

TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS AND SERVICES

1 INTERPRETATION

1.1 The definitions and rules of interpretation in this clause 1 apply to these terms and conditions.

Business Hours: Monday to Friday between 9am and 5pm excluding Public and Bank holidays in the country in which Micro Focus is placing the order.

Completion Date: the date specified in the Purchase Order or the Statement of Work (if any) for the completion of the Services.

Contract: an agreement between Micro Focus and the Supplier for the supply and purchase of Goods and/or Services on the basis of these terms and conditions and the Purchase Order.

Goods: any goods specified in the Purchase Order (including any part or parts of them) including goods required to be delivered in performance of the Services.

Laws: any legislation (primary or secondary), order, directive, codes of practice and standards or other legal or regulatory requirement in any relevant jurisdiction, from time to time.

Losses: has the meaning given to it in clause 9.1.

Micro Focus: means the Micro Focus group company placing the Purchase Order.

MSA Offence means an offence under the UK's Modern Slavery Act 2015.

MSA Statement means Micro Focus's anti-slavery and human trafficking statement, [as published on Micro Focus's UK website];

Purchase Order: means Micro Focus' purchase order for the supply of Goods and/or Services to which these terms and conditions are annexed (including any instructions contained in the Statement of Work, if any).

Start Date: has the meaning set out in clause 2.3.

Supplier: the person or firm from whom Micro Focus purchases the Goods and/or Services.

Services: any services to be ordered by Micro Focus from the Supplier or to be rendered in connection with the delivery of the Goods to be delivered, which in both cases are specified in either the Purchase Order or the Statement of Work (if any).

Statement of Work: the statement of work attached to or clearly referred to in the Purchase Order, which sets out the Services to be performed by the Supplier and comprising all documents, standards and drawings therein referred to.

2 APPLICATION OF TERMS AND CONDITIONS

2.1 These terms and conditions shall apply to all Purchase Orders unless expressly varied pursuant to clause 2.4. In the event of any conflict or inconsistency between these terms and conditions, the Purchase Order or the Statement of Work, the Purchase Order shall prevail in preference to the Statement of Work and these terms and conditions, and the provisions of the Statement of Work shall prevail over the provisions of these terms and conditions (provided that the Statement of Work has been agreed and signed by both parties).

2.2 The Purchase Order constitutes an offer by Micro Focus to purchase the Goods and/or Services in accordance with these terms and conditions.

2.3 The Purchase Order shall be deemed to be accepted by the earlier of: (a) the Supplier issuing written acceptance of the Purchase Order; or (b) any act by the Supplier consistent with fulfilling the Purchase Order, at which point and on which date the Contract shall come into existence (the "Start Date").

2.4 No terms or conditions endorsed upon, delivered with or contained in the Supplier's quotation or acceptance of a Purchase Order, specification or similar document shall form part of the Contract unless expressly agreed by Micro Focus upon signature of an amendment to these terms and conditions executed by an authorised representative of Micro Focus and incorporated in the Purchase Order and the Supplier waives any right which it otherwise might have to rely on such terms and conditions.

2.5 The parties agree that Micro Focus may permit other Micro Focus group companies to use or benefit from the use of the Goods and Services without the consent of the Supplier and without payment of any additional fees.

3 WARRANTIES

A. General (Goods and/or Services)

3.1 The Supplier warrants, represents and undertakes that the Goods and the Services shall: (a) not be changed without the prior written consent of Micro Focus; and (b) conform to the Purchase Order and the Statement of Work (if any) as well as generally recognised commercial practices and Laws applicable to the supply of such Goods and/or Services.

3.2 The Supplier warrants, represents and undertakes that it shall at all times during the duration of this Contract and at its own expense: (a) maintain all licences and consents necessary for the performance of its obligations under the Contract; (b) adopt safe working practices and at the proper time supply and install within the original contract price such guards and safety devices as may be necessary to comply with the provisions of all health and safety Laws and shall not in the performance of the Contract in any manner endanger the safety of or unlawfully or unreasonably interfere with the convenience of any other person, including employees and/or contractors of Micro Focus; (c) to the extent that the Supplier performs any of the Services at the premises of Micro Focus or its customers (a "relevant site"), ensure that (in performing its obligations under the Contract) it does not cause any disturbance or damage to the operations and property of Micro Focus or its customers at the relevant site; (d) comply with Micro Focus' (or its customers') conditions in relation to any relevant site (including but not limited to health and safety conditions, safety management systems, hygiene policies and security policies) and Micro Focus' code of conduct and code of ethics made available to the Supplier from time to time; (e) assist Micro Focus (and any person nominated by Micro Focus) in the investigation of any accident or incident or the resolution of any dispute, which assistance shall include, but not be limited to, making personnel available for interview, providing access to documents and records and providing information reasonably requested by Micro Focus; (f) notify Micro Focus as soon as it becomes aware of any breach of Laws or any health and safety hazard or issue which arises in relation to the Goods or Services (which notification shall not release the Supplier from any liability and/or obligations in respect of such breach, hazard or issue); and (g) co-operate with Micro Focus in all matters relating to the Services or supply of Goods.

