

## Micro Focus Maintenance Agreement

This Maintenance Agreement (“Agreement”) describes the terms under which Micro Focus will provide Maintenance services to the entity purchasing Maintenance through this Agreement (“Licensee”) from Micro Focus or an authorized reseller. In this Agreement, “Micro Focus” is the Micro Focus legal entity authorized to distribute the Maintained Software in the country in which the Maintenance services are provided to Licensee.

1. **Definitions.** Capitalized terms used in this Agreement are defined as follows:

- a. **Correction.** A fix, workaround, or other software modification or process change that addresses an Error.
- b. **Error.** A bug, defect, or material difference, between the use of the Maintained Software and its specifications in the product’s documentation.
- c. **Effective Date.** The date when Micro Focus receives Licensee’s order for the Maintenance or, if later, delivery to Licensee of the Maintained Software.
- d. **Hotfix.** A release created to resolve specific customer problems, and that is available from technical support.
- e. **Maintenance.** Access to available Updates and the provision of support services, as described in clauses 2 and 3 below.
- f. **Maintained Software.** A Micro Focus product for which Licensee has purchased Maintenance under this Agreement. The quantity of Maintained Software licenses is as specified on the Maintenance quote, invoice and/or order. Maintained Software must be obtained through a separate licensing agreement.
- g. **Major Version.** A product version with significant new or improved functionality within the same product bearing the same name, usually designated by a change in the number to the left of the decimal point (e.g., from version 5.4 to 6 or 2015 to 2016), and released for wide distribution.
- h. **Minor Version.** Corrections, minor enhancements or improvements to the software functionality of a Major Version, usually designated by a change in the number to the right of the decimal point or a release number (e.g. from version 5.3 to 5.4 or R2 to R3), and released for wide distribution.
- i. **Patch Update.** A small release with multiple corrections, indicated by a P and patch number to the right of the version number (e.g. 5.3.2 P1).
- j. **Platform.** A hardware chipset and operating system combination.
- k. **Service Pack.** A small release which includes multiple corrections and increments 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) and is available for wide distribution.
- l. **Severity 1.** The operation is in production and is mission critical to the business. The product is inoperable and the situation is resulting in a total disruption of work. There is no workaround available.
- m. **Severity 2.** Operations are severely restricted and important features are unavailable, although work can continue in a limited fashion. A workaround is available allowing the company to operate in some manner.
- n. **Severity 3.** There is no material loss of service. This may be a request for documentation, general information, enhancement request, or the product has a workaround that keeps the business functioning near normal levels.
- o. **Update.** Any of a Major Version, Minor Version, Service Pack, Patch Update, or Hotfix. Except with respect to Borland Software, if Maintained Software is licensed for a specific Platform, an Update is always specific to the same Platform as the original Maintained Software.

2. **Software Updates.** In consideration of payment of the applicable Maintenance fees, Micro Focus will make available to Licensee any Updates generally released for the Maintained Software.

- a. **Use of Updates.** Licensee will be entitled to install and use Updates up to the number of licenses for which Licensee has purchased Maintenance for the Maintained Software. Use of Updates is subject to the terms of the end user license agreement provided with the Update; if no such agreement is included with an Update, the end user license agreement for the most recent Service Pack, Minor Version or Major Version shall apply.
- b. **Exception for Acu / extend Products.** A license to a new Major Version of Micro Focus’ Acu or *extend* products is not included as a Maintenance benefit, and so must be purchased separately. Licensee may purchase such versions at a discounted fee equal to 20% of the then-current license fee list price for the product.

**Installing Updates and Transition Period.** Except where otherwise stated at <https://www.microfocus.com/support-and-services/alternates> or in the applicable end user license agreement or in any other written agreement between Micro Focus and Licensee, for up to 90 days from the date Licensee receives an Update, Licensee may use both the original Maintained Software being updated and the Update simultaneously. At the end of this transition period the license and Maintenance for that license will shift to the Update and the Update will become the Maintained Software. At that time, any further use of the original

Maintained Software for that license is not be permitted unless Micro Focus expressly authorizes such use in writing, such authorization to be accompanied by the payment of additional fees.

