

## END USER LICENSE AGREEMENT

IMPORTANT: LICENSOR PROVIDES LICENSED SOFTWARE TO LICENSEE UNDER THIS END USER LICENSE AGREEMENT (THE "AGREEMENT"). THIS AGREEMENT GOVERNS LICENSEE'S INSTALLATION AND USE OF THE VERSION OF THE LICENSED SOFTWARE IDENTIFIED IN THE APPLICABLE PRODUCT ORDER, OR IF NOT ACQUIRED VIA A PRODUCT ORDER, LICENSEE'S INSTALLATION OR USE OF THE LICENSED SOFTWARE CONSTITUTES ACCEPTANCE OF THIS AGREEMENT. **THE TERMS AND CONDITIONS OF THIS AGREEMENT MAY BE DIFFERENT FROM THE AGREEMENT(S) THAT ACCOMPANIED EARLIER RELEASES OF THE LICENSED SOFTWARE. PLEASE READ THIS AGREEMENT CAREFULLY BEFORE PROCEEDING, AS IT MAY CONTAIN ADDITIONAL RESTRICTIONS ON YOUR USE OF THE SOFTWARE. THIS AGREEMENT SUPERSEDES AND CONTROLS OVER ANY OTHER TERMS PROVIDED TO LICENSEE REGARDING LICENSEE'S USE OF THE LICENSED SOFTWARE, WHETHER WRITTEN OR ORAL, AS PART OF A SIGNED AGREEMENT (INCLUDING, BUT NOT LIMITED TO, MASTER AGREEMENTS AND PORTFOLIO TERMS, UNLESS A DIFFERENT AGREEMENT IS EXPRESSLY REFERENCED IN A PRODUCT ORDER OR EXECUTED BY LICENSOR AND LICENSEE SPECIFYING THAT IT APPLIES TO THE VERSION OF THE LICENSED SOFTWARE TO WHICH THIS AGREEMENT RELATES), A CLICK-WRAP AGREEMENT PROVIDED WITH THE LICENSED SOFTWARE OR OTHERWISE (SUCH TERMS REFERRED TO AS THE "OTHER AGREEMENT"), EVEN IF SUCH OTHER AGREEMENT WAS EMBEDDED WITHIN PREVIOUSLY LICENSED SOFTWARE.** LICENSOR RESERVES THE RIGHT TO UPDATE, AMEND, AND/OR MODIFY THIS AGREEMENT FROM TIME TO TIME, AND MAY INCLUDE SUCH UPDATED AGREEMENT WITH OR EMBEDDED IN FUTURE VERSIONS OF THE LICENSED SOFTWARE. PLEASE DIRECT ANY QUESTIONS TO THE MICRO FOCUS LEGAL DEPARTMENT AT [LEGALDEPT@MICROFOCUS.COM](mailto:LEGALDEPT@MICROFOCUS.COM).

ENTERING INTO THIS AGREEMENT DOES NOT CONSTITUTE A SALES TRANSACTION. THE SALE OF A LICENSE TO SOFTWARE PRODUCTS TAKES PLACE UNDER PRODUCT ORDERS WHICH (UNLESS OTHERWISE STATED IN THE PRODUCT ORDER) INCORPORATE THE TERMS OF THIS AGREEMENT.

Capitalized terms in this Agreement are defined as follows:

**"Additional License Authorization"** or **"ALA"** means the additional specific software license terms that govern the authorized use of a given software product of Licensor, including requirements for any non-production use rights described in the Non-Production Licensing Guide, and License Options available for that software product, along with additional terms or conditions applicable to a given License Option, all of which are made a part of this Agreement. The applicable Additional License Authorization for the Licensed Software is either attached hereto or can be found here: <https://software.microfocus.com/en-us/about/software-licensing> by product name and version; all references in this Agreement to "Additional License Authorization" or "ALA" shall refer to the ALA that corresponds to the version of the Licensed Software.

**"Documentation"** means the user documentation that Licensor makes available for the Licensed Software in electronic form or paper form.

**"Licensee"** means the legal entity or individual that is identified in the applicable Product Order or who has rightfully received a license to the Licensed Product.

**"License Option"** means the type of license available for a given software product (such as a named user license, concurrent user license or server license). In addition to the ALA, a License Option may be set forth in a Product Order or an agreement executed in writing by Licensee and Licensor.