3.3 At any time prior to delivery of the Goods to Micro Focus or completion of the Services Micro Focus (or its nominee) shall have the right to inspect and test the Goods or inspect the work being carried out in performance of the Services.

3.4 If the results of such inspection or testing cause Micro Focus to be of the opinion (acting reasonably) that the Goods and/or Services do not conform or are unlikely to conform with the Purchase Order or the Statement of Work, or that the Goods and/or Services may not be delivered to time, Micro Focus may at its option:

(a) inform the Supplier in writing, following which the Supplier shall immediately take such action as is necessary to ensure conformity;

(b) reject the Goods or Services; or

(c) require and witness further testing and inspection.

3.5 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and the Services and any such inspection or testing shall not diminish or otherwise affect the Supplier's obligations under the Contract.

- 3.6 The warranties given under this clause 3 (in all of its parts A, B and C) shall survive any performance, acceptance or payment pursuant to the Contract and shall be extended to any repaired or replacement Goods or substituted or remedial Services provided by the Supplier.
- B. Goods**
- 3.7 The Supplier warrants, represents and undertakes that the Goods shall:
- (a) be of the best available design, of the best quality and workmanship subject to any Statement of Work and in any case without fault or defect (including latent defect);
 - (b) be complete and fully operational and shall be delivered with all parts (and also those parts that are not specified in the Purchase Order but which are required for proper operation and also including the usual safety devices or special tools);
 - (c) be accompanied by all appropriate information, warnings, instructions and documentation in relation to the safe use, handling, storing, operation, consuming, transportation and disposal of any Goods or parts or materials including paper and/or electronic operation manuals or those available via a functioning web link, in particular in relation to hazardous materials which will be clearly identified to Micro Focus;
 - (d) comply with any applicable national and international quality assurance standards from time to time published under which the Supplier is approved; and/or as reasonably requested by Micro Focus.
- 3.8 The Supplier warrants, represents and undertakes that the Goods shall conform with all Laws applicable to such Goods as regards the design, manufacture, quality, packaging, storage, transportation, delivery, labelling, health, safety and environmental standards and use of such Goods which are in force at the time of supply.
- C. Services**
- 3.9 The Supplier warrants, represents and undertakes that the Services shall be performed with reasonable care and skill, in accordance with generally recognised commercial practices and standards for similar services and any agreed service levels and the Statement of Work (if any).
- 3.10 The Supplier warrants, represents and undertakes that the Services shall conform with all Laws applicable to such Services including in relation to health, safety, human rights and environmental standards.
- 4 DELIVERY, ACCEPTANCE AND REJECTION**
- A. General (Goods and/or Services)**
- 4.1 Time shall be of the essence in respect of the delivery of the Goods and/or Services.
- 4.2 The Goods shall be delivered DDP (Incoterms 2010), and the Services performed, at the place specified in the Purchase Order or to such other place of delivery as is agreed by Micro Focus in writing prior to delivery of the Goods or the performance of the Services or where necessary agreed by Micro Focus orally prior to such delivery or performance and subsequently confirmed in writing.
- 4.3 Where Micro Focus agrees in writing to accept delivery of Goods or Services by instalments the Contract shall be construed as a single contract in respect of each instalment. Nevertheless, failure by the Supplier to deliver any one instalment shall entitle Micro Focus at its option to treat the whole Contract as repudiated.
- B. Goods**
- 4.4 The Supplier shall unload the Goods at its own risk as directed by Micro Focus. Unless otherwise stipulated by Micro Focus in the Purchase Order, deliveries shall only be accepted by Micro Focus in Business Hours.
- 4.5 The date for delivery shall be specified in the Purchase Order, or if no such date is specified then delivery shall take place within 5 days of the Purchase Order.
- 4.6 The Supplier shall ensure that each delivery is accompanied by a delivery note which shows, among other things, the Purchase Order number, date of Purchase Order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered. Any delivery which is not accompanied by a delivery note in accordance with this clause 4.6 may, at Micro Focus' discretion, be rejected without liability or penalty on the part of Micro Focus. In the case of rejection of the delivery by Micro Focus, the Supplier shall, at its own expense promptly remove all Goods which were the subject of the delivery.
- 4.7 All Goods shall be packaged by the Supplier so as to ensure that they will be in good condition upon arrival at their destination. If the Supplier requires Micro Focus to return any packaging material to the Supplier that fact must be clearly stated on any delivery note delivered to Micro Focus and any such packaging material shall only be returned to the Supplier at the cost of the Supplier.
- 4.8 If the Goods are delivered to Micro Focus in excess of the quantities ordered Micro Focus shall be entitled to reject the excess Goods and shall not be bound to pay for the excess and any excess shall be and shall remain at the Supplier's risk and shall be available for collection at the Supplier's expense within 3 months. Thereafter Micro Focus may dispose of such excess Goods at the Supplier's expense.
- 4.9 Micro Focus shall not be deemed to have accepted the Goods until it has had 7 days to inspect them following delivery.
- C. Services**
- 4.10 The Supplier shall meet the Completion Date and all other applicable dates for the performance of the Services stated in the Purchase Order or the Statement of Work (if any).
- 5 RISK/PROPERTY**
- Goods**
- The Goods shall remain at the risk of the Supplier until delivery to Micro Focus in the manner prescribed by clause 4 is complete (including unloading and stacking) at which point title and risk in the Goods shall pass to Micro Focus (save where Micro Focus rejects the Goods in accordance with clause 4.6).
- 6 CONSEQUENCES OF DEFAULT**
- A. General (Goods and/or Services)**
- 6.1 Without prejudice to Micro Focus' other rights under the Contract or otherwise and subject to clause 6.2 below, if: (a) the Supplier breaches any of the warranties set out in clause 3.1, 3.7 or 3.9; or (b) the Supplier breaches any other provision of the Contract not referred to in clause 6.1(a) above or any of the Goods or the Services otherwise fail to comply with the provisions of the Contract, Micro Focus shall where practicable first seek to meet and discuss the situation with the Supplier as soon as possible, but reserves the right to avail itself of any one or more of the remedies set out in clause 6.3 at its discretion, whether or not any part of the Goods or the Services have been accepted by Micro Focus.
- 6.2 Where clause 6.1(a) applies, the remedies set out in clause 6.3 shall only be available where Micro Focus notifies the Supplier of the failure of the Goods or Services to comply with the Contract or the breach of warranty prior to the latest of: (a) 24 months after the date of acceptance of the relevant Goods or performance of the relevant Services; (b) where the Supplier has repaired or replaced Goods or provided substitute Services pursuant to clause 6.3, 24 months after the date of acceptance of such repaired or replacement Goods or the date of performance of the substitute Services.
- 6.3 The remedies available to Micro Focus following the occurrence of one of the events referred to in clause 6.1 are: (a) to reject the Goods (in whole or in part) and return them to the Supplier at the risk and cost of the Supplier on the basis that the Supplier shall immediately pay to Micro Focus a full refund for the Goods so returned; (b) to give the Supplier the opportunity at the Supplier's expense either to remedy any defect in the Goods or Services or to supply replacement Goods or substitute Services and carry out any other necessary work to ensure that

