



**MLA Membership Form (EMEA)**

Contract Number (Micro Focus Use Only): .....

TO APPLY FOR THE MLA PROGRAM, PLEASE COMPLETE AND SIGN THIS FORM AND RETURN IT TO MICRO FOCUS.

Membership in the MLA Program is subject to all terms contained in this Membership Form and the attached Master License Agreement ("MLA").

Micro Focus's acceptance of Your application is conditioned upon Micro Focus assigning a unique MLA number to You.

**CUSTOMER INFORMATION:**

CUSTOMER FULL LEGAL NAME:						"YOU"
Street Address:						
City:		State or Province, Post Code:				
Country:		Telephone:		Fax:		
Web Site:		Business Sector:		VAT No.:		
Type (Select One):	<input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Government <input type="checkbox"/> Education <input type="checkbox"/> Other (Specify):					

**CONTACT INFORMATION:**

Contract Coordinator:		Position:				
Address:						
City:		State or Province, Post Code:				
Country:		Telephone:		Fax:		
Email:						

**CONTRACT RELATIONSHIP:**

Are You the Prime Customer (i.e. the first applicant in your group/organization) or do You wish to apply to join as a Subsidiary/Affiliate to an existing agreement?	
Please check relevant box: <input type="checkbox"/> Prime Customer <input type="checkbox"/> We would like to join as a Subsidiary/Affiliate	
If You are not the Prime Customer, please indicate Your relationship to the Prime Customer below.	
Please check relevant box: <input type="checkbox"/> Subsidiary <input type="checkbox"/> Affiliate <input type="checkbox"/> Parent of Prime Customer	
If joining as a Subsidiary/Affiliate/Parent to an existing contract, please complete the following two rows:	
Prime Customer's Name:	
Prime Customer's MLA Contract Number:	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>

As used in the MLA and this Membership Form, "Micro Focus" means Micro Focus Software (Ireland) Limited.

By signing below, You confirm that:

- 1) the information You provide in this Membership Form is true and accurate;
- 2) You have received a copy of the MLA, have read and understood it, and agree to be bound by its terms; and
- 3) the person signing below is an authorized representative of Your organization.

Customer Signature:		Print Name of Signatory:	
Title:		Date:	

Micro Focus Signature:		Print Name of Signatory:	
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Contract Number (Micro Focus Use Only): .....

<b>Title:</b>		<b>Date:</b>	

**Please return this Membership Form, along with a copy of your initial purchase order, to the address below.  
Keep a copy of this Membership Form and the MLA terms for Your records.**

Fax to:	<b>00 353 1 6058174</b>
AND mail the original form to:	<b>Micro Focus Software (Ireland) Limited, Corrig Court, Corrig Road Sandyford Business Estate Dublin 18 Ireland</b>

Any personal information submitted to Micro Focus will be stored in databases controlled by Micro Focus or its affiliates (including in the U.S.A). Such information is required by Micro Focus and Micro Focus-authorized resellers to fulfil their obligations under the MLA Program. Such personal data may be used by Micro Focus entities and/or Micro Focus partners to provide general information on Micro Focus products and services.

If You do not wish the data to be used outside of the Micro Focus group to provide You with general information on Micro Focus products and services, please check this box

If You do not wish the data to be used by Micro Focus entities to provide You with general information on Micro Focus products and services, please check this box .