**"Licensor"** means the applicable Micro Focus entity and its affiliates who own the intellectual property rights in Licensed Product.

**"Licensed Product"** means the Licensed Software and Documentation.

**"Licensed Software"** means the executable version of Licensor's software listed in the Product Order or otherwise provided to or rightfully acquired by Licensee. This Agreement shall govern the use of any update to the Licensed Software that Licensee receives pursuant to a separate support and maintenance agreement as

described in Section 4 below, unless such update contains, comes with, or is otherwise specifically governed by a different end user license agreement.

**“Product Order”** means an agreement between Licensor and Licensee that consists of a document that has been (i) submitted by Licensee describing the License Option(s) to be purchased for the Licensed Software, and (ii) accepted by Licensor (a) in writing or (b) by delivering the Licensed Software to Licensee, whichever occurs first. A Product Order may also consist of a written quote, or other written document issued by Licensor (the “Quote”), (i) describing the License Options for the Licensed Software to be purchased, and (ii) that is accepted by Licensee before the Quote expires either by (a) returning the Quote signed by an authorized representative of Licensee, (b) issuing a purchase order that references the Quote (if the Quote expressly allows acceptance in this manner), or (c) paying Licensor the fees listed in the Quote. Unless otherwise expressly set forth in the relevant Product Order, each Product Order incorporates the terms and conditions of this Agreement, and in no event will any different or additional terms of a purchase order or similar document issued by Licensee in connection with this Agreement or a Product Order apply, and any such additional or different terms are hereby rejected by the Licensor. For purposes of this paragraph, “Licensor” shall also include the relevant Micro Focus entity as defined above and its authorized distributors and resellers. Any conflicting or additional terms in a Product Order accepted by an authorized distributor or reseller of Licensor shall have no effect unless such terms have been agreed to by the applicable Micro Focus entity in writing.

**“Third Party Component”** means any run time or other elements owned or licensed to Licensor by a third party (other than open source code or elements) which may be embedded in the Licensed Software.

**“Third Party Software”** means additional or accompanying software owned or licensed by a third party (such as Adobe Acrobat or Microsoft Internet Explorer, but not any open source code or elements) that may be specified in the Documentation or in a file accompanying such Licensed Software.

**“Warranty Period”** means the ninety (90) day time frame beginning on date of delivery of the Licensed Software to Licensee (Licensed Software delivery is deemed to occur when the Licensed Software is physically delivered to Licensee EXWORKS or made available for download to Licensee).

## **1. GRANT OF LICENSE; LICENSE CONDITIONS.**

- A. **License Grant.** Subject to Licensee’s compliance with the terms and conditions of this Agreement (including but not limited to payment of applicable fees), Licensor grants to Licensee a personal, non-transferable, non-sublicensable and non-exclusive license to use the Licensed Software as authorized by the License Option(s) specified in the ALA solely for Licensee’s internal business operations, functions and benefit, and not for commercialization of the Licensed Software or to provide services or benefit to any affiliates or subsidiaries of Licensee or any other third party. Throughout the license term, Licensee agrees to: (i) implement internal safeguards to prevent any unauthorized copying, distribution, installation, use of, or access to, the Licensed Products and associated support and maintenance, or any other breach of this Agreement; and (ii) take all necessary steps to destroy or erase all Licensed Software codes, programs, Documentation, and other proprietary information of Licensor before disposing of any media or hardware. Licensor will provide any license key necessary for activation and use of the Licensed Software. Licensor is not liable or responsible for lost or broken license keys and is not obligated to replace license keys or issue new license keys unless (1) Licensee has purchased a support and maintenance plan for the applicable Licensed Software that specifically covers the issuance of new or replacement keys and (2) the applicable version of the Licensed Software is then generally available for distribution by Licensor. If Licensee has not paid for such a support and maintenance plan, replacement or new license keys may be available for purchase at Licensor’s then-current list price for applicable new licenses.
- B. **Evaluation Licenses.** With respect to any Licensed Software provided to Licensee solely for evaluation purposes (an “Evaluation License”), in the event of conflict this Section 1.B shall prevail over any other provisions set forth in this Agreement. An Evaluation License may be used for a period of no more than thirty (30) days from the date the Licensed Software is provided to Licensee (“Evaluation Term”), unless a different period is specified in writing by Licensor. An Evaluation License may be used solely for Licensee’s internal evaluation and testing purposes on a single computer system and not for development, commercial, or production purposes. For Licensed Software subject to an Evaluation License, (i) Licensee may not reproduce or distribute the Licensed Products; and (ii) Licensee’s results of benchmark or other performance tests run on or using the Licensed Software may not be disclosed to any third party without Licensor’s prior

