Associate

In accordance with the limitations in this BAA, Business Associate may use or disclose PHI as necessary to perform functions on behalf of and/or provide services to Covered Entity to the extent such uses or disclosures are permitted by the Privacy Rule, as it may be amended from time to time.

### IV. Specific Use and Disclosure Provisions

(a) Business Associate may use or disclose PHI as necessary to provide services under the Business Support Agreement.

(b) In accordance with the limitations in this BAA, Business Associate may use PHI as necessary for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, to the extent such use is permitted by the Privacy Rule, as it may be amended from time to time.

(c) In accordance with the limitations in this BAA, Business Associate may disclose PHI as necessary for the proper management and administration of Business Associate or to carry out the legal responsibilities of the Business Associate, provided that such disclosures are (i) Required By Law, or (ii) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as Required By Law or for the purposes for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been Breached.

(d) Business Associate may use PHI as necessary to report violations of law to appropriate federal and state authorities, to the extent permitted by 45 CFR § 164.502(j)(1).

(e) In accordance with 45 CFR § 164.504(e)(2)(i)(B), Business Associate may use PHI to provide data aggregation services.

(f) Business Associate may use PHI to create de-identified information in accordance with applicable requirements of 45 C.F.R. §§ 164.514(a) - (c) and may further use and disclose such information for its own purposes.

### V. Specific Use and Disclosure Restrictions

In accordance with 45 CFR § 164.502(b)(1), Business Associate will limit to the extent practicable the use, disclosure, or request of PHI to the minimum necessary to accomplish the intended purposes of such use, disclosure, or request, respectively, except that the restrictions set forth herein shall not apply to the exceptions set forth in CFR § 164.502(b)(2).

### VI. Obligations of Covered Entity

(a) Covered Entity shall notify Business Associate of any limitation(s) in a Covered Entity’s notice of privacy practices, in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate’s use or disclosure of PHI.

(b) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate’s use or disclosure of PHI.

(c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that a Covered Entity has agreed to or is required to abide by in accordance with 45 CFR § 164.522, or as mandated pursuant to Section 13405(c) of the HITECH Act, to the extent that such restriction may affect Business Associate’s use or disclosure of PHI.

(d) Covered Entity agrees to disclose to Business Associate only the minimum amount of PHI necessary to accomplish the services covered in the Business Support Agreement.
(e) Covered Entity understands and agrees that in addition to obligations Required By Law, Business Associate provides services in the Business Support Agreement on the express condition that the Covered Entity fulfills its additional obligations set forth therein.

(f) Covered Entity shall obtain all consents and authorizations necessary and/or required by law for Business Associate to provide its services and to engage in uses and disclosures required by the Business Support Agreement and this BAA.

(g) Upon any suspected or actual Breach of Unsecured PHI, unauthorized disclosure of PHI or breach of this BAA, Covered Entity shall meet and confer in good faith with Business Associate before notifying affected Individuals, reporting to government agencies, and/or commencing any legal action.

VII. Permissible Requests by Covered Entity

Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rules if done by Covered Entity. Business Associate shall not use or disclose PHI in any manner that would not be permissible under the Privacy Rules if done by Covered Entity, except for uses and disclosures permitted by Sections IV(b) and (c).

VIII. Term and Termination

(a) Term. This BAA shall be effective as of Effective Date, and shall continue until terminated. The obligations under this BAA shall apply to each Business Support Agreement referencing this BAA until the later of (i) completion, termination, or expiration of that Business Support Agreement or (ii) when all of the PHI provided by Covered Entity to Business Associate or created received, maintained, or transmitted by Business Associate on behalf of Covered Entity under the Business Support Agreement is destroyed or returned to Covered Entity, in accordance with subsection (d), below.

(b) Termination for Cause for Failure to Comply with this BAA by Business Associate. Upon any material failure to comply with this BAA by Business Associate, Covered Entity shall either:

   (1) Provide an opportunity for Business Associate to cure the failure to comply or end the violation and terminate this BAA if Business Associate does not cure the failure to comply or end the violation within a reasonable time specified by Covered Entity; or

   (2) Immediately terminate this BAA if Business Associate has failed to comply with a material term of this BAA and cure is not possible and the Business Associate has not implemented reasonable steps to prevent a reoccurrence of such failure to comply.

(c) Termination for Cause for Failure to Comply with this BAA by Covered Entity. Upon any material failure to comply with this BAA by Covered Entity, Business Associate shall either:

   (1) Provide an opportunity for Covered Entity to cure the failure to comply or end the violation and terminate this BAA if Covered Entity does not cure the failure to comply or end the violation within the time specified by Business Associate;

   (2) Immediately terminate this BAA if Covered Entity has failed to comply with a material term of this BAA and cure is not possible and the Covered Entity has not implemented reasonable steps to prevent a reoccurrence of such failure to comply.

(d) Effect of Termination.

   (1) Except as provided below in paragraph (2) of this subsection, upon termination of this BAA, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity or created, received, maintained, or transmitted by Business Associate on behalf of Covered Entity in accordance with HIPAA. This provision shall apply to PHI in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of PHI.

   (2) In the event Business Associate determines returning or destroying the PHI is infeasible, Business Associate shall extend the protections of this BAA to such PHI and limit further uses and disclosures of PHI for so long as Business Associate maintains such PHI. Business Associate shall return to Covered Entity or destroy the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.
IX. **Miscellaneous**

(a) **Amendment.** The Parties agree to take such action as is necessary to amend this BAA from time to time as is necessary for Covered Entity or Business Associate to comply with requirements of HIPAA.

(b) **Survival.** The respective rights and obligations of Business Associate under Section VIII (Term and Termination) of this BAA shall survive termination of this BAA.

(c) **Interpretation.** Any ambiguity in this BAA shall be resolved to the extent reasonable to permit Covered Entity to comply with HIPAA.

(d) **Conflicts.** To the extent a conflict exists between this BAA and the Business Support Agreement, the terms and conditions of this BAA shall take precedence.

(e) **Third Parties.** Nothing in this BAA shall confer any right, remedy or obligation upon anyone other than Business Associate and Covered Entity.

(f) **Regulatory References.** A reference in this BAA to a section in the HIPAA Rules means the section as in effect or as amended.