## Master License Agreement

1. **INTRODUCTION.** This Master License Agreement (“MLA” or “Agreement”) allows You (the customer entity signing the Membership Form) to obtain software licenses and services from Micro Focus with volume discounts and other benefits. The Effective Date of the MLA is the date the Membership Form is signed by both entities. At that time, a contract number will be assigned to You. That contract number is personal and may not be disclosed to third parties, except to Your Micro Focus-authorized reseller.
2. **DEFINITIONS.** Capitalized terms used in this Agreement are defined as follows:
  - 2.1 Annual Period means the period beginning on the first day of the month following the Prime Customer’s Effective Date and ending one year later, and each consecutive one-year period thereafter while the Agreement remains in effect.
  - 2.2 Documentation means any user documentation and manuals (including electronic versions) provided by Micro Focus with a Software product.
  - 2.3 Price List means the price list for the MLA Program as published by Micro Focus from time to time. Information on obtaining the then-current Price List can be found by contacting Your local Micro Focus office.
  - 2.4 Prime Customer means the first customer entity who enters into the MLA through completing a Membership Form.
  - 2.5 Qualified Member means those entities that have an organizational relationship with Prime Customer (e.g., parent companies, subsidiaries, affiliates, departments, agencies, political subdivisions), and submit their own Membership Forms, which are accepted by Micro Focus. The Prime Customer will not be responsible for such Qualified Members, but will be responsible for ensuring Agreement compliance by those related entities that obtain Micro Focus Software and MLA benefits through Prime Customer without submitting their own Membership Form. Any Qualified Member that submitted a completed Membership Form to Micro Focus under the Prime Customer’s previous MLA is not required to submit a new Membership Form upon execution of these terms. Upon the Effective Date of this Agreement, such Qualified Members shall be governed by the terms and conditions of this new MLA.
  - 2.6 Software means the Micro Focus software product licensed to You under this Agreement, excluding Services Deliverables.
  - 2.7 Update means a fix or compilation of fixes released by Micro Focus to correct operation defects (program bugs) in the Software.
  - 2.8 Upgrade means any new version of Micro Focus Software which bears the same product name, including version changes evidenced by a number immediately to either the left or right of the decimal (e.g. SUSE Linux Enterprise Server 9.x to 10.x). If a question arises as to whether a product offering is an Upgrade or a new product, Micro Focus’s opinion will prevail, provided that Micro Focus treats the product offering the same for its end users generally.
3. **LICENSING.** The license grants and restrictions for the Software are contained in the End User License Agreement (“EULA”) accompanying the Software. A copy of the EULA can be obtained at [www.microfocus.com/licensing/eula/](http://www.microfocus.com/licensing/eula/). Subject to Your payment of the applicable fees and compliance with this Agreement and the applicable EULA, Your licenses to use the Software will be perpetual, except as expressly provided otherwise (such as with beta products or products licensed on a subscription basis). To the extent of any conflict between the terms and conditions of this Agreement and the EULA, the terms and conditions of this Agreement will prevail. Ownership of Micro Focus Software is held by Micro Focus and/or its licensors. Nothing in this Agreement or any related agreement shall restrict or limit or otherwise affect any rights or obligations You may have, or conditions to which You may be subject, under any applicable open source licenses to any open source code contained in the Micro Focus Software or any third-party licenses for third-party code contained in the Micro Focus Software.
4. **PROGRAM CHANGES.** The MLA Program Guide is available at [www.microfocus.com/media/guide/master\\_license\\_agreement\\_program\\_guide.pdf](http://www.microfocus.com/media/guide/master_license_agreement_program_guide.pdf) and forms an integral part of this Agreement. To the extent of any conflict between the terms of this Agreement and the Program Guide, the terms of this Agreement will prevail. Any changes will apply only to purchases made after the effective date of the changes. If any material change to the Program has an adverse effect on Your participation in it, You will be entitled to terminate Your Agreement by giving written notice to Micro Focus within 30 days after receiving notice from Micro Focus of such a change.
5. **MAINTENANCE.**
  - 5.1 The Maintenance services described in this section (the provision of Upgrades, Updates and Premium Services) are a mandatory part of all Software licenses granted under the MLA Program (including all installations of Linux Products), and Maintenance fees must be paid for such services on all Software licenses for as long as this Agreement remains in effect. During the period for which Maintenance is paid for a license, Micro Focus will provide You with the following benefits for the license.
    - 5.1.1 Upgrades and Updates. If Micro Focus commercially releases any Upgrades and/or Updates during the period covered by Your Maintenance, Micro Focus will make such Upgrades and/or Updates available to You within a reasonable period of time after they become commercially available. To obtain Updates and Upgrades, You will need to subscribe, at no extra

cost, to Micro Focus's Upgrade notification service available at [login.microfocus.com/nidp/idff/sso?id=136&sid=0&option=credential&sid=0&target=https://esp.microfocus.com/LAGBroker?%22https://www.novell.com/customercenter/app/home%22](https://login.microfocus.com/nidp/idff/sso?id=136&sid=0&option=credential&sid=0&target=https://esp.microfocus.com/LAGBroker?%22https://www.novell.com/customercenter/app/home%22). You will be entitled to install and use such Upgrades and/or Updates up to the number of licenses for which You have purchased Maintenance. Use of Upgrades is subject to the restrictions of the EULA provided with the Upgrade.