written consent. At any time during the Evaluation Term or upon completion thereof, Licensee may, upon written notification to Licensor and payment of the applicable license fee, replace the Evaluation License with a license to use the Licensed Software that is not restricted to evaluation purposes. In the absence of such notification by Licensee, the Evaluation License shall automatically terminate at the end of the Evaluation Term, and Licensee shall return, or, if Licensor so directs, delete and destroy all such Licensed Software and provide Licensor with written confirmation of its compliance with this provision. Upon written request from Licensee, Licensor may, in its sole discretion, grant Licensee an extension in writing prior to the expiration of the Evaluation Term. Other than updates to Licensed Software provided as part of support and maintenance, Licensed Software provided by Licensor free of license fee charge shall be deemed to be provided for evaluation purposes only. Licensed Software furnished under an Evaluation License is provided without any contractual obligation of maintenance and support by Licensor and is provided “as is” without warranties, implied or express, of any kind.

- C. **Bundles/Suites.** If the Licensed Software is licensed in a bundle or suite of multiple products, and the applicable Product Order specifies the License Option and license count for the bundle or suite (but not the individual product components of the bundle or suite), then each product in the bundle or suite shall share such license type and count. For example, individual products in the bundle or suite cannot be used by multiple users if only one user license is purchased (for user-based licenses) and cannot be installed on multiple devices or servers if only one device or server license is purchased (for device or server-based licenses).

2. **USE RESTRICTIONS.** Except as may be otherwise specifically permitted in the applicable ALA, Licensee agrees not to, directly or indirectly:

- A. Copy, distribute or use the Licensed Software, in whole or in part (such as any portion, feature, function, or user interface) without paying Licensor the applicable fees;
- B. Use the Licensed Software as a service, or for timesharing, facilities management, outsourcing, hosting, service bureau use, or for providing other application service (ASP) or data processing services to third parties or for like purposes, or permit the use of the Licensed Software by a third party or permit access by or use for the benefit of any third party without executing a separate distribution agreement for the Licensed Software and paying Licensor the applicable required additional fees;
- C. Modify or create derivative works of the Licensed Software, or decrypt, translate, disassemble, recompile, decompile or reverse engineer the Licensed Software or attempt to do so (except to the extent applicable law specifically permits such activity, in which case Licensee must provide Licensor with detailed information regarding such activities);
- D. Alter, destroy, or otherwise remove any proprietary notices or labels on or embedded within the Licensed Software;
- E. Use the Licensed Software in a manner other than as specifically permitted in this Agreement or an ALA;
- F. Assign, sell, resell, license, rent, lease, lend, sublicense, outsource or otherwise transfer the Licensed Software to any third party, without first paying Licensor the applicable required license fees and obtaining Licensor's prior written consent;
- G. Authorize, allow or appoint any third party to do any of the foregoing. For the avoidance of doubt, third parties include, without limitation, contractors and consultants (including contractors and consultants retained to provide services solely for the benefit of Licensee), outsourcers, Licensee's affiliates and subsidiaries, parent companies, customers, and the public; or
- H. Publish or disclose to third parties any evaluation or benchmarking of the Licensed Software without Licensor's prior written consent.

Notwithstanding the foregoing, Licensee may: (i) make a reasonable number of archival back-up copies of the Licensed Software and (ii) make a reasonable number of copies of the Documentation. Licensee shall reproduce all copyright and other proprietary rights notices appearing in or on the Licensed Products, including notices of all third party suppliers.