the terms of the Contract are fulfilled within a reasonable period specified by Micro Focus; (c) to refuse to accept any further deliveries of the Goods or subsequent performance of the Services which the Supplier attempts to make, in each case without any liability to the Supplier; (d) to carry out or procure that some other person carries out at the Supplier's expense any work necessary to make the Goods and/or Services comply with the Contract (including but not limited to freight, disassembly and re-assembly); (e) to obtain substitute goods or purchase substitute services elsewhere and recover from the Supplier any expenditure reasonably incurred by Micro Focus in obtaining the goods or services in substitution from another seller; (f) to recover from the Supplier (under the indemnity granted to Micro Focus by the Supplier pursuant to clause 9.1 or otherwise through a contractual claim for damages) such Losses as may have been sustained by Micro Focus in consequence of the Supplier's breach or breaches of the Contract; (h) in the event of any failure by the Supplier to fulfil its obligations under clause 6.3(a) to (f) or to the extent there is any other material or persistent default by the Supplier of its obligations under the Contract, which being capable of remedy are not remedied within 14 days of notice of such default, to terminate the Contract in whole or in part or to rescind the Purchase Order, in each case without any liability to the Supplier.

B. Goods

6.4 If Micro Focus exercises its rights under clause 6.3(b), (d) and/or (e) above in respect of Goods which do not, in Micro Focus' opinion, meet the requirements specified in the Contract, the Supplier grants to Micro Focus the right to utilise the relevant Goods until such time as they meet those requirements.

7 PRICE

7.1 The price of the Goods and/or Services shall be stated in the Purchase Order or the Statement of Work (if any) and unless otherwise agreed in writing by Micro Focus shall be exclusive of value added tax but inclusive of all other charges.

7.2 No variation in the price nor extra charges shall be accepted by Micro Focus unless formally agreed in writing.

7.3 (a) **Invoicing (Goods):** In respect of the Goods provided, the Supplier shall invoice Micro Focus upon, but separately from, despatch of the Goods to Micro Focus.

(b) **Invoicing (Services):** In respect of the Services, the Supplier shall invoice Micro Focus upon completion of the Services.

8 PAYMENT

8.1 Unless otherwise agreed in writing in advance by the parties, Micro Focus shall pay all undisputed amounts within 30 days of receipt of a valid and correct invoice.

8.2 Without prejudice to any other right or remedy, Micro Focus reserves the right to set off any amount owing at any time from the Supplier to Micro Focus against any amount payable by Micro Focus to the Supplier under the Contract.

8.3 If the Goods and/or Services are purchased in any country other than in North America and any sum under the Contract is not paid when due then that sum shall bear interest from the due date until payment is made in full, both before and after any judgment, at two percent (2%) per annum above the Bank of England base rate from time to time. The Supplier is not entitled to suspend deliveries of the Goods and/or Services as a result of any sums being outstanding.