- 5.1.2 **Premium Services.** Micro Focus will provide Premium Services as described in the then-current MLA Services Guide published on [www.microfocus.com/support-and-services/maintenance-and-support-plans/](http://www.microfocus.com/support-and-services/maintenance-and-support-plans/), the terms of which are incorporated into this Agreement. The level of additional Premium Services to which customers are entitled during an Annual Period is determined by the accumulated Maintenance fees paid by all Qualified Members for that Annual Period. You may upgrade that level of service to suit Your needs by purchasing optional technical support services as provided in section 6 below.
- 5.2 **Installed Base.** Your installed base (Micro Focus Software licenses available under the MLA Program which You purchased outside the MLA Program) must be transitioned into the MLA Program (be licensed under this Agreement at the product's most current version and receive Maintenance) through the purchase of Maintenance for the licenses, unless expressly allowed otherwise by Micro Focus. You will pay Maintenance fees for products so transitioned for as long as this Agreement remains in effect. To transition licenses that are not at the current product version, You must upgrade, at the discounted Upgrade price, the licenses to the current version.
- 5.3 **Ordering Maintenance and Subscriptions.** Unless the Price List allows You to purchase multi-year Maintenance or subscriptions for the relevant Software product, Maintenance and subscription fees will be calculated and paid on an annual basis. All Maintenance and subscription fees are paid in advance. Each Maintenance and subscription period shall expire at the end of each Annual Period (or the end of the multi-year period), no matter when during such Annual Period the Maintenance or subscription was purchased. The initial Maintenance or subscription fee for a license will be calculated, on a pro rata basis, from the first day of the month following the earlier of: (a) submission of the purchase order or the Micro Focus Order Form, or (b) making of a Software copy, through the end of the then-current Annual Period.
- 5.4 **Ongoing Maintenance.** While this Agreement remains in effect, You must order Maintenance on all product licenses by the start of the new Annual Period and pay the applicable Maintenance fee.
- 5.5 **Refunds.** If this Agreement is terminated because of Micro Focus's breach under section 8.2 below, Micro Focus will refund any Maintenance fees paid for the time period past the first day of the month following the termination date. Maintenance fees are not refundable unless expressly stated otherwise.

## **6. OPTIONAL SERVICES.**

- 6.1 **Support, Consulting or Education Services.** Your optional purchase and Micro Focus's delivery of Services, such as technical support, consulting or education ("Services") under the Agreement, are subject to the following terms, unless otherwise agreed in a separate agreement specifically covering those Services.
- 6.2 **Statement of Work.** The parties may choose to enter into a Statement of Work ("SOW") that describes the Services and may cover items such as project scope, code, documentation, media and other objects ("Deliverables"). Any such SOW will be governed by this Agreement's terms.
- 6.3 **Acceptance.** Services will be deemed satisfactory to and accepted by You unless within thirty (30) days after delivery of the Services to You, You give Micro Focus written notice of aspects in which the Services do not meet the SOW requirements. Upon receipt of such written notice, Micro Focus will use commercially reasonable efforts to make such changes as will be required to correct any deficiencies; if Micro Focus is unable to correct the Services within a reasonable period of time, Micro Focus or You may terminate the relevant SOW and Micro Focus shall provide a refund of the amount You paid for the Services Micro Focus did not correct.
- 6.4 **License.** Subject to payment of applicable fees for Services and Deliverables, Micro Focus grants You a nonexclusive, nontransferable, worldwide, perpetual license to reproduce and internally use the Deliverables. All proprietary rights notices must be faithfully reproduced and included on all copies (including any modifications or adaptations allowed by this Agreement or any SOW). Except as expressly provided otherwise in this Section or any SOW, Micro Focus (and/or its licensors) owns all right, title and interest, including all intellectual property rights, in any Deliverable developed, delivered and/or used by Micro Focus in the performance of any Services. Neither this Agreement nor any SOW changes ownership of any pre-existing materials.
- 6.5 **SOW Continuance.** If a SOW extends beyond the term of the Agreement, this section 6 and sections 9, 10.3, 10.5, and 11 of this Agreement will continue in effect solely with respect to such SOW.