3. **TERM OF LICENSE.** This Agreement and the license term for the Licensed Software granted herein is perpetual, unless a subscription/term license has been purchased by Licensee (in which case the license term

shall be set forth in the Product Order or ALA), and is subject to earlier termination as provided in this Section 3. If Licensee has purchased a subscription/term license, such license shall automatically terminate upon expiry of such subscription/term, unless earlier terminated under this Section 3. Licensor may terminate this Agreement, along with any or all licenses then in effect with Licensee, immediately by giving Licensee written notice of termination in the event that (i) Licensee breaches any term or condition of this Agreement and fails to remedy such breach within ten (10) days of receipt of Licensor's notice detailing such breach; (ii) Licensee becomes insolvent, has a receiver appointed, or files for or has filed against it, liquidation, bankruptcy or analogous proceedings; or (iii) Licensee infringes or misappropriates the intellectual property rights of Licensor. Termination shall be without prejudice to any other rights or remedies Licensor may have. In the event of any termination, Licensee's license(s) to install, access or use the Licensed Software will immediately terminate, and Licensee shall destroy and erase all copies of such Licensed Software in its possession or control and provide written certification to Licensor that it has complied with this provision. Early termination of this Agreement shall not entitle Licensee to any refund or reimbursement of any previously paid fees. The rights and obligations of the parties contained in Sections 3 (Term of License), 6 (Disclaimer of Warranty), 7 (Limitation of Liability), 8 (High Risk Uses), 9 (Ownership), 10 (Third Party Software and Components), 11 (Notice to U.S. Government End Users), 12 (License Fees and Payment Terms), 13 (Audits), 15 (Privacy and Use of Licensee Information), 16 (Licensee Trademark and Feedback) and 17 (Miscellaneous) will survive the termination or expiration of this Agreement.

4. **SUPPORT AND MAINTENANCE.** Licensee is not entitled to any updates to the Licensed Software, unless Licensee purchases maintenance and support services pursuant to Licensor's then-current applicable standard maintenance and support agreement, which can be found at <https://www.microfocus.com/support-and-services/maintenance-and-support-agreements/> or can be provided by Licensor at Licensee's request. Maintenance and support services (including, but not limited to, any new versions, bug fixes, and patches) provided by Licensor will be subject to such agreement. Where Licensee purchases maintenance and support for any Licensed Software, Licensee hereby agrees to purchase or keep current on such maintenance and support services for all of Licensee's licensed units of such Licensed Software product, regardless of License Option.
5. **LIMITED WARRANTY.** Licensor warrants for the Warranty Period that: (i) if the Licensed Software is supplied via media, the media will be free from defects in materials or workmanship under normal use, and (ii) the copy of the Licensed Software delivered to Licensee substantially conforms in all material respects to the Documentation. Licensee's sole and exclusive remedy for any defective media supplied by Licensor shall be Licensor's repair or replacement of such defective media free of charge, provided that the defective media is returned to Licensor during the Warranty Period. During the Warranty Period, Licensee's sole and exclusive remedy for not meeting part (ii) of the above warranty shall be the repair or replacement of the Licensed Software by Licensor free of charge so that it substantially conforms to the Documentation or, if Licensor reasonably determines that such remedy is not economically or technically feasible, Licensee shall be entitled to a full refund of the license fee and any maintenance fee paid for such Licensed Software. Upon such refund, Licensee's license to use such Licensed Software will immediately terminate. The warranties set forth in this Section 5 shall not apply if the defects in the Licensed Software or media result from: (a) failure to use the Licensed Software in accordance with the Documentation, this Agreement or ALAs; (b) the malfunctioning of Licensee's equipment or network; (c) accident, neglect, or abuse; (d) service by any unauthorized person; (e) other software used by Licensee and not provided by Licensor, or for which the Licensed Software is not designed or licensed for such use; (f) Third Party Software that is not a Third Party Component; (g) any other cause occurring after initial delivery of the Licensed Software or media to Licensee, unless caused directly by Licensor. Licensor has no responsibility for any claims made outside of the Warranty Period. The foregoing warranty shall not apply to any free-of-charge Licensed Software or updates provided under support and maintenance. THE FOREGOING WARRANTIES DO NOT APPLY, AND LICENSOR DISCLAIMS ALL WARRANTIES, WITH RESPECT TO ANY THIRD PARTY SOFTWARE THAT IS NOT A THIRD PARTY COMPONENT. The warranties set forth in this Section 5 will not apply and will become null and void if Licensee materially breaches any provision of this Agreement.
6. **DISCLAIMER OF WARRANTY.** EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 5, THE LICENSED PRODUCTS ARE PROVIDED TO LICENSEE "AS-IS" WITHOUT WARRANTY OF ANY KIND. LICENSOR DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE LICENSED SOFTWARE WILL MEET LICENSEE'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 LICENSED PRODUCTS, WHETHER EXPRESS 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 LICENSOR AND ITS THIRD-PARTY SUPPLIERS AND AFFILIATES. LICENSEE ACKNOWLEDGES THAT LICENSEE IS RESPONSIBLE FOR THE SELECTION OF THE LICENSED SOFTWARE TO ACHIEVE LICENSEE'S INTENDED RESULTS AND FOR THE INSTALLATION AND/OR USE OF, AND RESULTS OBTAINED FROM, THE LICENSED SOFTWARE.