9 LIABILITY AND INDEMNITY

9.1 THE SUPPLIER SHALL INDEMNIFY AND KEEP MICRO FOCUS INDEMNIFIED ON DEMAND AGAINST ALL DIRECT, INDIRECT OR CONSEQUENTIAL LOSSES AND/OR LIABILITIES (ALL OF WHICH TERMS INCLUDE, WITHOUT LIMITATION, LOSS OF PROFIT, LOSS OF BUSINESS, DEPLETION OF GOODWILL AND LIKE LOSS), DAMAGES, INJURY, CLAIMS, CHARGES, DEMANDS, ACTIONS, COSTS AND EXPENSES (INCLUDING LEGAL AND OTHER PROFESSIONAL FEES AND EXPENSES) (TOGETHER THE "LOSSES") AWARDED AGAINST OR INCURRED OR PAID BY MICRO FOCUS AS A RESULT OF OR IN CONNECTION WITH: (A) THE SUPPLIER'S NEGLIGENCE, DEFAULT OR BREACH OF CONTRACT; AND (B) ANY CLAIM MADE AGAINST MICRO FOCUS IN RESPECT OF ANY LOSSES SUSTAINED BY MICRO FOCUS' EMPLOYEES OR AGENTS, CONTRACTORS OR BY ANY CUSTOMER OR THIRD PARTY TO THE EXTENT THAT SUCH LOSSES WERE CAUSED BY, RELATE TO OR ARISE FROM THE GOODS OR THE PROVISION OF THE SERVICES AS A CONSEQUENCE OF A BREACH OR NEGLIGENT PERFORMANCE OR FAILURE OR DELAY IN PERFORMANCE OF THE TERMS OF THE CONTRACT BY THE SUPPLIER.

9.2 THE SUPPLIER SHALL MAINTAIN, WITH A REPUTABLE INSURANCE COMPANY, APPROPRIATE PROFESSIONAL INDEMNITY INSURANCE, PRODUCT LIABILITY INSURANCE, PUBLIC LIABILITY INSURANCE AND SUCH OTHER INSURANCE (REASONABLY REQUESTED BY MICRO FOCUS AT THE TIME OF THE PURCHASE ORDER) TO COVER THE LIABILITIES THAT MAY ARISE UNDER OR IN CONNECTION WITH THE CONTRACT. IF THE SUPPLIER FAILS TO DO SO, MICRO FOCUS MAY INSURE AND CHARGE THE SUPPLIER WITH THE COST. ON REQUEST, THE SUPPLIER WILL PROVIDE A COPY OF THE INSURANCE CONTRACT TO MICRO FOCUS.

9.3 SUBJECT TO CLAUSE 9.5, THE AGGREGATE LIABILITY OF MICRO FOCUS TO THE SUPPLIER UNDER OR IN CONNECTION WITH THE PURCHASE ORDER WHETHER ARISING FROM NEGLIGENCE, BREACH OF CONTRACT OR OTHERWISE SHALL NOT EXCEED AN AMOUNT EQUAL TO THE PRICE PAID OR PAYABLE BY MICRO FOCUS TO THE SUPPLIER FOR THE RELEVANT GOODS AND/OR SERVICES UNDER THAT PURCHASE ORDER.

9.4 SUBJECT TO CLAUSE 9.5, MICRO FOCUS SHALL NOT BE LIABLE TO THE SUPPLIER FOR ANY LOSS OF: (A) PROFIT, GOODWILL, REVENUE, ANTICIPATED SAVINGS OR ANY OTHER LIKE ECONOMIC LOSS (WHETHER DIRECT OR INDIRECT); OR (B) ANY INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGE, OR LOSS OF BUSINESS OPPORTUNITY WHETHER ARISING FROM NEGLIGENCE, BREACH OF CONTRACT OR OTHERWISE.

9.5 NOTHING IN THESE TERMS AND CONDITIONS EXCLUDES OR LIMITS: (A) EITHER PARTY'S LIABILITY FOR DEATH OR PERSONAL INJURY ARISING FROM ITS NEGLIGENCE OR THAT OF ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS; (B) EITHER PARTY'S LIABILITY FOR FRAUD; (C) MICRO FOCUS' LIABILITY TO PAY THE PRICE PURSUANT TO CLAUSES 7 AND 8; OR (D) THE SUPPLIER'S LIABILITY UNDER THE INDEMNITIES CONTAINED IN CLAUSES 12 (INTELLECTUAL PROPERTY RIGHTS) AND 16 (EMPLOYEES) AND 17 (ANTI-BRIBERY AND CORRUPTION).