## **7. ORDERING AND DELIVERABLES.**

- 7.1 **Orders.** You must place an order for the appropriate number of new Software licenses and associated Maintenance within thirty (30) days after installation. You must place an order for the appropriate renewal Maintenance or subscriptions at least five (5) days prior to the expiration date of Your then-current Maintenance or subscription ("Order Due Date"). Orders submitted after the Order Due Date will incur a late order fee equal to ten percent (10%) of the renewal Maintenance and subscription fee due. The late order fee is in addition to annual Maintenance fees, late payment

interest, and other obligations that may be due and payable. Expiring software subscriptions are automatically renewed for an additional twelve (12) months at Your then-current subscription prices unless, at least thirty (30) days prior to the subscription expiration date, Micro Focus receives written notification that You do not intend to renew. You agree to pay such renewal charges. A valid order is a purchase order that is either signed by Your authorized representative or generated by Your automated ordering system. If You are unable to issue purchase orders, You must complete and sign a Micro Focus MLA Order Form. Micro Focus's acceptance of an order does not suggest Micro Focus's agreement with the accuracy of the quantities or other information set forth in the order. Micro Focus reserves the right to invoice You without a purchase order for fees otherwise owing under this Agreement, including for Maintenance fees at the beginning of each Annual Period.

- 7.2 **Price and Product Changes.** Micro Focus may revise the Price List at any time to (a) change the list prices for Software, Maintenance, and other services or deliverables, and (b) add or delete Software licenses or other services or deliverables available for purchase. During an MLA Term, however, Your list price for available licenses or Maintenance shall remain at the price published by Micro Focus the first month of such Term (or whenever the product first became published on the price list during the Term). This limited price protection will expire at the end of each Term. Any decrease in list prices will apply to Your orders received after publication of a new Price List. Micro Focus's obligation to protect Your list prices will not apply to third-party branded products, special promotions, licenses and Maintenance invoiced in non-U.S., non-Canadian or non-EURO currency, and does not guarantee product availability for the full Term.
- 7.3 **Master Software.** Micro Focus will make available Master Software for the Software products ordered from the Price List. "Master Software" means master media available from Micro Focus from which You may make copies to install the Micro Focus Software up to the number of licenses granted.
- 7.4 **Copying.** You may install the Software from Master Software for Your internal use by Your employees (which may include contractors and consultants while performing work for your business), up to the number of licenses granted to You. You must reproduce the Master Software's serial numbers and all proprietary rights notices in any copies You make.
- 7.5 **Payment.** All fees will be due and payable in U.S. Dollars within 30 days from the date of invoice. However, for orders requesting shipment and billing to a country whose currency is the Euro or a currency required by the applicable Price List, the purchase orders may be issued, and the fees paid, in Euros or the required currency. Orders issued in response to quotes must correspond to the currency in which the quote was made. Payments made later than the due date will accrue interest from the date due to the date paid at the lesser of the rate of 12% per year or the highest rate allowed by applicable law.
- 7.6 **Taxes.** The MLA fees are exclusive of all applicable taxes. You will pay and bear the liability for taxes associated with MLA deliverables, including sales, use, excise, and value added taxes but excluding taxes based upon Micro Focus's net income, capital, or gross receipts, or any withholding taxes imposed such as a withholding tax on a royalty payment made by You where such withholding is required by law. In the event You are required to withhold taxes, You will furnish Micro Focus all required receipts and documentation substantiating such payment. If Micro Focus is required by law to remit any tax or duty on Your behalf or for Your account upon delivery, You agree to reimburse Micro Focus within 30 days after Micro Focus notifies You in writing of such remittance. You will provide Micro Focus with valid tax exemption certificates in advance of any remittance otherwise required to be made by Micro Focus on Your behalf or for Your account where such certificates are applicable.
- 7.7 **Audit.** You will keep complete and accurate records of all Software use. Micro Focus may, at its expense and upon no less than five (5) working days written notice, audit Your installation, use and/or access of the Software and Your related records and MLA payments. As part of such audit, Micro Focus is entitled to obtain physical and electronic data concerning all Software installation, use and/or access at each of Your offices, regardless of their location. At Micro Focus's option, the audit may be conducted at Your facilities or from a remote location. An audit may be conducted either by Micro Focus or by its authorized representative, and will not interfere unreasonably with Your business activities. An audit will be conducted no more often than once per calendar year at a location, unless a previous audit disclosed a material discrepancy. If an audit shows You have underpaid fees or other amounts owing, You must promptly purchase from Micro Focus at list price sufficient licenses and Maintenance to support the actual deployment, including Maintenance for the time period of the shortfall. If an audit shows that You have underpaid amounts owing by more than five percent (5%), You will also within thirty (30) days pay the reasonable expenses of the audit.

