

# Micro Focus Business Support Agreement

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

## 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:

With respect to Software previously provided by the former software business of Hewlett Packard Enterprise and now provided by Micro Focus (“SoftwareGrp”), you can access the MySupport portal to get online self-service support at: <https://softwaresupport.softwaregrp.com/>

For all other Software, you can access 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.

### Support Delivery Languages

Worldwide support centers provide you with Support in English and local language access in most major countries. Subject to language knowledge and resource availability, Support may be available in Chinese (Cantonese and Mandarin), French, German, Hindi, Italian, Japanese, Korean, Polish, Portuguese, Russian or Spanish. Support outside of standard local business hours and Support for Vertica, IDOL, Connected Media, Archiving and eDiscovery, Security ArcSight, Atalla, Fortify and Voltage products may be provided in English only.

### Escalation Management

Micro Focus has established formal 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	1: Critical	2: High	3: Medium	4: Low
Severity Level Description	Production system is down Production system is down. The product is inoperable, resulting in a total disruption of work. No workaround is available.	Major feature or function failure Major functionality failure. Operations are severely restricted, although work can continue in a limited fashion. A workaround is available.	Minor feature or function failure Minor functionality failure. Product does not operate as designed, resulting in a minor loss of usage. A workaround may be available.	Minor problem There is no loss of service. For example, this may be a request for documentation, general information, or a Software enhancement request.

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Micro Focus Business Support

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
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**Response Time Objectives**

Micro Focus Business Support, Monday–Sunday, 24x7, 365 days per year <sup>2</sup>	1 hour	3 hours	6 hours	1 business day
Standard Care local business hours and local business days <sup>3 4</sup>	N/A	N/A	N/A	N/A

Total Care 24x7 (below), will not be available for purchase as of 1 March 2018, but for those customers who subscribe to Total Care 24x7 between 15 January 2018 and 28 February 2018, this Business Support Agreement will solely govern, including the Response Time Objectives set forth (below).

Total Care 24x7 Monday–Sunday, 365 days per year <sup>2</sup>	1 hour	3 hours	1 business day	N/A
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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 SoftwareGrp, any 24x7x365 support will only be provided for Severity 1 issues opened by telephone.

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

4 Standard Care is available for all products except Serena and those in SoftwareGrp.

## 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.
- 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 significant 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 "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.#.

## 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, for FlexCare purchases, the [FlexCare Support data sheet](#) as well.

- Micro Focus Premium Support and Micro Focus FlexCare Support offer enhanced reactive and proactive support services. Features include designated engineers and account managers who become familiar with your environment.
- Micro Focus FlexCare Credits are a support currency that can be purchased at any time throughout the life of your Business Support agreement, and provide a flexible way to source additional reactive and proactive support services from a menu of standalone pre-packaged support services.

For more information on Micro Focus advanced support offerings, visit:

- For SoftwareGrp: [www.microfocus.com/flexcaresupport](http://www.microfocus.com/flexcaresupport)
- For all other Software: [www.microfocus.com/support-and-services/premium-support/](http://www.microfocus.com/support-and-services/premium-support/)

## 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::

- a) a) 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
- b) 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. Software Updates pertaining to the Autonomy IDOL Software product require a prerequisite software migration to the IDOL 10 platform. All Software Updates for Autonomy IDOL will pertain solely to the Autonomy IDOL 10 version.

#### 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. Term Licenses

A “Term License” means a Software license limited to a fixed period of time. With respect to Term Licenses for SoftwareGrp, Micro Focus provides Support through online self-service Support only. All incidents are logged online. With respect to Term Licenses for all other Software, in addition to online Support, Severity 1 issues may also be opened by telephone.

### 4. 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.

## 5. 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.

## 6. Concurrent Support

### Software Updates

Micro Focus offers Customers the ability to use both a Software Update and the current Software product version for a limited timeframe from receipt of the Software Update at no additional charge ("Update Concurrent Use Period"). For Software Updates from SoftwareGrp, the Update Concurrent Use Period is six (6) months. For all other Software Updates, the Update Concurrent Use Period is 90 days.