10 CONFIDENTIALITY

10.1 For the purposes of this clause 10, "Confidential Information" shall mean all documentation, knowledge, information and material, including notes and reports incorporating such information, whether of a technical, commercial, operational or financial nature or otherwise relating in any manner to the business affairs of Micro Focus including Micro Focus' Rights and Developments as defined in clause 12 (in whatever form and including, without limitation, business plans, research and development material, marketing strategies, specifications, processes, designs, drawings, initiatives and inventions) disclosed directly or indirectly by Micro Focus to the Supplier or available or apparent to the Supplier in the course of the Contract except to the extent that such information is already known to the Supplier or legitimately disclosed to the Supplier by a third party or otherwise legitimately enters the public domain.

10.2 The Supplier shall keep in strict confidence all Confidential Information disclosed to the Supplier by Micro Focus or its agents and the Supplier shall restrict disclosure of such Confidential Information to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Supplier's obligations to Micro Focus and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Supplier.

11 TERMINATION

11.1 Micro Focus shall have the right at any time and for any reason to terminate the Contract in whole or in part by giving the Supplier 30 days' written notice whereupon all work on the Contract shall be discontinued and Micro Focus shall pay to the Supplier compensation for any costs reasonably incurred or commitments made for work-in-progress or Services already performed at the time of such notice of termination. Under no circumstances shall Micro Focus be liable under the Contract for any loss of anticipated profits or any consequential or indirect loss.

- 11.2 Without prejudice to its other rights or remedies, Micro Focus shall have the right at any time by giving notice in writing to the Supplier to terminate the Contract in whole or in part forthwith: (a) in accordance with clause 6.3(h); (b) if any distress, execution or other process is levied upon any of the assets of the Supplier; (c) on the Supplier being unable to pay its debts or the commencement of, or any application, order, resolution or appointment being made for, in respect of the Supplier, a distress, execution, composition or arrangement with creditors, insolvency proceedings, winding up, dissolution, administration, liquidation, receivership (administrative or otherwise), bankruptcy, the suspension of payments, any form of seizure not lifted within two months, a moratorium of indebtedness or any similar proceedings in any jurisdiction; (d) if there is a change in the ownership, control or management of the Supplier that Micro Focus considers will materially affect the interests of Micro Focus; or (e) any other event giving rise to a right of Micro Focus to terminate under another clause in these terms and conditions occurs.
- 11.3 The termination or expiry of the Contract or the Purchase Order shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force of any other conditions of the Contract which are expressly or by implication intended to come into force or continue to be in force on or after such termination or expiry.
- 12 INTELLECTUAL PROPERTY RIGHTS**
- 12.1 "**Rights**" means registered or unregistered patent rights, copyrights, trade mark and design rights, utility model rights, database rights, know how, and other intellectual property rights as may exist from time to time in any part of the world.
- 12.2 If Goods are manufactured or supplied or Services rendered according to Micro Focus' designs or specifications (the "**Micro Focus Designs**"), or where the Supplier has provided any design or development Services to Micro Focus (the "**Commissioned Designs**"), the Rights in relation to Micro Focus Designs and the Commissioned Designs together with any other information, knowledge, idea, design, material, or invention and any expression of any idea created by the Supplier (or its agents or employees) in connection with the Purchase Order (the "**Developments**") shall be the exclusive property of Micro Focus.
- 12.3 The Supplier shall fully disclose all Developments to Micro Focus and shall not use the Developments for its own purposes or those of any third party nor disclose the Developments without the prior written consent of Micro Focus. The Supplier at the expense and by agreement with Micro Focus will take all measures which may be necessary to vest ownership of all Rights in the Developments in Micro Focus or its nominee and shall assist Micro Focus in establishing and protecting such Rights, including if necessary doing all such acts and executing all such documents which Micro Focus deems necessary. To the extent permitted by applicable Laws, the Supplier shall waive or shall procure the waiver of moral rights in the Developments in relation to Micro Focus (and its successor) and any third party authorised to use the Rights by Micro Focus.
- 12.4 The Supplier warrants that no Rights (including any Rights belonging to any third party) are violated or infringed through the supply of any Goods or the rendering of any Services by the Supplier or through the use of such Goods or Services. The Supplier shall indemnify and keep indemnified Micro Focus on demand in respect of all Losses awarded against or incurred by Micro Focus in connection with any claim that the use or possession of any Goods or Services supplied by or on behalf of the Supplier infringes any Rights of any third party (an "**IPR claim**").
- 12.5 If any IPR claim is made, or in the Supplier's reasonable opinion is likely to be made, the Supplier shall promptly and at its cost either: (a) obtain for Micro Focus the right to continue using the relevant materials which were the subject of the IPR claim; or (b) modify or replace the infringing part of the materials so as to avoid the infringement or alleged infringement, but in such a way that it complies with the representations and warranties in the Contract.
- 12.6 All Micro Focus' Rights and all products, samples, documents and information provided by Micro Focus to the Supplier (including copyright therein) shall remain the property of Micro Focus. Their use by the Supplier shall be allowed only within the limits of the purpose of each Purchase Order or another written agreement between the parties.
- 13 ASSIGNMENT**
- 13.1 The Supplier shall not be entitled to assign the Contract or any part of it without the prior written consent of Micro Focus.
- 13.2 Micro Focus may assign or transfer the Contract or any part of it and/or any rights and obligations arising under it (including the benefit of any guarantee or warranty) to any person, firm or company and the Supplier shall if required by Micro Focus, enter into a novation agreement with Micro Focus and the transferee or such other documentation as is necessary to give effect to any such assignment or transfer.
- 14 SUB-CONTRACTING**
- 14.1 The appointment of sub-contractors or the performance of the Supplier's obligations by or through any person other than the Supplier shall be subject to the prior approval of Micro Focus unless such other person is identified on the Purchase Order as acting in such capacity. However, Micro Focus' approval shall not discharge the Supplier in any respect from its duty properly and punctually to meet its obligations under the Contract and the Supplier shall remain liable to Micro Focus for any performance or non-performance of such obligations, whether by the Supplier or any of its sub-contractors.
- 14.2 The Supplier shall promptly and fully inform each subcontractor as to the provisions contained in the Contract (including these terms and conditions) which apply to them and shall ensure that each sub-contract with its sub-contractors ensure that such sub-contractors are bound to such provisions of the Contract, as relevant as if those provisions were incorporated in that sub-contract.
- 15 DATA PROTECTION**
- To the extent the provision of the Services or supply of Goods by the Supplier requires the processing of personal data in respect of which Micro Focus is a data controller (as such terms are defined in the General Data Protection Regulation (EU) 2016/679), the Supplier agrees to the terms and conditions set forth in Appendix A attached.
- 16 EMPLOYEES**
- 16.1 Nothing in the Contract shall be taken to mean that any individual employed or engaged in the provision of the Services or supply of the Goods by the Supplier or any of its subcontractors is an employee, worker, officer or agent of Micro Focus. The Supplier shall be solely responsible for all matters relating to the employment or engagement of such individuals including compliance with all applicable laws. The Supplier will be responsible for all income tax, national insurance contributions or social security charges or similar statutory payments in relation to all such individuals and ensure that they are deducted and/or paid to the relevant authorities and/or such individuals (as the case may be).
- 16.2 The Supplier shall indemnify Micro Focus against any costs, expenses, liabilities, damages and losses arising out of any claim, demand, action or proceeding made or brought by any of the individuals employed or engaged in the provision of the Services or supply of the Goods which arises or is alleged to arise out of any act or omission of the Supplier (or any of its agents or subcontractors). The Supplier shall further indemnify Micro Focus for any liability for income tax, national insurance contributions and/or social security charges or similar statutory payments (or penalties or interests thereon) which may be found due from Micro Focus in respect of any individuals employed or engaged in the provision of the Services or supply of the Goods.
- 16.3 The Supplier shall promptly on Micro Focus' request fully and accurately disclose to Micro Focus such details concerning the individuals employed or engaged in the provision of the Services or supply of the Goods and/or their terms and conditions of employment/engagement as Micro Focus may require from time to time.
- 16.4 The Supplier shall indemnify Micro Focus for itself and any future provider of services to Micro Focus against all and any costs, expenses, liabilities, damages and losses arising out of any claim, action, demand or proceeding which arises or is alleged to arise by virtue of the