## **8. TERM AND TERMINATION.**

- 8.1 **Term.** This Agreement will begin on the Effective Date and will remain in effect for two consecutive Annual Periods ("Term"), subject to earlier termination as stated below. Qualified Members shall be subject to the same Term as the Prime Customer, but may continue their memberships if, for whatever reason, the Prime Customer's membership terminates earlier. At the end of each Term, this Agreement will renew for an additional Term of two Annual Periods, unless either party gives notice in writing at least 30 days prior to the end of the then-current Term that it does not wish to renew, or unless this Agreement terminated earlier as provided below.
- 8.2 **Termination for Cause.** Either party may terminate this Agreement (and Your MLA membership) upon written notice for the substantial breach by the other party of any material term, if such breach is not cured within 30 days following receipt of written notice of breach from the non-breaching party.
- 8.3 **Effect of Termination.** Upon termination of this Agreement for any reason, Your right to acquire MLA licenses or Maintenance will immediately terminate. However, unless Your membership is terminated by reason of Your violation of

Micro Focus's intellectual property rights, Your right to continue to use any perpetual licenses will not be affected and You may keep and use Your Master Software to install licenses that You owned prior to termination, including any Upgrades and Updates to which You were entitled under Maintenance.

## **9. INTELLECTUAL PROPERTY INDEMNIFICATION.**

- 9.1 Scope. Micro Focus will defend any claim brought against You by a third party to the extent it is based on an allegation that a Micro Focus Software product or service deliverable infringes such third-party's patent, copyright, or trademark, or misappropriates such third party's trade secrets, under the laws of the country in which You take delivery of the Software or deliverable. Micro Focus will pay any damages, costs, and expenses finally awarded (or agreed to by settlement) for any such claim. You must promptly notify Micro Focus of the claim, give Micro Focus control of the defense and related settlement negotiations, and provide Micro Focus with the reasonable assistance (for which Micro Focus shall pay Your reasonable out-of-pocket costs) in defending the claim. If You desire separate legal representation in any such action, You will be responsible for the costs and fees of Your separate counsel.
- 9.2 Remedies. If a Micro Focus Software product or service deliverable is held to infringe and its use is prohibited or if, in Micro Focus's reasonable opinion, is likely to become the subject of an infringement claim, You will permit Micro Focus, at Micro Focus's option and expense, to (a) procure for you the right to continue to use the Software or deliverable, or (b) replace or modify it so that it becomes non-infringing and has the same or additional functionality and comparable or improved performance characteristics, or (c) upon Your return of the infringing Software or deliverable, refund to You the amount paid for the Software or deliverable.
- 9.3 Exceptions. Micro Focus will have no obligation of defense or indemnity to the extent the infringement claim arises from (a) Micro Focus's compliance with Your designs, specifications or instructions, (b) use of other than the Software's current release, if the infringement would have been avoided by use of the current release and if the infringement occurs more than 90 days after Micro Focus notifies You that a previous release may infringe, (c) a modification of the Software or deliverable not requested or authorized in writing by Micro Focus, (d) its use or combination with non-Micro Focus software, equipment, or data, other than as specified in the Documentation or otherwise approved by Micro Focus in writing, (e) the furnishing to You of any information, service, or technical support by a third party, (f) non-licensed use of the Software or deliverable, or (g) any Linux-based Software or Software for which Micro Focus does not charge a license fee ("Linux Product"), unless You are current on Maintenance for all installations of the Linux Product on the date the infringement claim is tendered to Micro Focus.
- 9.4 Indemnification Limitation. To the extent allowed by applicable law, Micro Focus's aggregate liability for any infringement claim is limited to the lesser of \$U.S. 1.5 million or twice the amount paid by You for the Software or deliverable (which amount includes Maintenance fees for Linux Product) giving rise to the claim. This limit does not apply to expenses incurred by Micro Focus in defending the claim.
- 9.5 Exclusive Remedy. This section 9 states the exclusive obligation of Micro Focus to Customer regarding any claim of infringement or misappropriation of any third party's intellectual property rights.

