

MICRO FOCUS CUSTOMER TERMS - SOFTWARE-AS-A-SERVICE

Scope and Parties. These Micro Focus Customer Terms for Software-as-a-Service (the “**Agreement**”) govern the purchase, access and use of software-as-a-service from the applicable Micro Focus entity and affiliates (“**Micro Focus**”) by the customer entity identified in the applicable Order (as defined herein) (“**Customer**”). The terms of this Agreement become effective the earlier of (i) the date of the last signature on the applicable Order; (ii) the date of online acceptance of the applicable Order by Customer; or (iii) the date Micro Focus makes the applicable Micro Focus SaaS available for Customer’s use (the “**Effective Date**”) and will remain in effect unless terminated pursuant to Section 16 (Term and Termination).

- 1. Micro Focus Software-as-a-Service.** “Micro Focus Software-as-a-Service” or “Micro Focus SaaS” mean the Micro Focus branded online software solutions that Micro Focus makes available for Customer’s use through a network connection, each as described in the applicable service description and the additional terms or conditions applicable to a given Micro Focus SaaS (collectively, “**Service Description**”), all of which are made a part of this Agreement. The terms for authorized use of each Micro Focus SaaS are stated in the applicable Service Description. The applicable Service Description is either attached hereto or can be found by accessing a Micro Focus or provider website; all references in this Agreement to “Service Description” shall refer to the Service Description that corresponds to the applicable version of the Micro Focus SaaS made available to Customer. In the event of a conflict, the Order and Service Description takes precedence over this Agreement in that order.
- 2. Orders.** An order for Micro Focus SaaS may be placed by Customer or any entity of which Customer has the beneficial ownership of at least 50% of the voting interests of such entity (an “**Affiliate**”) through a document for the provision of the Micro Focus SaaS: (i) which is agreed upon by the parties; (ii) which may be titled “Order”, “Order Form”, “Services Order Form”, “Schedule”, or comparable title; and (iii) which incorporates this Agreement, including incorporation by reference to a URL on the Micro Focus website (each upon Micro Focus’ acceptance, an “**Order**”).
- 3. Access Rights.** During the applicable SaaS Order Term (defined in section 16(a)), Customer and its Affiliates may access and use Micro Focus SaaS in accordance with the applicable Service Description and this Agreement. Customer is responsible for ensuring that it and its Affiliates comply with the terms of this Agreement and the applicable Service Description. Customer is further responsible for any and all use of Micro Focus SaaS by Customer, its Affiliates, and Third Party(ies) through its credentials, Orders placed by or on behalf of its Affiliates, and any account that it or its Affiliates may establish. Customer agrees to maintain the confidentiality of its account, credentials, and any passwords necessary to use Micro Focus SaaS and agrees to ensure that its Affiliates and Third Parties agree to do the same. “**Third Party(ies)**” means contractors or consultants of Customer or its Affiliates retained to provide services solely for the internal benefit of Customer or its Affiliates. Should Customer or its Affiliates believe that there has been unauthorized use of its or their accounts, credentials, or passwords, Customer must immediately notify Micro Focus.
- 4. Usage Limitations.** Micro Focus SaaS may be used only for Customer’s internal business operations or functions and not for commercialization of Micro Focus SaaS or to provide services or benefit to any third party. Customer will not: (i) exceed any usage limitations identified in the Service Description; (ii) assign, sell, resell, license, rent, lease, lend, sublicense, outsource or otherwise transfer rights to use or access Micro Focus SaaS to any third party except as specifically permitted in the Service Description; (iii) copy or reproduce any portion, feature, function, or user interface of Micro Focus SaaS; (iv) interfere with or disrupt the integrity or performance of Micro Focus SaaS; (v) use Micro Focus SaaS to submit, send, or store SaaS Data (defined in Section 6 (Customer-provided SaaS Data) below) that is obscene, threatening, libelous or otherwise unlawful or tortious material, violates any third party’s privacy rights, risks harm to Micro Focus’ reputation, or infringes upon or misappropriates intellectual property rights; (vi) use Micro Focus SaaS to disrupt or cause harm to a third party’s system or environment; (vii) submit or process SaaS Data via the Micro Focus SaaS that impose a greater obligation on Micro Focus than as expressly set forth in the Agreement (viii) access Micro Focus SaaS to build a derivative work, competitive product or service to Micro Focus SaaS or software; (ix) reverse engineer Micro Focus SaaS or software; or (x) authorize, allow or appoint any third party to do any of the foregoing. Customer is responsible for complying with all terms of use for any software, content, service, or website it loads, creates, or accesses when using Micro Focus SaaS and ensuring compliance with applicable local, state and national laws and regulations in connection with the use of the Micro Focus SaaS, including those related to export compliance, data privacy, international communications and the transmission of data. Upon written notice to Customer, Micro Focus may require Customer’s assistance in verifying usage of the Micro Focus SaaS in compliance with the terms of this Agreement, the Order and the Service Description.