operation of the Transfer of Undertakings (Protection of Employment) Regulations 2006 in connection with the termination of the provision of any of the Services or supply of the Goods (including without limitation in relation to any dismissal or alleged dismissal of any individual employed or engaged or formerly employed or engaged in the provision of the Services or supply of the Goods).

17 ANTI-BRIBERY & CORRUPTION

17.1 The Supplier shall, and shall procure that persons associated with it or other persons who are performing Services, or providing Goods, in connection with this Agreement shall: (a) comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption ("**Relevant Requirements**"), including but not limited to: (i) the Bribery Act 2010; (ii) the Foreign Corrupt Practices Act 1977; and (iii) the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, signed in Paris on December 17, 1997, which entered into force on February 15, 1999, and the Convention's Commentaries; (b) not engage in any activity, practice or conduct which would constitute an offence under Sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK; (c) comply with Micro Focus' anti-bribery policy annexed to the Contract or as otherwise provided to the Supplier (as Micro Focus may update from time to time) (the "**Relevant Policies**"); (d) not do, or omit to do, any act that will cause or lead Micro Focus to be in breach of any of the Relevant Requirements or Relevant Policies; (e) promptly report to Micro Focus any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of the Contract; (f) have and shall maintain in place through the term of the Contract its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policies and clause 17.1(b), and will enforce them where appropriate; (g) if requested, provide Micro Focus with any reasonable assistance, at Micro Focus' reasonable cost, to enable Micro Focus to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with any of the Relevant Requirements or Relevant Policies; (h) within one month of the date of the Contract, and annually thereafter, certify to Micro Focus in writing signed by an officer of the Supplier, compliance with this clause 17 by the Supplier and all persons associated with it or other persons who are performing Services or supplying Goods in connection with the Contract. The Supplier shall provide such supporting evidence of compliance as Micro Focus may reasonably request.