3. **Support Services.** In consideration of payment of the applicable Maintenance fees, Micro Focus will make available to Licensee the following support services for the Maintained Software.

a. Support Lifecycle. The Micro Focus product support lifecycle is divided into two phases: Mainstream and Extended Support. The support available in each phase is described below. To determine the timing of the phases for a specific product, see <https://www.microfocus.com/support-and-services/lifecycle>.

b. Mainstream Support. The following benefits are available during the Mainstream Support phase:

i. Errors and Enhancement Requests. Licensee may submit support incidents to report Errors or request product enhancements to the Maintained Software.

ii. Defect Support. Upon receipt of an Error report, Micro Focus will attempt to reproduce the Error. If Micro Focus can reproduce the Error on its support systems, Micro Focus will use commercially reasonable efforts to provide a Correction based on the Error's prioritization or criticality. If a Correction is included within an Update, Micro Focus may provide Licensee with the Update instead of as a separate Correction. Licensee acknowledges that Micro Focus may not be able to produce a Correction for all Errors.

iii. Error Reproduction. If Micro Focus is unable to reproduce a reported Error at Micro Focus' premises, if mutually agreed, Licensee may choose whether to provide Micro Focus with direct access to Licensee's system for the purposes of performing remote diagnostic efforts to determine the cause of the Error. Such remote access shall be through a service that allows access to a receiving system through secure internet connections. If Micro Focus is unable to reproduce a reported Error, Micro Focus will not work to produce a Correction.

iv. Each of the Extended Support phase benefits.

c. Extended Support. The following benefits are available during the Extended Support phase:

i. Technical Support. Licensee may submit an unlimited number of technical support incidents (not including requests for enhancements or defect support) relating to Maintained Software. See [www.microfocus.com/support](http://www.microfocus.com/support) for details on submitting incidents.

ii. Extended Plus. For a product version in the Extended Support phase, defect support is no longer generally available. Micro Focus may choose to make Extended Plus available for an additional charge. If Licensee purchases Extended Plus, Micro Focus will make available for that product version defect support and security updates released for Severity 1 issues.

d. The following benefits are available during all support phases.

i. Access to Self-Help Resources. Licensee may access an online knowledgebase and available support forums and documentation.

ii. License Keys. For Maintained Software that requires a license key for installation, Micro Focus will make available a replacement key for installing or reinstalling authorized licenses to the extent Micro Focus is authorized to provide the key. Licensee is responsible for installing all software.

iii. Access to Updates. Licensee may access available Updates that have been generally released for the Maintained Software and to which Licensee is entitled as described in clause 2.

e. Standard Care Availability. If Licensee has purchased Standard Care Maintenance, then Micro Focus' technical support will be available in English during business hours on business days excluding holidays of the applicable Micro Focus support center. In addition, for the products listed in Annex 1, technical support will be available in the English language for Severity 1 incidents, 24 hours x 7 days a week and 365 days a year. Support in other languages will be subject to availability during the business hours of the Micro Focus support center providing support.

f. Total Care Availability. If Licensee has purchased Total Care Maintenance, Micro Focus' English language technical support will be available 24 hours x 7 days a week and 365 days a year for Severity 1 issues, and during business hours on business days excluding holidays of the applicable Micro Focus support center for other issues. Support in other languages will be subject to availability during the business hours of the Micro Focus support center providing support.

g. Total Care Response Times. If Licensee has purchased Total Care Maintenance, the target initial response time depends on the Severity Level of the incident and is as follows:

Severity Level	Targeted Response Time
Severity 1	1 hour
Severity 2	3 business hours
Severity 3	Next business day