## **10. LIMITED WARRANTY.**

- 10.1 Software. Micro Focus warrants that the Software (including Upgrades) will conform substantially to the specifications in the Documentation, provided: (a) the Software is not modified by anyone other than Micro Focus, unless authorized by Micro Focus in writing; (b) You notify Micro Focus in writing of the nonconformity within 90 days after You first acquire a licensed copy of the Software version; and (c) the Software is installed in a compatible environment. Micro Focus's only obligation under this warranty, at its option, is to either cause the Software to conform substantially with its specifications or to refund to You the amount paid to license such Software (or, for an Upgrade, the annual Maintenance fee entitling You to the Upgrade) upon Your return of all the Software. In the event of a refund, Your license to use the Software will automatically expire.
- 10.2 Media. Micro Focus warrants that if either the media provided by Micro Focus is in a damaged or physically defective condition at the time of delivery to You and if it is returned to Micro Focus (postage prepaid) within 90 days of delivery, Micro Focus will provide You replacements at no charge.
- 10.3 Services. Micro Focus warrants that any Services purchased under this Agreement will be performed in a professional manner in accordance with generally accepted industry standards. As files may be altered or damaged in the course of Micro Focus providing technical services, You agree to take appropriate measures to isolate and back up Your systems. This warranty will be effective for 90 days following acceptance of the Services in accordance with Section 6.3. Upon receipt of written notice of breach of this warranty, Micro Focus's obligation is to correct the Services so that they comply with this warranty. If Micro Focus is unable to correct the Services within a reasonable period of time, Your sole remedy is to terminate the relevant SOW and obtain a refund of the amount You paid to Micro Focus for the Services Micro Focus is unable to correct.
- 10.4 Non-Micro Focus Products. Micro Focus does not warrant non-Micro Focus products. Any such products are provided on an "AS IS" basis. Any technical or warranty service for non-Micro Focus products is provided by the product manufacturer in accordance with any applicable manufacturer's warranty.
- 10.5 DISCLAIMER OF WARRANTIES. EXCEPT AS EXPRESSLY SET FORTH IN THESE LIMITED WARRANTY SUBSECTIONS, MICRO FOCUS MAKES NO WARRANTY OR REPRESENTATIONS REGARDING ANY SOFTWARE

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

## 11. LIABILITY LIMITATIONS.

11.1 Indirect Damages. TO THE EXTENT ALLOWED BY APPLICABLE LAW, NEITHER MICRO FOCUS NOR CUSTOMER WILL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES WHETHER UNDER CONTRACT OR IN TORT (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR INTERRUPTION OF BUSINESS, LOSS OF BUSINESS, LOSS OF PROFITS AND LOSS OF USE OF DATA) RELATED TO OR ARISING OUT OF THIS AGREEMENT, EVEN IF THE BREACHING PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS SECTION DOES NOT APPLY TO VIOLATIONS BY EITHER PARTY OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS.