**7. LIMITATION OF LIABILITY.**

- A. Aggregate Cap. IN NO EVENT SHALL ANY LIABILITY OF LICENSOR OR ITS AFFILIATES OR ANY OF ITS OR THEIR RESPECTIVE LICENSORS OR SERVICE PROVIDERS UNDER OR IN CONNECTION WITH THIS AGREEMENT EXCEED, IN THE AGGREGATE, THE AMOUNTS PAID BY LICENSEE FOR THE LICENSED SOFTWARE AND THE INITIAL PERIOD OF MAINTENANCE AND SUPPORT GIVING RISE TO THE APPLICABLE CLAIM.
  - B. Waiver of Liability. IN NO EVENT SHALL LICENSOR OR ITS AFFILIATES OR ANY OF ITS OR THEIR RESPECTIVE LICENSORS OR SERVICE PROVIDERS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SIMILAR DAMAGES, LOSS OF PROFITS, BUSINESS, DATA, OR PROGRAMS (INCLUDING, BUT NOT LIMITED TO, THE COST OF RECOVERING OR REPLACING SUCH DATA OR PROGRAMS), LOSS, DAMAGE OR ANY COSTS DUE TO INTERRUPTION, DELAY, OR INABILITY TO USE THE LICENSED SOFTWARE, WHETHER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.
  - C. Scope. THE LIMITATIONS AND EXCLUSIONS OF THIS SECTION 7 APPLY TO ALL CAUSES OF ACTION, INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION AND OTHER TORTS. THESE LIMITATIONS AND EXCLUSIONS APPLY COLLECTIVELY TO LICENSOR, ITS PARENTS, AFFILIATES, AND SUBSIDIARIES AND EACH OF THEIR RESPECTIVE EMPLOYEES, CONTRACTORS, AND SUPPLIERS. NOTWITHSTANDING THE FOREGOING, NOTHING IN THIS SECTION 7 EXCLUDES LIABILITY FOR WILLFUL MISCONDUCT OR FRAUDULENT MISREPRESENTATION.
  - D. Exclusive Remedy. LICENSEE'S REMEDIES IN THIS AGREEMENT ARE LICENSEE'S EXCLUSIVE REMEDIES. LICENSEE AGREES THAT, IN ENTERING INTO THIS AGREEMENT, IT DID NOT RELY ON ANY REPRESENTATIONS (WHETHER WRITTEN OR ORAL) OF ANY KIND OTHER THAN THOSE EXPRESSLY SET OUT IN THIS AGREEMENT.
  - E. Essential Purpose. LICENSEE FURTHER ACKNOWLEDGES THAT THE LIMITATIONS AND EXCLUSIONS OF LIABILITY IN THIS SECTION 7 APPLY TO THE FULLEST EXTENT PERMITTED BY LAW AND ARE AN ESSENTIAL ELEMENT OF THIS AGREEMENT AND THAT, IN THE ABSENCE OF SUCH LIMITATIONS AND EXCLUSIONS, THE PRICING AND OTHER TERMS AND CONDITIONS SET FORTH HEREIN WOULD BE SUBSTANTIALLY DIFFERENT. THE LIMITATIONS AND EXCLUSIONS SET FORTH IN THIS SECTION 7 SHALL APPLY EVEN IF THE LICENSEE'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.
  - F. Free Software. IF LICENSOR PROVIDES LICENSEE WITH ANY LICENSED SOFTWARE FREE-OF-CHARGE OR UNDER AN EVALUATION LICENSE, TO THE EXTENT PERMITTED BY LAW, LICENSOR SHALL NOT BE RESPONSIBLE FOR ANY LOSS OR DAMAGE TO LICENSEE, ITS CUSTOMERS, OR ANY THIRD PARTIES CAUSED BY THE LICENSED SOFTWARE THAT IT MAKES AVAILABLE TO LICENSEE.
8. **HIGH RISK USES.** The Licensed Software is not fault tolerant, nor designed, manufactured, or intended for use in hazardous environments requiring fail-safe performance (including, without limitation, the operation of

nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems) in which failure of the Licensed Software could lead directly or indirectly to death, personal injury, or severe physical or environmental damage. Licensor and its suppliers shall have no liability for any use of the Licensed Software in any high-risk situations.

9. **OWNERSHIP.** The Licensed Products are provided under license, and not sold, to Licensee. The only rights in the Licensed Products are the licenses expressly stated in this Agreement and no other rights are implied or granted by estoppel. Licensor (and its affiliates) and its and their licensors and third party suppliers retain ownership of, and reserve all rights in and to, the Licensed Products, including all copies thereof, and all intellectual property rights arising out of or relating to the Licensed Products. Licensee shall use reasonable efforts to safeguard the Licensed Products (including all copies thereof) from infringement, misappropriation, theft, misuse, or unauthorized access. Licensee shall promptly notify Licensor if it becomes aware of any infringement or misappropriation of the Licensed Products and shall fully cooperate with Licensor, at Licensor's expense, in any legal action taken by Licensor to enforce its intellectual property rights.
10. **THIRD PARTY SOFTWARE AND COMPONENTS.** The Licensed Software may come with or require Third Party Software that Licensee shall license directly from the third party licensor pursuant to such third party's terms and conditions and not this Agreement. Additionally, some Licensed Software may include certain Third Party Components and open source software. Such open source software and Third Party Components may also be loaded on the Licensed Software media. Third Party Components are licensed to Licensee under this Agreement; open source software is licensed pursuant to the applicable open source license. To the extent applicable, information about the open source software may be found (i) in a file accompanying the applicable Licensed Software or (ii) in the Documentation or ALA. Licensee shall not directly access any Third Party Components other than with or as part of the Licensed Software. Licensee agrees that to the extent required by a third party licensor or supplier of a Third Party Component, that third party licensor or supplier is an intended third party beneficiary of this Agreement as necessary to protect intellectual property rights in the Licensed Software and limit certain uses thereof.
11. **NOTICE TO U.S. GOVERNMENT END USERS.** The Licensed Products are deemed to be "Commercial Items," as defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation," as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with such sections, the Licensed Products are licensed to U.S. Government end users (i) only as Commercial Items, and (ii) with only those rights as are granted pursuant to this Agreement.
12. **LICENSE FEES AND PAYMENT TERMS.** Licensee agrees to pay the applicable license fees for the Licensed Products within thirty (30) days of the date of invoice or such other date as agreed in writing by the parties. Software license fees are non-refundable, except as provided in Section 5 above, and shall be paid without any deduction or tax withholding. Software License fees are exclusive of any applicable transportation charges, sales, use, value added tax, and other applicable taxes and duties, and all such amounts shall be paid or reimbursed by Licensee. Licensee 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.
13. **AUDITS.** Licensor or an Auditor (as defined below) has the right to verify Licensee's compliance with the licenses issued under Product Orders, the applicable ALAs and this Agreement (please see Micro Focus License Compliance Charter at <http://supportline.microfocus.com/licensing/licVerification.aspx>, which can also be provided by Licensor at Licensee's request). Licensee agrees to:
  - A. **Recordkeeping.** Keep, and upon Licensor's request, provide records, sufficient to certify Licensee's compliance with this Agreement based on the applicable License Option(s) (including applicable license metric and other terms and conditions) for the Licensed 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 Licensed Software is installed or accessed or from which the Licensed Software can be accessed, the names (including corporate entity) and number of users accessing or otherwise able to access the Licensed Software, metrics, reports, copies of the Licensed Software (by product and version), and network architecture diagrams as they may relate to Licensee's licensing and deployment of the Licensed Products and associated support and maintenance;