- h. Escalation. If after Micro Focus' response to a support request, Licensee has reasonable grounds for concern as to whether Micro Focus is dedicating sufficient effort to resolving an issue, Licensee may escalate its concern to Micro Focus' local, regional, and then global support management.
- i. Backup. Data may be altered or damaged in the course of installing Updates or otherwise implementing services. Licensee will take appropriate measures to isolate and back up its applicable systems accordingly.
- j. Items Not Covered by Support Services. Support services do not apply to:
- i. software that is modified other than by Micro Focus or pursuant to this Agreement;
  - ii. A product version for which Micro Focus has discontinued maintenance services;
  - iii. Errors caused by power problems, environmental problems, Licensee's negligence, hardware malfunction, software not covered by this Agreement, or any cause other than the Maintained Software itself;
  - iv. If Maintained Software is licensed for a specific Platform, use on a different Platform.
- k. Additional Charges. In the course of investigating a reported Error, if Micro Focus determines the issue is not an Error in the Maintained Software, upon prior notice, Micro Focus reserves the right to charge for expenses related to such investigation.
- l. Platform Changes. For COBOL, CORBA, or Enterprise products, if a license is available for purchase for use on a different Platform, Licensee may purchase the right to use the license on the different Platform at a price of 60% off the then-current applicable license fee list price for the software for the different Platform, if the purchase is made during the Maintenance term of the original Maintained Software. Otherwise, if Maintained Software is licensed for a specific Platform, a license to use or purchase at a discount Maintained Software on a separate Platform is not a Maintenance benefit except with respect to Borland Software as set forth above. Except where otherwise stated in the applicable end user license agreement or other written agreement between Micro Focus and Licensee, if for a specific license Licensee purchases a license for a different Platform as described in this paragraph, Licensee shall have 90 days from the purchase date to simultaneously use the license on both the original and the new Platform. At the end of this transition period the license and Maintenance for that license will shift to the new Platform and that license will become the Maintained Software. At that time any further use of the license on the original Platform is not permitted. Notwithstanding the foregoing, there shall be no transition period for those products listed at <https://www.microfocus.com/support-and-services/mla-product-exclusions> and Licensee may not have the license for any such products on both the original and the new Platform concurrently installed.
- m. Successor Products. A successor product to a Maintained Software product is not included as a Maintenance benefit. If a successor product to a COBOL, CORBA, or Enterprise product is made available for purchase, Licensee may purchase the license at a price of 60% off of the then-current applicable list price for the successor product if the purchase is made during the Maintenance term of the original Maintained Software. Except where otherwise stated in the applicable end user license agreement or other written agreement between Micro Focus and Licensee, if for a specific license, Licensee purchases a license to a successor product as described in this paragraph, Licensee shall have 90 days from the purchase date to simultaneously use the original and successor product license. At the end of this transition period the license and Maintenance for that license will shift to the successor product and that license will become the Maintained Software. At that time any further use of the original license is not permitted. Notwithstanding the foregoing, there shall be no transition period for those products listed at <https://www.microfocus.com/support-and-services/mla-product-exclusions> and Licensee may not have any such product and the successor product concurrently installed.

**4. Term and Termination.** This Agreement will commence on the Effective Date. The Agreement will continue for an initial term of 1 year unless a different initial term is agreed to in writing by the parties (such as in a separately executed master agreement). Pursuant to clause 5.b, the Agreement may be renewed at the end of each term (the "Renewal Date") for a period of 1 year, or a different period if agreed to in writing by the parties ("Renewal Period").

a. Termination for Cause. Either party may terminate this Agreement upon written notice to the other for a material breach that is not cured within 30 days of notice receipt. If Licensee is more than 10 business days late in making payment, Micro Focus may suspend Agreement performance until payment is made. Upon termination of the end user license agreement for a Maintained Software product, this Agreement shall be terminated in relation to that product.