5. **Payment.**

- a. **Obligation to pay.** Customer agrees to pay (i) all applicable fees for Micro Focus SaaS and Licensed Software (defined in section 10) and (ii) any storage fees following expiration or termination of the SaaS Order Term. Customer agrees to pay all invoiced amounts within thirty (30) days of Micro Focus' invoice date. Customer shall be liable for all outstanding past-due amounts, which shall accrue interest at the rate of 1.5% per month compounded or, if lower, the maximum rate allowed by applicable law, and any collection costs associated with the collection of any past-due amounts. Micro Focus may also suspend or cancel performance of open Orders or services if Customer fails to make payments when due. Customer purchase orders are for administrative convenience and not a condition of payment. Not providing a purchase order does not relieve Customer from the obligation to make timely payments as set forth in this Agreement.
- b. **Prices and Taxes.** Prices will be as quoted in writing by Micro Focus in the applicable Order or, in the absence of a written quote, as set out on a Micro Focus website or portal, or Micro Focus published list price at the time an Order is submitted to Micro Focus. Prices are exclusive of taxes, duties, and fees unless otherwise quoted, and all such amounts shall be paid or reimbursed by Customer. After the Initial Term, Micro Focus may increase the prices by no more than ten percent (10%) per year, by providing Customer with prior written notice.
- c. **Usage-based Micro Focus SaaS.** If Customer purchases Micro Focus SaaS through a usage-based model, Customer agrees to issue a purchase order to Micro Focus within 15 days of receiving a usage report from Micro Focus. If Customer does not issue a purchase order as so required, Customer agrees that Micro Focus may invoice Customer without a purchase order and Customer agrees to pay such invoice in accordance with Section 5(a) above.

6. **Customer-provided SaaS Data.** Customer is solely responsible for the data, text, audio, video, images, software, and other content input into a Micro Focus system or environment during Customer's (and its Affiliates' and/or Third Parties') access or use of Micro Focus SaaS ("**SaaS Data**"). As between Micro Focus and Customer, Customer is and will remain the sole and exclusive owner of all right, title, and interest in and to all SaaS Data. Subject to Section 7, Micro Focus will treat SaaS Data as confidential by not disclosing it other than to its employees, affiliates, subsidiaries, contractors, and suppliers solely for the purposes of the Permitted Uses (as defined below). Customer hereby provides to Micro Focus all necessary rights to Customer- provided SaaS Data to enable Micro Focus to perform its obligations, and exercise its rights, under this Agreement. Subject to Section 7, Micro Focus will use SaaS Data only as necessary to provide Micro Focus SaaS, provide or maintain the security and integrity of Micro Focus SaaS, provide technical support to the Customer or as otherwise required by law (the "**Permitted Uses**").

7. **Data Protection.** Micro Focus will provide Micro Focus SaaS in accordance with privacy and data protection laws, to the extent applicable to Micro Focus. Micro Focus' privacy policy is available at <https://www.opentext.com/about/privacy> or can be provided by Micro Focus at Customer's request.

- a. To the extent that Micro Focus processes personal data on behalf of Customer in performing the Micro Focus SaaS: (i) Micro Focus shall implement reasonable and appropriate technical and organizational measures designed to protect personal data against unauthorized or unlawful processing. The Service Description for each Micro Focus SaaS describes the specific measures implemented for such Micro Focus SaaS; (ii) Micro Focus shall not collect, sell or use such personal data except as necessary to perform the Micro Focus SaaS, or as otherwise permitted by the applicable laws; (iii) where an individual submits a verifiable request to Micro Focus to exercise their privacy rights relating to their personal data in respect of a named Customer, Micro Focus shall forward these requests to the named Customer's email address on file with Micro Focus as soon as reasonably practicable; and (iv) this Agreement incorporates by reference the data processing addendum at <https://www.opentext.com/about/data-processing-addendum> (as updated from time to time).
- b. To the extent that Micro Focus requires personal data to provide the Micro Focus SaaS, Customer will provide personal data only to the extent reasonably required. Customer is responsible for implementing and maintaining privacy protections and security measures for components that Customer provides or controls, as well as complying with its obligations under this Agreement or otherwise required by law. Customer is responsible for providing notice to, and obtaining consents from, by way of example but not limited to, individuals regarding the collection, processing, transfer and storage of their data through the Micro Focus SaaS as required by law.