11.2 Direct Damages. Micro Focus's liability for damages of any type arising out of or related to this Agreement shall be limited to the greater of two (2) times the actual amounts paid by You for the licenses, service, or deliverable in question, or US\$100,000. This subsection does not apply to Micro Focus's liability for intellectual property indemnification described above, nor does it apply to any damages for personal injury or tangible property caused by the negligence or willful default of Micro Focus.

## 12. GENERAL.

12.1 Choice of Law. The Agreement will be governed by the substantive laws of the State of Utah without regard to its choice of law provisions, unless the laws of the state, province, or country of Your domicile require otherwise, in which case the laws so required will govern.

12.1.1 However, if Your principal residence is in (a) a member state of the European Union or (b) a member state of the European Free Trade Association (c) the Republic of South Africa, or (d) Canada, the governing law is that of the country of Your principal residence (and for Canadian customers, the law of the Province of Ontario). If Your principal residence is in any other country in Europe the applicable law will be the law of the Federal Republic of Germany. If Your principal residence is in the Middle-East or Africa (except South Africa), the applicable law will be the law of England. To the extent allowed by applicable law, the terms of the United Nations Convention on the International Sale of Goods will not apply, even where adopted as part of the domestic law of the country whose law governs the relationship.

12.1.2 Each party will, at its own expense, comply with any applicable law, statute, administrative order or regulation. An action at law under this Agreement may only be brought before a court of appropriate jurisdiction in the state whose law governs this Agreement under the terms of this Section 12. If a party initiates legal proceedings related to this Agreement, the prevailing party will be entitled to recover reasonable attorney's fees.

12.2 Assignment. Neither party may transfer or assign any Agreement right or obligation without the prior written consent of the other. Either party may, with written notice to the other party, assign the Agreement to the surviving entity in the case of a merger or acquisition. If Micro Focus transfers a Software product to a third party, it may assign Agreement rights or obligations related to that product to the third party. Micro Focus may assign the Agreement or obligations with respect to a specific product to its parent company or an entity under common control with the parent company.

12.3 Confidentiality Obligations. The receiving party of Confidential Information will exercise reasonable care to protect any Confidential Information from unauthorized disclosure or use. The receiving party may disclose Confidential Information only to its employees or agents with a need to know such information and will inform such employees and agents by way of policy or agreement that they are bound by confidentiality obligations. "Confidential Information" means the terms of this Agreement and any other information that (i) if disclosed in tangible form, is marked in writing as confidential, or (ii) if disclosed orally or visually, is designated orally at the time of disclosure as "confidential." Confidential Information will not include information (a) already in the receiving party's possession without obligation of confidence; or (b) independently developed by the receiving party; or (c) that becomes available to the general public without breach of this Agreement; or (d) rightfully received by the receiving party from a third party without obligation of confidence; or (e) released for disclosure by the disclosing party with its written consent; or (f) required to be disclosed by law, regulation, or court order. These confidentiality obligations will survive three (3) years after expiration or termination of this Agreement. Micro Focus retains the right to use its knowledge and experience (including processes, ideas, and techniques) learned or developed in the course of providing any services to You.

12.4 Publicity. You agree that, unless You inform Micro Focus otherwise in writing, Micro Focus may use Your participation in the MLA Program as a commercial reference.

12.5 Entire Agreement. This Agreement sets forth the entire agreement and understanding between the parties as to its subject matter. This Agreement supersedes all prior and contemporaneous agreements, proposals and statements on this subject matter. Except as otherwise stated herein, this Agreement may only be modified in a writing signed by authorized representatives of each party. Purchase order terms will not modify the Agreement unless the parties agree otherwise in writing.