**5. Purchasing and Renewal.** If the parties have separately executed an agreement in writing that includes the purchase and provision of Maintenance, during the validity of that agreement its maintenance purchase and renewal terms shall prevail over those in this Agreement with respect to any conflicts.

a. Full Maintenance Policy. When purchasing Maintenance for a product, Licensee must purchase Maintenance for all of its licenses of that product. During the time period for which Maintenance is purchased, if Licensee increases the number of licenses of the Maintained Software that it has copied, used, or otherwise exploited, then it must promptly purchase Maintenance for such licenses.

- b. Maintenance Renewal. For so long as Micro Focus continues to offer Maintenance for the Maintained Software, Licensee may, subject to Micro Focus' acceptance, renew Maintenance by delivering a purchase order or executing the quote for the applicable Maintenance fees on or about each Renewal Date. If Licensee renews Maintenance Licensee must purchase Maintenance for all licenses of the Maintained Software that it has copied, used, or otherwise exploited. Micro Focus may increase Maintenance fees by up to 10% over the previous year's fees or such greater amount necessary to increase the support fee to the then-current maintenance list price. If Licensee allows Maintenance to lapse or payment of the Maintenance fee for a Renewal Period is not received by the due date, Micro Focus may immediately and without notice suspend provision of Maintenance and Licensee will no longer be eligible for the 10% limitation on price increases for the current and subsequent years set forth above. Licensee may then reinstate Maintenance in accordance with the Reinstatement clause below. Licensee will also no longer be eligible for the 10% limitation on price increases if Licensee does not renew Maintenance for all copies of the Maintained Software or Licensee reduces the number of copies of the Maintained Software.
- c. Reinstatement. If a product has been off Maintenance for longer than 1 year, in order to purchase Maintenance, Licensee must purchase licenses of the most current version of the product to replace the previous licenses. If Licensee elects not to renew Maintenance or allows Maintenance to lapse and an affected product has been off Maintenance for less than 1 year, Licensee can reinstate Maintenance by paying for a new Maintenance term of not less than 12 months, plus the following charges:
- i. if the Maintained Software is the most then-current version of the product, by paying to Micro Focus the applicable Maintenance Fees backdated to the date when the previous Maintenance term had expired, plus a 20% reinstatement fee (calculated as 20% of the applicable annual Maintenance Fee), or
  - ii. if the Maintained Software is not the most then-current version of such product, by paying to Micro Focus the applicable Maintenance Fees backdated to the date when the previous Maintenance term had expired, plus a 20% reinstatement fee (calculated as 20% of the applicable annual Maintenance Fee), plus a license fee equal to 60% reduction of the then-current list price of the most then-current version of the product, or for the Reflection line of products, the price of upgrade licenses.
- d. Payment. Fees are non-refundable and shall be paid in the currency indicated on the invoice by the later of (i) 30 days from the date of invoice, or (ii) for Maintenance fees for a Renewal Period, by the Renewal Date (see clause 4). Late payments will accrue interest at the rate of 1.5% per month or, if lower, the highest rate permitted by law. Micro Focus shall have the right to recover from Licensee any collection costs (including attorney's fees) incurred by Micro Focus as a result of any late payment.
- e. Taxes. The fees are exclusive of all applicable taxes. Licensee will pay and bear the liability for taxes associated with Agreement services and deliverables, including sales, use, excise, and added value taxes but excluding taxes based upon Micro Focus' net income, capital, or gross receipts, or any withholding taxes imposed as required by law. If Licensee 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 Licensee's behalf, Licensee agrees to reimburse Micro Focus within 30 days after notification in writing of such remittance. Licensee will provide Micro Focus with valid tax exemption certificates in advance of any remittance otherwise required to be made by Micro Focus on Licensee's behalf where such certificates are applicable.
- f. Changes. Micro Focus may, upon written notice prior to any Renewal Period, discontinue Maintenance for a product, alter the prices as per clause 5.b above, or alter terms for Maintenance in advance of such new Renewal Period. Any such discontinuance or alterations will be deemed to amend this Agreement, effective beginning the next Renewal Period.
- g. Optional Services. If Licensee chooses to purchase, and Micro Focus chooses to sell, through this Agreement optional consulting, support, or education services, the following terms apply unless otherwise agreed in a separate written agreement specifically covering those services.
- i. Support Services. The Maintenance benefits, including support services, described above in this Agreement are not provided for the deliverables resulting from the purchase of optional services (including without limitation any field developed solutions) ("Deliverables") unless the parties expressly agree otherwise in writing.
  - ii. Statement of Work. The parties may choose to enter into a Statement of Work ("SOW") that describes the relevant services and may cover items such as project scope and code, documentation, media and other objects including Deliverables. Any such SOW will be also governed by this Agreement's terms unless otherwise agreed in the SOW.
  - iii. License. Subject to payment of applicable fees for the services, Micro Focus grants Licensee a nonexclusive, nontransferable, worldwide, perpetual license to reproduce and internally use the resulting Deliverables. All proprietary rights notices must be faithfully reproduced and included on all copies. Except as expressly provided otherwise in a SOW, all rights are reserved in Deliverables.
  - iv. Premium Support. In the event Licensee purchases Micro Focus' optional Premium Support offering, such services shall be additionally governed by the terms and conditions set forth in the then-current