8. **Performance and Operations.** Micro Focus' ability to deliver Micro Focus SaaS will depend on Customer's reasonable and timely cooperation and the accuracy and completeness of any information from Customer needed to deliver Micro Focus SaaS.
9. **Operations.** Micro Focus: (i) may modify the systems and environment used to provide Micro Focus SaaS; and (ii) reserves the right to make any changes to Micro Focus SaaS that it deems necessary or useful to maintain or enhance the quality or delivery of Micro Focus SaaS to its customers, the competitive strength of or market for Micro Focus SaaS, or Micro Focus SaaS' cost efficiency, or performance. If a change is anticipated to have a material adverse effect on Customer's use of the affected Micro Focus SaaS, Micro Focus will: (i) give reasonable advance written notice identifying the reason for the change and the expected impact prior to implementing such change; and (ii) consult with Customer to identify ways to mitigate the impact of any such change. Micro Focus may use global resources, such as Micro Focus affiliates or third parties, in worldwide locations to provide Micro Focus SaaS and perform its obligations.
10. **Software Licensing in connection with Micro Focus SaaS.** To the extent that Micro Focus makes Micro Focus- branded software available for use in connection with Micro Focus SaaS (the "**Licensed Software**"), such Licensed Software is governed by the applicable Micro Focus End User License Agreement ("**EULA**") (found at <https://software.microfocus.com/en-us/about/software-licensing>) except that (i) use of such Licensed Software shall only be in conjunction with Micro Focus SaaS and (ii) the term of such use shall be limited to the SaaS Order Term. Should Customer use the Licensed Software beyond the Order, Micro Focus' then-current list price for the version of the Licensed Software made generally available outside of Micro Focus SaaS shall apply.
11. **Warranty.** Micro Focus and its affiliates respectively will provide Micro Focus SaaS consistent with the Service Description using qualified personnel and in a workmanlike manner. The Micro Focus SaaS and Licensed Software are provided to Customer "AS-IS" without warranty of any kind. MICRO FOCUS DOES NOT WARRANT THAT THE FUNCTIONALITY CONTAINED IN THE MICRO FOCUS SAAS AND LICENSED SOFTWARE WILL MEET CUSTOMER'S REQUIREMENTS, THAT OPERATION WILL BE UNINTERRUPTED, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE, OR WORK IN COMBINATION WITH ANY OTHER SOFTWARE, APPLICATIONS, OR SYSTEMS, MEET ANY PERFORMANCE OR RELIABILITY STANDARDS, OR BE ERROR-FREE, OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED. EXCEPT AS SET FORTH HEREIN AND TO THE EXTENT PERMITTED BY LAW, ALL OTHER WARRANTIES WITH RESPECT TO THE MICRO FOCUS SAAS AND LICENSED SOFTWARE, WHETHER EXPRESSED OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE, OR TRADE PRACTICE ARE EXPRESSLY DISCLAIMED BY MICRO FOCUS, ITS AFFILIATES, AND ITS THIRD-PARTY SUPPLIERS. Customer acknowledges that Customer is responsible for the selection of the Micro Focus SaaS and Licensed Software to achieve Customer's intended results and for the installation and/or use of, and results obtained from, the Micro Focus SaaS and the Licensed Software.
12. **Intellectual Property Rights.** No transfer of ownership of any intellectual property rights will occur under this Agreement. Customer's only rights to the Micro Focus SaaS and Licensed Software granted herein are the rights and licenses expressly stated in this Agreement and no other rights are implied or granted by estoppel. Micro Focus and its affiliates and their licensors and third party suppliers retain ownership of, and reserve all rights in and to, the Micro Focus SaaS and Licensed Software, including all copies thereof, and all intellectual property rights arising out of or relating thereto. Customer shall use reasonable efforts to safeguard the Micro Focus SaaS and Licensed Software (including all copies thereof) from infringement, misappropriation, theft, misuse, or unauthorized access. Customer shall promptly notify Micro Focus if it becomes aware of any infringement or misappropriation of the Micro Focus SaaS and Licensed Software and shall fully cooperate with Micro Focus, at Micro Focus' expense, in any legal action taken by Micro Focus to enforce its intellectual property rights. Customer grants Micro Focus a non-exclusive, worldwide, royalty-free right and license to any intellectual property rights, data and technology, including SaaS Data, that is necessary for Micro Focus and its designees to perform Micro Focus SaaS.
13. **Indemnification.** Micro Focus will defend and/or settle any claims against Customer that allege that a Micro Focus-branded product or service as supplied under this Agreement infringes the intellectual property rights of a third party ("**IP Infringement Claim**") by paying infringement claim defense costs, Micro Focus negotiated settlement amounts, and court awarded damages, provided: (i) Customer promptly notifies Micro Focus in writing of the IP Infringement Claim; (ii) Micro Focus has sole control of the defense and all related settlement negotiations; and (iii) Customer