17.2 The Supplier warrants and represents that: (a) its responses to Micro Focus' anti-bribery and anti-corruption due diligence questionnaire (if applicable) are complete and accurate; (b) neither the Supplier nor any of its officers, employees or other persons associated with it: (i) has been convicted of any offence involving bribery or corruption, fraud or dishonesty; (ii) has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence under the Relevant Requirements; or (iii) has been or is listed by any government agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or other government contracts; (c) none of the officers or employees of the Supplier or any person associated with it or any other person who is performing Services or providing Goods in connection with the Contract is a foreign public official; and (d) no foreign public official owns a direct or indirect interest in the Supplier or any person associated with it or any other person for whom the Supplier is responsible under clause 17.2(c) and no foreign public official has any legal or beneficial interest in any payments made by Micro Focus under the Contract.

17.3 The Supplier shall promptly notify Micro Focus if, at any time during the term of the Contract, its circumstances, knowledge or awareness changes such that it would not be able to repeat the warranties set out in clause 17.2 at the relevant time.

17.4 Breach of this clause 17 shall be deemed a material default under clause 6.3(h) and Micro Focus shall be entitled to terminate the Contract without any liability to the Supplier in accordance with such clause and, in particular, the Supplier shall not be entitled to claim compensation or any further remuneration, regardless of any activities or agreements with additional third parties entered into before termination.

17.5 Regardless of any other provisions in the Contract, Micro Focus shall not be obliged to do, or omit to do, any act which would, in its reasonable opinion, put it in breach of any of the Relevant Requirements.

17.6 The Supplier shall indemnify Micro Focus against any losses, liabilities, damages, costs (including, but not limited to, legal fees) and expenses incurred by, or awarded against, Micro Focus as a result of any breach of this clause 17 by the Supplier.

18 MODERN SLAVERY

18.1 The Supplier hereby undertakes, warrants, and represents that:

18.1.1 neither the Supplier nor any of its officers, employees, agents or subcontractors has:

- (i) committed an MSA Offence; or
- (ii) been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or
- (iii) awareness of any circumstances within its business or supply chain which are reasonably likely to give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;

18.1.2 it shall comply with the Modern Slavery Act 2015 and Micro Focus's Modern Slavery Statement; and

18.1.3 [its responses to Micro Focus's modern slavery and human trafficking due diligence questionnaire are complete and accurate.]

18.2 [Any breach of Clause 18.1 by the Supplier shall be deemed a material breach of the agreement and shall entitle Micro Focus to terminate the agreement in accordance with Clause 11.]

18.3 The Supplier shall take all reasonable steps to ensure that slavery, servitude, human trafficking, forced or compulsory labour, and/or child labour do not take place in its supply chains or in any part of its business (including making all necessary enquiries with its suppliers and, to the extent reasonable, other parties in the supply chain).

18.4 The Supplier shall notify Micro Focus immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have breached or potentially breached any of Supplier's obligations under this Clause 18.. Such notice will set out full details of the circumstances concerning the breach or potential breach of Supplier's obligations.

19 GENERAL

19.1 Each right or remedy of Micro Focus under the Contract is without prejudice to any other right or remedy of Micro Focus whether under the Contract or not and is in addition to any conditions implied in favour of Micro Focus by Law.

19.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

19.3 Failure or delay by Micro Focus in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

19.4 Any waiver by Micro Focus of any breach of, or any default under, any provision of the Contract by the Supplier shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

19.5 Other than in respect of other Micro Focus group companies, the parties to the Contract do not intend that any term of the Contract shall be enforceable by any person that is not a party to it.

19.6 The Contract constitutes the entire agreement between the Supplier and Micro Focus relating to the sale and purchase of the Goods and/or Services. Each party acknowledges that in entering into the Contract it has not relied on any representations, agreements, warranties or



other assurances (other than those repeated in the Contract) and waives all rights and remedies which but for this clause 19.6 would be available to it. Nothing in this clause 19.6 excludes or limits any liability for fraud.

19.7 Nothing in the Contract is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

20 **GOVERNING LAW AND JURISDICTION**

If the Goods and/or Services are purchased in France, Germany or Japan, this Agreement is governed by the laws of the country in which the Services are provided. If the Services are provided in North America, the laws of the state of Maryland (USA) (without regard to its choice of law rules) govern this Agreement. In the rest of the world, the laws of England govern this Agreement. This Agreement shall be subject to the exclusive jurisdiction of the courts of the country determining the applicable law as aforesaid. In particular, in the event Maryland law applies, any action brought hereunder shall be subject to the exclusive jurisdiction of the state and/or Federal courts with jurisdiction over actions arising in Rockville, Maryland.