- 12.6 Severability/Waiver. If a provision is invalid or unenforceable, the remaining provisions will remain in effect and the parties will amend the Agreement to reflect the original agreement to the maximum extent possible. No waiver of any contractual right will be effective unless in writing by an authorized representative of the waiving party. No waiver of a right arising from any breach or failure to perform will be deemed a waiver of any future right.
- 12.7 Notices. Notices to a party must be in writing and sent to the party's address on the Membership Form or such other address as a party may provide in writing. Notices may be delivered in a format reasonably chosen by the notifying party.
- 12.8 Force Majeure. Neither party will be liable for delay or failure to perform that arises out of causes beyond the reasonable control and without the fault or negligence of such party. A party will give prompt notice of any condition likely to cause any delay or default.
- 12.9 Survival. The provisions of this Agreement, which by their nature extend beyond termination of the Agreement, including sections 3 (Licensing), 7.7 (Audit), 9 (Intellectual Property Indemnification), 10 (Limited Warranty), 11 (Liability Limitations) and 12 (General), will survive termination of the Agreement.
- 12.10 Intellectual Property Rights/Remedies. Nothing in this Agreement waives or limits extra-contractual rights or remedies available to Micro Focus to protect its rights in the Software, including those available under U.S. copyright law, international treaties, or national copyright and intellectual property laws of the countries in which You may use the Software.
- 12.11 Export Compliance. Any products or technical information provided under this Agreement may be subject to U.S. export controls and the trade laws of other countries. The parties agree to comply with all export control regulations and to obtain any required licenses or item classification to export, re-export or import deliverables. The parties agree not to export or re-export to entities on the current U.S. export exclusion lists or to any embargoed or terrorist supporting countries as specified in the Export Administration Regulations (EAR). The parties will not use deliverables for prohibited nuclear, missile, or chemical biological weaponry end uses as specified in the EAR. Please consult the Bureau of Industry and Security web page: [www.bis.doc.gov](http://www.bis.doc.gov) before exporting or re-exporting items subject to the EAR. Refer to: [www.novell.com/info/exports/](http://www.novell.com/info/exports/) for more information on exporting Software. Upon request, Micro Focus can provide information regarding applicable export restrictions. However, Micro Focus assumes no responsibility for Your failure to obtain any necessary export approvals.

### 13. DELIVERY.

#### 13.1 Delivery Terms.

- 13.1.1 Delivery in the United States will be made FOB Micro Focus's Dock (INCOTERMS 2000). Micro Focus will ship ground only and prepay freight from Micro Focus's Dock to Your forwarder or named destination. All other freight arrangements will be billed to You.
- 13.1.2 Delivery to destinations in Canada, Latin America, and Asia Pacific will be made DDU-POE (Delivery Duty Unpaid – Port of Entry) as defined in INCOTERMS 2000. Micro Focus will select a carrier and will prepay shipping and handling charges. You will be responsible for all applicable import duties and value added tax, goods and services tax, or other similar taxes and fees.
- 13.1.3 Delivery within Europe, the Middle-East and Africa ("EMEA") will be made Carriage Paid To (C.P.T.) Destination, as defined in INCOTERMS 2000. Micro Focus will select a carrier, prepay the freight and invoice You for freight and any handling costs. Destinations for E.U. countries will be Your nominated delivery point; for non-E.U. countries, destination will be the point of import. The term C.P.T. does not include the payment by Micro Focus of taxes or any applicable import duties.
- 13.2 Electronic Delivery. For Micro Focus Software products delivered by electronic means directly to You outside the United States, Your right to exercise Your licenses hereunder shall arise at the location of the computer on which You first use the Micro Focus Software and any Documentation. Delivery of the Micro Focus Software and Documentation so supplied shall be deemed to occur where download is completed successfully at the destination computer. In EMEA, the Micro Focus Software product shall be considered delivered CPT Destination (as defined in INCOTERMS 2000).
- 13.3 Title & Risk of Loss. *For shipment within the United States*, title to any deliverables, exclusive of Micro Focus's rights to intellectual property, and risk of loss will pass to You upon delivery to Your carrier. *For shipments from the U.S. to outside the U.S.*, title to and risk of loss will remain with Micro Focus until the shipment arrives at the importing country's entry port (or at a bonded warehouse within Canada or Mexico if You so request shipment). *For shipments within EMEA* (i.e. originating in Ireland), title to and risk of loss passes to You at the Irish shipment point. If You insure shipment, the insurance will protect Micro Focus's interest until title passes as set forth above. Notwithstanding the above provisions, no title to Master Software is transferred to You.