reasonably cooperates with Micro Focus in the defense of the IP Infringement Claim. At Micro Focus' option and sole discretion, Micro Focus may modify the product or service so as to be non-infringing and materially equivalent, or Micro Focus may procure a license. If these alternatives are not reasonably available, Micro Focus will refund to Customer the balance of any pre-paid amount for the affected Micro Focus SaaS not available for Customer's continued access and use. Micro Focus is not responsible for losses suffered by the Customer as a result of any IP Infringement Claim relating to (i) SaaS Data (ii) any unauthorized use of the products or services by the Customer or (iii) customized configurations or designs performed or provided by Customer or performed at Customer's direction. Customer shall be liable for and shall defend and indemnify Micro Focus from and against any losses suffered by Micro Focus as a result of claim or regulatory action relating to (i) SaaS Data (ii) any unauthorized use of the products or services by the Customer or (iii) customized configurations or designs performed or provided by Customer or performed at Customer's direction. The defense, settlement, and payments offered in this Section 13 shall be the sole and exclusive remedy for any IP Infringement Claim under this Agreement. This section shall also apply to Licensed Software identified as such in the relevant Service Description.

14. **Limitation of Liability.** Micro Focus' liability for all claims under this Agreement is limited in the aggregate to the amount payable by Customer to Micro Focus for the relevant Micro Focus SaaS Order that is the subject of the claim for the twelve (12) month period immediately preceding the act or omission giving rise to the claim. This limit applies collectively to Micro Focus, its employees, affiliates, subsidiaries, contractors, and suppliers. This provision does not limit either party's liability for: unauthorized use of intellectual property, any liability arising under Section 13, death or bodily injury caused by their negligence, acts of fraud, nor any liability which may not be excluded or limited by applicable law. Micro Focus will not be liable for lost revenues or profits, downtime costs, or indirect, special, or consequential costs or damages, performance delays or for non-performance due to causes beyond its reasonable control, even if informed of the possibility of such damages in advance. If Micro Focus provides Customer with a free-of-charge SaaS Order Term, including but not limited to Micro Focus SaaS provided on an evaluation or "freemium" basis, Micro Focus SaaS is provided "AS IS" and to the extent permitted by law, Micro Focus shall not be responsible for any loss or damage to Customer, its customers, or any third parties caused by Micro Focus SaaS or Licensed Software that it makes available to Customer.
15. **Suspension.** Micro Focus may immediately suspend all or any access and use rights granted hereunder to Micro Focus SaaS in the event of a security or regulatory concern in relation to Micro Focus SaaS or where (i) Customer fails to make payments when due; (ii) Customer breaches sections 3, 4, 5, 6, 7, 10 or 19 of this Agreement; (iii) Customer's use of Micro Focus SaaS is in violation of law; or (iv) Micro Focus reasonably believes such Customer's use poses a threat to the security, integrity, or the reputation of Micro Focus SaaS. Customer remains responsible for applicable fees through the date of suspension including usage and data storage fees. Customer will not be entitled to service credits during any suspension period.
16. **Term and Termination.**
 - a. The initial term ("**Initial Term**") of each Micro Focus SaaS subscription begins on the Effective Date and will continue until the end of the period referenced in the applicable Order or Service Description. Unless otherwise set forth in the Order, the Order Term shall automatically renew for successive 12 month renewal terms (each a "**Renewal Term**") on each anniversary of the Effective Date. Either party may terminate the Agreement, effective at the end of the Initial Term or then-current Renewal Term, by providing the other party at least 60 days prior written notice. The Initial Term and the Renewal Terms may be collectively referred to as the "**SaaS Order Term**".
 - b. Either party may terminate this Agreement if the other fails to meet any material obligation and fails to remedy the breach within thirty (30) days of being notified in writing of such breach. If either party becomes insolvent, unable to pay debts when due, files for or is subject to bankruptcy or receivership, or asset assignment, the other party may terminate this Agreement and cancel any unfulfilled obligations. Micro Focus may terminate this Agreement (i) where access and use rights are suspended pursuant to Section 15 (Suspension) or (ii) where any such access and/or use under this Agreement fails to comply with applicable laws or regulations. Except in the event of a material breach or as expressly provided in this Agreement, neither party will be permitted to terminate the applicable Order or this Agreement prior to the end of the Initial Term or applicable Renewal Term. Any terms in this Agreement which by their nature extend beyond termination or expiration of this Agreement will remain in effect until fulfilled and will apply to both parties' respective successors and permitted assigns.