APPENDIX A

Micro Focus Group GDPR Terms (Supplier Appendix)

1. **Definitions.** The following definitions shall apply to the Contract and this Appendix A. Capitalized terms not otherwise defined in this Appendix A shall have the meanings set forth in the Contract.
 - a. **"Data controller", "data processor", "data subject", "personal data", "special categories of personal data" and "processing"** shall be as defined in GDPR.
 - b. **"GDPR"** means the EU General Data Protection Regulation 2016/679.
 - c. **"GDPR Data"** means all personal data including (where relevant) special categories of personal data which is provided by Micro Focus to Supplier pursuant to the Agreement or in connection with the products and/or services provided by Supplier thereunder to the extent that GDPR applies to such data
 - d. **"Security Breach"** means any breach of security leading to, or reasonably believed to have led to, the accidental or unlawful destruction, loss, alteration, damage, unauthorized disclosure of or access to the GDPR Data.
2. **GDPR Terms.**
 - a. The following processing may be performed by Supplier in relation to the Agreement:
 - i. *Subject-matter of processing:* the processing of GDPR Data by Supplier shall be that which is necessary to comply with Supplier's obligations under the Agreement.
 - ii. *Duration of processing:* the duration of the processing shall be the term of the Agreement.
 - iii. *Type of GDPR Data:* The GDPR Data processed by Supplier shall be as defined above.
 - iv. *Categories of data subjects:* the data subjects shall be the subjects of the GDPR Data as defined above.
 - b. Micro Focus agrees that it shall at all times comply with all requirements applicable to it under GDPR as a data controller or data processor as applicable.
 - c. Micro Focus and Supplier acknowledge that for the purposes of GDPR, Micro Focus is the data controller and Supplier is the data processor of any GDPR Data.
 - d. When processing GDPR Data, Supplier shall, in addition to the measures taken by Micro Focus, implement and maintain all appropriate technical and organizational measures in such a manner (i) to ensure a level of security appropriate to the risk to the GDPR Data when it is processed by Supplier (ii) to protect the GDPR Data from Security Breaches and (iii) to enable Supplier to assist Micro Focus in the fulfilment of its obligations to respond to requests from data subjects exercising their rights under the GDPR.
 - e. Supplier shall not engage another processor (a **"sub processor"**) without Micro Focus's prior written authorization.
 - f. Supplier hereby stipulates that it shall:
 - i. provide all assistance to Micro Focus as is reasonably requested to enable Micro Focus to comply with its obligations pursuant to the GDPR;
 - ii. process the GDPR Data only on documented instructions from Micro Focus, including with regard to transfers of GDPR Data to a third country or an international organization, unless (1) required to do so by European Union or EU Member State law to which Supplier is subject; in such a case, Supplier shall immediately inform Micro Focus of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest or (2) in its opinion, an instruction given by or on behalf of Micro Focus infringes the GDPR, in which instance Supplier shall immediately inform Micro Focus of such opinion;
 - iii. ensure that persons authorized to access the GDPR Data on behalf of Supplier are limited to those who require access to it for the purpose of complying with Supplier's obligations under the Agreement and that such authorized persons have committed themselves to contractual obligations of confidentiality or are under an appropriate statutory obligation of confidentiality;
 - iv. not process or transfer the GDPR Data outside of the European Economic Area (or permit the GDPR Data to be so processed or transferred) unless it has obtained Micro Focus' prior written authorization;
 - v. without prejudice to the generality of 2. f (i) above, assist Micro Focus in ensuring compliance with its obligations pursuant to GDPR Art. 32-36 taking into account the nature of the processing carried out by Supplier and the information available to Supplier;
 - vi. promptly (and in any event within 24 hours of becoming aware of a Security Breach) notify Micro Focus of the Security Breach and provide Micro Focus with details of the Security Breach (such details to include but not be limited to, (1) the identity of any affected data subjects (2) any recommended remedial measures that should be taken by it and/or Micro Focus in respect of the Security Breach and (3) all information necessary to enable Micro Focus to assess the risk posed by the Security Breach and establish whether it is required to notify the relevant data protection authorities);
 - vii. at the choice of Micro Focus, delete or return all GDPR Data to Micro Focus within seven days of the end of the provision of services relating to processing, and delete all copies of such GDPR Data unless European Union or EU Member State law requires the Supplier to retain a copy of the GDPR Data in which case the Supplier shall (to the extent permitted by law) inform Micro Focus of such retention requirement; and
 - viii. allow Micro Focus and/or its representatives to conduct audits (including inspections) of all data processing facilities, procedures, documentation and other matters required to demonstrate compliance with the GDPR and this Appendix A. Without prejudice to the foregoing, the Supplier shall contribute to such audits in a reasonable manner, and provide all information reasonably necessary to demonstrate compliance with the GDPR and this Appendix A.
 - g. Subject to paragraph 2. d of this Appendix A, where Supplier engages a sub processor for carrying out specific processing activities on behalf of Supplier, Supplier shall ensure that any such sub processors are contractually bound by the same data protection terms as set forth herein. Where a sub processor fails to fulfill its data protection obligations, Supplier shall remain fully liable to Micro Focus in respect of any breach of this Appendix A that is caused by an act, error or omission of such sub processor.
 - h. The Supplier agrees that it shall at all times comply with all requirements applicable to it under the GDPR as a data processor.

END OF APPENDIX A