Notwithstanding the foregoing, there shall be no Update Concurrent Use Period for the Software listed at [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 concurrently installed.

The Update Concurrent Use Period may not extend beyond the end of Support for the current Software version. Your authorized use of a Software Update is limited to managing the same environment as is currently being managed by the current Software version. At the end of the applicable Update Concurrent Use Period, your license to the prior version of the Software is terminated.

### Migrations

For SoftwareGrp, Support may include authorized Software migrations. "Migrated Software" means the software which results from a Micro Focus authorized migration of a current SoftwareGrp product to a different Software product.

With respect to a Micro Focus authorized Software migration, Micro Focus authorizes you to use both the current Software version and the Migrated Software simultaneously ("Migrated Software Concurrent Use Period") at no additional charge for the time period specified per the categories below. You will be notified of the migrated software concurrent use period when you are notified of a Micro Focus authorized migration, or please contact your Micro Focus representative or Micro Focus Business Partner with questions:

- Standard: 3 months Migrated Software Concurrent Use Period.
- Advanced: 12 months Migrated Software Concurrent Use Period.
- Complex: 18 months Migrated Software Concurrent Use Period.
- Exceptional: 24 months Migrated Software product version, and for which a successor Software product or product version is commercially available.

The Migrated Software Concurrent Use Period may not extend beyond the end of Support for the current Software version. Your authorized use of Migrated Software is limited to managing the same environment as is currently being managed by the current Software version. At the end of the applicable Migrated Software Concurrent Use Period, your license to the prior version of the Software is terminated.

## 7. 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.

## 8. 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.

## 9. Product Support Lifecycle

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 is either Time Based or Version Based.

- **Time Based:** Committed Support will be provided for a designated minimum period of time. When a Software product exits the Committed Support period, it enters the Extended Support period. During this period, Customer may access previously released Software Updates, technical Support and Self-Help resources, but may no longer submit defect Support or enhancement requests. For Software Grp, following Committed and Extended Support, the product enters a minimum period of Self-Help Support with Rights To New Versions ("RTNV"). If SoftwareGrp discontinues a product and no successor product is commercially available under Support, SoftwareGrp will provide support for the minimum timeframes indicated in the [Micro Focus Software Time Based Support Lifecycle Time Frames table](#).
- **Version Based:** Committed Support will be provided for the current and previous Minor versions of the current Major Version and the last Minor Version of the previous Major Version. Software Grp will support the last Minor Version of a Major Version (for example, 6.2) for either (i) twenty-four (24) months from the date when a new Major Version (for example, 7.0) becomes generally available or (ii) until the date when the next Major Version (for example, 8.0) becomes generally available, whichever occurs earlier. For Version Based products, when a Software product exits the Committed Support period, it enters the Self-Help Support period. During the Self-Help Support period, Customer may access online self-service resources and previously released Software Updates, but may no longer contact technical Support or submit product defect or enhancement requests. If SoftwareGrp discontinues a product and does not make another Minor Version commercially available as an Update, SoftwareGrp will provide full support for twenty-four (24) months from the date of the product's discontinuance notice.
- **Extended Support Plus:** For selected Software products, "Extended Support Plus" may be purchased at an additional fee to Support for continued access to Severity Level 1 defect support and critical security Software Updates upon the exit of the product from Committed Support. See more information here at [Extended Support Plus](#).

For SoftwareGrp: Review the details of the Product Support Lifecycle policy and Software product specific end dates here: [Product Support Lifecycle policy and Software product specific end dates](#).

For all other Software: Review the details of the [Product Support Lifecycle policy](#). View the [Software product specific end dates](#).