- B. Questionnaire. Within seven (7) days of Licensor's request, Licensee shall furnish to Licensor or its designated independent auditor ("Auditor") a completed questionnaire provided by Licensor or Auditor, accompanied with a written statement signed by a director of Licensee certifying the accuracy of the information provided; and
- C. Access. Provide representatives of Licensor or Auditor any necessary assistance and access to records and computers to allow an inspection and audit of Licensee's computers and records, during Licensee's normal business hours, for compliance with licenses, the applicable ALAs, and this Agreement, and fully cooperate with such audit.
- D. Non-Compliance. In the event that Licensee has, or at any time has had, unlicensed installation, use of, or access to the Licensed Software or has otherwise breached this Agreement or an ALA (a "Non-Compliance"), without prejudice to any other rights or remedies Licensor may have, including, without limitation, injunctive relief, Licensee shall, within thirty (30) days' notice of such Non-Compliance to Licensee, purchase sufficient licenses and/or subscriptions and associated support and maintenance to cure the Non-Compliance, by paying Licensor's current (as of the date of such additional purchase) list license fees and 12-month support and maintenance fees to Licensor for such additional licenses, plus Licensor's current (as of the date of such additional purchase) list term license and support and maintenance 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 of the aforementioned fees, with interest payable even if an invoice was not issued at the time the Non-Compliance occurred. For purposes of the foregoing, "list" shall mean Licensor's full list price as set forth in Licensor's standard price list that is current as of the commencement of the audit without any volume or other discount. If Licensee's Non-Compliance results in an underpayment of license fees of 5% or greater, Licensee shall also reimburse Licensor for the reasonable cost of such audit in addition to other amounts due. In the event of a dispute related to a Non-Compliance, Licensor shall have the right to collect from Licensee its reasonable costs and attorneys' fees incurred in enforcing this Agreement.

14. **RELATED SERVICES**. Licensee shall be responsible for obtaining and installing all proper hardware and other third party support software (including operating systems) for the proper installation and implementation of the Licensed Software. In the event that Licensee retains Licensor to perform any services with respect to the Licensed Software (for example: installation, implementation, maintenance, consulting, or training services), Licensee and Licensor agree that such services shall be provided at Licensor's then- current standard terms, conditions, and rates for such services unless otherwise agreed in writing by Licensor.

#### 15. **PRIVACY AND USE OF LICENSEE INFORMATION**

- A. Responsibility and Compliance with Laws. Licensee is solely responsible for and assumes all liability with respect to its own collection, processing, storage, and transfer of any user data, including, but not limited to, personally identifiable information and personal health and financial information (collectively, "Personal Information"). Licensee shall be solely responsible for notifying its users of proper use of such data. Each party is responsible for complying with its respective obligations under all applicable laws, regulations, and industry standards regarding data collection and data privacy applicable for the use of the Licensed Software by the relevant party.

Licensee shall not provide any Personal Information to Licensor for processing by Licensor on behalf of Licensee, unless otherwise agreed by the parties in writing in an applicable transaction document with applicable privacy terms. If the parties agree that processing Personal Information is necessary for the performance of this specific transaction, and when such Personal Information processing falls within the scope of the General Data Protection Regulation (EU) 2016/679 ("GDPR"), before any Personal Information is made available to Licensor, the parties agree that Licensee will be the data controller and Licensor will be the data processor, and when Licensor is processing Personal Information on behalf of Licensee, such processing shall be governed by terms that comply with Article 28 of the GDPR including standard contractual clauses to be included in such transaction document.

Licensor will not have access to protected health information unless the parties have an executed business associate agreement in place for this transaction. Licensee is solely responsible for assessing the Licensed Product or any related product or service for compliance with any industry requirements applicable to Licensee.