17. **Effect of Expiration or Termination.** Upon expiration or termination of a SaaS Order Term, except as otherwise provided in the Service Description:
- a. Micro Focus may disable all access to the applicable Micro Focus SaaS granted hereunder;
 - b. Customer shall promptly deinstall, cease use of, and return to Micro Focus (or at Micro Focus' request destroy) any Licensed Software provided with Micro Focus SaaS;
 - c. SaaS decommissioning is subject to the terms of the applicable Service Description;
 - d. Customer agrees that it will pay or arrange for payment for the storage of any SaaS Data that remains on Micro Focus' systems following the expiration or termination of the SaaS Order Term; and
 - e. Customer shall not be entitled to any refund or credit, and Customer's payment obligations are non-cancellable.
18. **General.** This Agreement represents the parties' entire understanding with respect to its subject matter and supersedes any previous communication or agreements that may exist. Modifications to this Agreement will be made only through a written amendment signed by both parties. If Customer is located in North America, the laws of the State of Delaware govern this Agreement and the rights granted hereunder, and the parties hereto consent to the exclusive jurisdiction of the State and Federal courts of the State of Delaware in any action based on this Agreement, the access and use rights or any Licensed Software. Each party waives any right it may have to object to such venue, including objections based on personal jurisdiction or forum non conveniens (inconvenient forum). The parties agree that the Uniform Computer Information Transaction Act or any version thereof, adopted by any state, in any form ("UCITA"), shall not apply to this Agreement. To the extent that UCITA is applicable, the parties hereby opt out of the applicability of UCITA pursuant to the opt-out provision(s) contained therein. If Customer is located in France or Germany, this Agreement is governed by the laws of the country in which Customer is located. In the rest of the world, the laws of England govern this Agreement. In each case, the applicable law shall apply without regard to conflicts of laws provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods. Other than for North American transactions, this Agreement, the access and use rights, the licenses granted hereunder, and the parties hereto, shall be subject to the exclusive jurisdiction of the courts of the country determining the applicable law as aforesaid. In the event of a dispute, the prevailing party shall have the right to collect from the other party its reasonable costs and attorneys' fees incurred in enforcing this Agreement. No action, regardless of form, arising from this Agreement or any Micro Focus SaaS provided hereunder may be brought by either party more than two (2) years after the cause of action has accrued, except that an action for non-payment may be brought at any time.
19. **Export laws.** The Micro Focus SaaS (which for purposes of this Section include any Licensed Software, documentation and technical data stored or transmitted via the Micro Focus SaaS) may be subject to export and import control laws of Canada, the United States, the European Union or other countries. Customer agrees to comply strictly with all applicable export or import regulations, including, but not limited to (i) the Export Administration Regulations maintained by the U.S. Department of Commerce, and (ii) the trade and economic sanctions maintained by the U.S. Department of Treasury Office of Foreign Assets Control, and will not allow use of the Micro Focus SaaS in a manner that breaches or facilitates the breach of such regulations. Customer has the responsibility to obtain any licenses required to export, re-export, or import the Micro Focus SaaS, including deemed exports. The Micro Focus SaaS shall not be provided or used by anyone: (a) located in any applicable embargoed or sanctioned countries or by any Foreign National of a U.S. embargoed country; or (b) included on the U.S. Treasury Department's list of Specially Designated Nationals; (c) the U.S. Department of Commerce's Denied Persons or Entity List; or (d) subject to trade control sanctions or blocking measures. By using the Micro Focus SaaS, Customer represents and warrants that neither Customer nor any person provided access to the Micro Focus SaaS by Customer is located in any such country or on any such list.