## 6. 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 6(A) ABOVE, NEITHER MICRO FOCUS NOR ITS SUPPLIERS SHALL BE LIABLE FOR:

i. INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR

ii. FOR ANY LOSS OF PROFITS, BUSINESS, OR DATA (WHETHER ARISING 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 6(A), ANY LIABILITY OF MICRO FOCUS OR ITS SUPPLIERS SHALL BE LIMITED IN THE AGGREGATE TO THE AMOUNT PAID BY LICENSEE FOR MAINTENANCE FOR THE APPLICABLE MAINTAINED SOFTWARE DURING THE PRIOR 12-MONTH PERIOD, OR FOR THE PURCHASE OF OPTIONAL SERVICES, THE AMOUNT OF PAID FOR SUCH OPTIONAL SERVICES; THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION, INCLUDING CONTRACT, WARRANTY BREACH, OR TORT.

## 7. Warranties

a. Software Warranty. The warranty terms applicable to software provided under this 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 PRODUCTS, SERVICES AND DELIVERABLES PROVIDED UNDER THIS AGREEMENT, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, GOOD TITLE, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. Micro Focus does not warrant that the services or any Deliverables will be without defect or error.

8. **Confidentiality**. The party receiving Confidential Information may only use it for the purposes of this 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 Agreement terms 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 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; or (f) required to be disclosed by law, regulation, or court order. These confidentiality obligations will survive 5 years after Agreement termination and survive indefinitely as to Confidential Information that contains Personal Data (as defined in clause 10 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 services.

## 9. General Provisions

a. Governing Law. If Maintenance is provided in North America, all matters arising out of or relating to this Agreement are governed by the laws of the state of Maryland. If Maintenance is provided in France, Germany, Italy, Japan or Spain, all matters arising out of or relating to this Agreement are governed by the laws of the country in which the services are provided. In the rest of the world, the laws of England govern all matters arising out of or relating to this 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 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 Maryland 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 the Agreement, including a party's obligations under data protection laws.

c. Entire Agreement. Unless otherwise agreed in writing by the parties, this Agreement and the applicable Micro Focus end user license agreement(s) constitute the entire agreement between Micro Focus and

Licensee with respect to the Maintained Software and related services, and supersede any prior representations and communications, whether oral or written. This Agreement may be modified only in writing signed by both parties. The terms of any purchase order or similar document will not modify this Agreement.