## 10. License Type Upgrades and Quantity Upgrades

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

- "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.
- "License Quantity Upgrade" means upgrading to a higher count of license. An example would be upgrading from 1000 nodes to 2500 nodes.

## 11. 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.

## 12. 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.

## 13. 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.

## 14. 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.

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.

## 15. 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 19 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.

## 16. Exclusions

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

- Improper site preparation, or site or environmental conditions that do not conform to Micro Focus site specifications;
- Customer's non-compliance with Micro Focus's specifications, statements of work or this Support Agreement;
- Customer's improper or inadequate upkeep of the Software environment;
- Use in conjunction with Customer's or third-party's media, software, interfacing, supplies, or other products;
- Modifications not performed or authorized by Micro Focus;
- Any virus, infection worm, or similar malicious code not introduced by Micro Focus; or
- 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.

## 17. 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.

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.

## 18. 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.

## 19. 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.

## 20. 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 20(A) ABOVE, NEITHER MICRO FOCUS NOR ITS SUPPLIERS SHALL BE LIABLE FOR:
  - i. INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR DAMAGES, OR
  - ii. 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.
- c. SUBJECT TO CLAUSE 20(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.

## 21. 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.

## 22. 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.

### **23. 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 California. 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 above-described 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.
- 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.

## 24. Personal Data

This provision only applies to the extent Customer provides Personal Data to Micro Focus under this Support Agreement.

- a. The following definitions apply to these terms used in this clause:
  - i. Data Controller: The natural or legal person, public authority, agency or any other body which alone or jointly with others determines the purposes and means of the processing of Personal Data; where the purposes and means of processing are determined by national or local laws or regulations, the controller or the specific criteria for his nomination may be designated by national or local law.
  - ii. Data Processor: The natural or legal person, public authority, agency or other body which processes personal data on behalf of the Data Controller.
  - iii. Data Subject: An identified or identifiable natural person who is the subject of Personal Data, and as otherwise may be defined by national or local data protection law; an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his/her physical, physiological, mental, economic, cultural or social identity.
  - iv. Personal Data: Any information relating to a Data Subject.
  - v. Processing and Process: Any operation or set of operations which is performed upon Personal Data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction.
- b. Customer shall at all times remain the Data Controller of Personal Data that is Processed under this Support Agreement, and Micro Focus shall be Customer's Data Processor. Micro Focus shall Process the Personal Data solely in accordance with the terms of this Support Agreement and as otherwise instructed by the Data Controller.
- c. 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. Micro Focus agrees that: (i) it shall ensure adequate security measures are put in place to protect the integrity of the Personal Data to the extent as required by the applicable national and/or local data protection laws; and (ii) it shall assist Customer with Data Subject access requests under the applicable national and/or local data protection laws.
- d. Customer acknowledges that the provision of Personal Data to Micro Focus is not required in order for Micro Focus to provide Support. Customer warrants that: (i) no Personal Data shall be provided to Micro Focus in connection with this Support Agreement without Micro Focus's express written consent to such disclosure in each instance; (ii) it has obtained the necessary consent of each of the Data Subjects to collect their respective Personal Data and to transfer, and permit Micro Focus to process, such Personal Data in accordance with this Support Agreement and that such consent has not been withdrawn; (iii) it shall immediately inform Micro Focus if it becomes aware that a Data Subject has withdrawn its consent, or such consent has not been validly provided, as obtained in accordance with clause 24.d.(i); (iv) where requested, it shall provide Micro Focus with records showing the above consent; (v) it shall provide Micro Focus with full co-operation in relation to Micro Focus's compliance with Micro Focus's data protection obligations; and (vi) it has complied with all its obligations under any applicable national and/or local data protection laws and any other applicable data protection requirements. Customer

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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

**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:

[Maintenance and Support Agreements](#)

[www.microfocus.com](http://www.microfocus.com)



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**U.S. Headquarters**

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877 772 4450

Additional contact information and office locations:

**[www.microfocus.com](http://www.microfocus.com)**