- B. Consent to Use of Licensee Information. To the extent required or permitted by law, Licensee hereby expressly consents to (i) receiving information from Licensor from time to time advertising Licensor's products; (ii) the use of Licensee's name in Licensor customer lists, promotional materials, and press releases; and (iii) the collection and use of information about the computer system on which the Licensed Software is installed (e.g. product version, serial number) for internal security and licensing purposes. Further information about Licensor's processing of personally identifiable data is available at <https://www.microfocus.com/about/legal/#privacy> (click "Privacy Notice" tab) or can be provided by Licensor at Licensee's request.
- C. Other Use of Licensee Information. To the extent required or permitted by law, and notwithstanding the terms in Section 15.A, Licensor may also process personally identifiable information of Licensee and Licensee's users (i) in order to comply with a legal obligation to which Licensor is subject; (ii) as is necessary for the performance of this Agreement; and (iii) where necessary for the purposes of Licensor's legitimate interests, except where such interests are overridden by the interests or fundamental rights and freedoms of the Licensee or Licensee's users which require protection of personally identifiable information.
16. **LICENSEE TRADEMARK AND FEEDBACK.** Licensor may use Licensee's name and logo for business development and marketing purposes, including, but not limited to, online and printed sales and marketing materials. Any other use of Licensee's name or logo, or a description of Licensee's use of the Licensed Software, shall be subject to Licensee's prior consent. Any suggestions, ideas for modifications, enhancements, and other feedback from Licensee regarding the Licensed Software provided at any time (collectively, the "Feedback"), including (but not limited to) all intellectual property rights in and to such Feedback, shall be owned exclusively by Licensor. Licensee hereby assigns all right, title and interest in and to such Feedback and all the intellectual property rights therein to Licensor, without the necessity of any further consideration. To the extent any Feedback cannot be assigned to Licensor, Licensee hereby grants to Licensor a perpetual, irrevocable, exclusive, worldwide, royalty-free, fully paid up license, with the right to sublicense through multiple tiers to use, make, sell, distribute, execute, adapt, translate, reproduce, display, perform, modify, create derivative works of and otherwise exploit the Feedback in any manner.
17. **MISCELLANEOUS.**
- A. Assignment. Licensor may assign this Agreement, including any rights or obligations under the Agreement (in whole or in part) to a parent or an affiliate. Licensee may not assign or transfer this Agreement or any of its rights or duties hereunder, including (but not limited to) by merger, acquisition by any entity of all or substantially all of Licensee's stock or assets, change of control, operation of law, or otherwise, without the prior written consent of Licensor and payment by Licensee of the applicable assignment fee. Any attempted assignment not in accordance with this Section shall be null and void.
- B. Governing Law. If Licensee is located in North America, the laws of the State of California govern this Agreement and the licenses granted hereunder, and the parties hereto consent to the exclusive jurisdiction of the State and Federal courts of the State of California in any action based on this Agreement or the Licensed Software hereunder or any License Option under an ALA. 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 Licensee is located in France, Germany or Japan, this Agreement is governed by the laws of the country in which Licensee 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 conflict 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 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.
- C. Export Control. This Agreement may be subject to export control laws, regulations, and other restrictions of the United States (including, but not limited to, the U.S. Export Administration Regulations (the "EAR")), United Kingdom, or the European Union regarding export or re-export of computer software and technology. Licensee agrees to comply with all applicable export control laws, regulations, and restrictions, including the EAR, where applicable.



- D. Entire Agreement. The applicable Product Order and this Agreement including the applicable ALA, constitutes the complete and exclusive statement of agreement between the parties relating to the license for the Licensed Products and supersedes all prior proposals, communications, purchase orders, and agreements (including, without limitation, Other Agreements), without need for a mutually executed amendment to any such Other Agreement. Any conflicting terms and conditions shall be resolved according to the following order of precedence: the applicable Product Order, the applicable ALA, and then this Agreement in all other respects.
- E. Amendment. No representation, supplement, modification, or amendment of this Agreement will be binding on either party unless executed in writing by duly authorized representatives of both parties (excluding any distributor or reseller of Micro Focus) to this Agreement.
- F. Waiver. No waiver of any right under this Agreement will be effective unless in writing and signed by authorized representatives of both parties (excluding any distributor or reseller of Licensor). No waiver of any past or present right arising from any breach or failure to perform will be deemed to be a waiver of any future right arising under this Agreement.
- G. Severability. If any provision in this Agreement is invalid or unenforceable, that provision will be construed, limited, modified or, if necessary, severed, to the extent necessary, to eliminate its invalidity or unenforceability, and the other provisions of this Agreement will remain unaffected.
- H. No Reliance. Each party acknowledges that in entering into this Agreement it has not relied on any representations, agreements, warranties or other assurances (other than those repeated in this Agreement) and waives all rights and remedies which but for this Section 17 would be available to it.