d. Force Majeure. Micro Focus shall not be liable for failure or delay in performing Agreement obligations to the extent caused by circumstances beyond Micro Focus' reasonable control, including labor dispute, war, civil disturbance, government action or inaction, epidemic, fire, or acts of nature.

e. Audit. Licensee agrees to keep records sufficient to certify compliance with this Agreement, and, upon request of Micro Focus, provide and certify metrics and/or reports based upon such records and account for, among other things, numbers of copies (by product and version) and network architectures as they may reasonably relate to Licensee's licensing and deployment of software and associated Updates. Within 7 days of Micro Focus's written request, Licensee shall furnish Micro Focus or an independent auditor chosen at Micro Focus's sole discretion with a completed questionnaire provided by Micro Focus and with a written statement in a format required by Micro Focus signed by a director and/or Licensee's auditor certifying the accuracy of any information provided. Licensee shall allow a Micro Focus representative or an independent auditor ("Auditor") to inspect and audit Licensee's computers and records, during Licensee's normal business hours, for compliance with the Agreement terms. If Licensee has or at any time has had unlicensed installation, use of, or access to Updates or has otherwise breached the license granted for an Update (a "Non-Compliance"), Licensee shall within 30 days purchase sufficient licenses and or subscriptions and associated Maintenance to cure the Non-Compliance, by paying Micro Focus's then-current list license fees and annual Maintenance fees to Micro Focus for such additional licenses, plus Micro Focus's then-current (as of the date of such additional purchase) list term license 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. If a material license shortfall of 5% or more is found, Licensee shall also reimburse Micro Focus for the reasonable cost of such audit in addition to other amounts due.

f. Ownership. Micro Focus (or its suppliers) have and will retain title and all ownership rights to the Maintained Software, Updates, and Deliverables. Licensee is granted only the rights in the Maintained Software, Updates, and Deliverables explicitly described in this Agreement or the applicable Micro Focus end user license agreement. This 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 services to Licensee does not constitute agreement by Micro Focus that Licensee is in compliance with such relevant terms and/or laws.

g. Assignment. Licensee may not assign this Agreement, or any of its rights or obligations thereunder. Micro Focus may assign all or a portion of this 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.

h. Non-solicitation. Without written consent from Micro Focus, during the Agreement and for 12 months afterwards Licensee shall not deliberately attempt to recruit, or offer employment or work to any personnel employed or retained by the other who have been involved in the provision or receipt of the services hereunder. Micro Focus resources represent a significant investment in recruitment and training. If Licensee hires a person in violation of this provision, Licensee shall pay Micro Focus liquidated damages equal to 50% of the person's gross annual cash compensation based upon the rate of pay as of the last day of the person's work with Micro Focus.

i. 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 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.

j. Delivery. Electronic delivery in the U.S. will be made FCA (Free Carrier, INCOTERMS) Micro Focus dock. Electronic delivery outside the U.S. shall be considered delivered DAP-POE (Delivered at Place, Port of Entry, INCOTERMS). For software products transmitted by electronic means directly to Licensee outside the U.S., the right to exercise licenses hereunder shall arise at the location of the computer on which the software and any documentation is first used. For physical shipments, delivery in the U.S. will be made FCA Micro Focus' dock. Micro Focus will ship ground only and prepay freight from Micro Focus' dock to Licensee's forwarder or named destination. All other freight arrangements will be billed to Licensee. Delivery to destinations in EMEA will be made DAP-POE port of entry. Delivery to destinations in Canada, Latin America, and Asia Pacific will be made DAP-POE. Title and risk of loss shall pass at the delivery point as set forth above. Reference in this -clause to title passage means title to software exclusive of all rights retained by Micro Focus under the Agreement and the applicable end user license agreement..

k. Export. Services and 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.

l. Insurance. Micro Focus will maintain reasonable amounts of insurance, which shall at least meet any limits required by law, for public liability, property damage, employer's liability and workers compensation.

m. U.S. Government users. This clause is applicable only to U.S. government users. Any software or documentation delivered under the 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 Agreement and the applicable end user license agreement.

n. Independent contractors. This Agreement creates no relationship of joint venture, partnership, association or principal and agent between the parties. Nothing in this 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.

10. **Personal Data:** This provision only applies to the extent Licensee provides Personal Data to Micro Focus under this 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 Subject:** An individual who is the subject of Personal Data.

iii. **Personal Data:** Any information relating to an identified or identifiable natural person; 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 and relates only to personal data, or any part of such personal data, of which Licensee is the Data Controller and in relation to which Micro Focus is providing services or processing personal data under this Agreement.

iv. **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. For the purposes of the applicable national and/or local data protection laws, Licensee is the Data Controller and Micro Focus is the data processor of any Personal Data.

c. Licensee authorizes Micro Focus to obtain, hold and process the Personal Data for the purposes of this Agreement. Micro Focus shall use reasonable efforts to process the Personal Data only to the extent, and in such a manner, as is necessary for the purposes of, or as permitted by, this 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 Licensee with Data Subject access requests under the applicable national and/or local data protection laws.

d. Licensee warrants that: (i) 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 Agreement and that such consent has not been withdrawn; (ii) 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 13.4.(i); (iii) where requested, it shall provide Micro Focus with records showing the above consent; (iv) it shall provide Micro Focus with full co-operation in relation to Micro Focus' compliance with its data protection obligations; and (v) it has complied with all its obligations under any applicable national and/or local data protection laws and any other applicable data protection requirements. Licensee agrees to indemnify and defend at its own expense Micro Focus against all costs, claims, damages or expenses incurred by Micro Focus or for which Micro Focus may become liable due to any failure by Licensee or its employees or agents to comply with any of its obligations under this clause.

e. Licensee agrees that Micro Focus may sub-contract to data processors established in the country in which Micro Focus is incorporated or other countries.

## ANNEX 1

Micro Focus Products Supported 24 x 7 with purchase of Standard Care

Application Server for Net Express	Orbacus
Application Server for Net Express with .NET	Orbix
Application Server for Server Express	Server Express
Artix	Server Express for Eclipse
COBOL 2010 Runtime	Server Express Remote Development Option
COBOL 2010 Runtime Test Server	Server for .NET
COBOL Server	Server for COBOL
COBOL Server for Stored Procedures	Server for SOA
Revolve Enterprise Edition	Silk QALoad
Enterprise Server	Silk TestPartner
Enterprise Developer	Studio for COBOL Developers
Enterprise Test Server	Studio for ISVs
Mainframe Express Enterprise Edition	TrackRecord
Server Enterprise Edition	Visual COBOL
Studio Enterprise Edition	Visual COBOL Development Hub
Net Express	Visual COBOL for Eclipse
Net Express for Eclipse	Visual COBOL for Eclipse Distributed Edition
Net Express Personal Edition	Visual COBOL for ISVs
Net Express Professional Edition	Visual COBOL for Visual Studio
Net Express Professional with .NET	Visual COBOL Studio
Net Express Professional with Server Express	Visual COBOL Studio Distributed Edition
Net Express with .NET	Visual COBOL Studio Distributed Edition for ISVs
Optimal Trace	
Orbacus	
Orbix	
Server Express	
Server Express for Eclipse	
Server Express Remote Development Option	
Server for .NET	
Server for COBOL	
Server for SOA	
Silk QALoad	
Silk TestPartner	
Studio for COBOL Developers	
Studio for ISVs	
TrackRecord	
Visual COBOL	
Visual COBOL Development Hub	
Visual COBOL for Eclipse	
Visual COBOL for Eclipse Distributed Edition	
Visual COBOL for ISVs	
Visual COBOL for Visual Studio	
Visual COBOL Studio	
Visual COBOL Studio Distributed Edition	
Visual COBOL Studio Distributed Edition for ISVs	