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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 2.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
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   iii. Reverse engineer, decrypt, disassemble or otherwise attempt to discover the source code of Licensed Software, except to the extent permitted by applicable law;
   iv. Unbundle component parts of Licensed Software for separate use, where Licensed Software with multiple components is provided to Customer as a single product;
   v. Publish or disclose to third parties any evaluation or benchmarking of Licensed Software; or
   vi. Alter, destroy, or remove any proprietary notices or labels on or embedded in Licensed Software.

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4. TERM. 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 Marketplace order or ALA) and is subject to earlier termination as provided in this Section 4. 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 4. 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) 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 4 (Term of License), 7 (Disclaimer of Warranty), 8 (Limitation of Liability), 9 (High Risk Uses), 10 (Ownership), 11 (Third Party Software and Components), 11 (Notice to U.S. Government End Users), 12 (License Fees and Payment Terms), 12 (Audits), 17 (Privacy and Use of Licensee Information), 15 (Licensee Trademark and Feedback) and 19 (Miscellaneous) will survive the termination or expiration of this Agreement.

5. SUPPORT AND MAINTENANCE. Customer is not entitled to any updates to Licensed Software, unless Customer purchases maintenance and support services pursuant to Licensor’s then current applicable standard maintenance and support agreement (which is found at https://www.microfocus.com/support-and-services/maintenance-and-support-agreements/ or can be provided by Licensor at Customer’s request).
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14. LICENSE VERIFICATION. 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:

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b. Questionnaire. Within seven (7) days of Licensor’s request, Licensee shall furnish 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.

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15. **USE OF CUSTOMER INFORMATION.** To the extent permitted by law, Customer expressly consents to the collection and use of information about Customer's purchase, installation and use of Licensed Software and the computer systems on which it is installed or accessed for security and licensing purposes and to improve Licensor's products and services.

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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](https://www.microfocus.com/about/legal/#privacy) (click “Your Privacy” 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 17.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.

18. **INDEMNIFICATION FOR INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT.**
Licensor will defend and/or settle any claims against Customer that Licensed Products furnished under this EULA infringe the intellectual property rights of a third party (“IP Infringement Claim”), provided: (i) Customer promptly notifies Licensor in writing of the IP Infringement Claim; (ii) Licensor has sole control of the defense and all related settlement negotiations; and (iii) Customer reasonably cooperates with Licensor in the defense of the IP Infringement Claim.

Licensor will pay all damages, costs, and expenses finally awarded (or agreed to by settlement) for any such IP Infringement Claim. Licensor will pay all reasonable out-of-pocket costs incurred by Customer for cooperation in the defense of the IP Infringement Claim. If, however, Customer wants separate legal representation, Customer will be responsible for the costs and fees of its separate counsel.

Should any Licensed Products provided under this EULA become or, in Licensor’s opinion, likely become, the subject of an IP Infringement Claim, Licensor may replace or modify affected Licensed Product so as to make it non-infringing and materially equivalent or procure for Customer the right to continue using it. If neither alternative is reasonably available, once Customer has returned or destroyed all copies of the affected Licensed Product, Licensor will refund to Customer the full amount paid for affected Licensed Product less straight-line depreciation on a five-year basis from date of delivery.

Licensor is not responsible for unauthorized use of Licensed Products, and has no obligations under Section 18 (Indemnification for Intellectual Property Rights Infringement), to the extent infringement results from (i) compliance with Customer's designs or instructions, (ii) a modification not authorized in writing by an authorized Licensor signatory, (iii) use or combination with software, equipment, or data not provided by Licensor, (iv) non-licensed use; or (v) Third Party Software or Open Source Software.

19. **MISCELLANEOUS.**

a. **Assignment.** Licensor may assign this EULA and any Marketplace orders to a parent or an affiliate. Customer may not assign or transfer this EULA or any of its rights or duties hereunder, including (but not limited to) by operation of law, without Licensor’s prior written consent, which will not be unreasonably withheld, and payment of any applicable assignment or transfer fee. Any transaction or series of related transactions resulting in a change in the ownership of more than 50% of the voting equity of Customer will be deemed an assignment for purposes of this provision. Any attempted assignment of this EULA not in accordance with Section 19.a (Assignment) will be null and void.

b. **Governing Law and Jurisdiction.** This EULA and, subject to Section 11 (Third Party Software And Components), licenses purchased under applicable Marketplace orders, as well as any claims or causes of action, whether in contract, tort or statute, based on, arising under or relating to this
EULA, will be governed and enforced pursuant to the laws of the State of Delaware will govern, without giving effect to any conflict of law rule or other rule that could result in the application of laws of a different jurisdiction. The parties consent to exclusive jurisdiction of the state and federal courts of Delaware except that Licensor will be allowed to apply for injunctive relief in any jurisdiction.


The prevailing party in any proceeding has the right to recover costs and reasonable attorneys’ fees as awarded by the court or arbitrator.

c. **Export Control.** If Customer exports or imports any Licensed Products provided under or in connection with this EULA, Customer is responsible for complying with all applicable export and import laws and regulations, which may include the U.S. Export Administration Regulations. Customer will not use Licensed Products for any purpose prohibited by applicable export laws, including nuclear, chemical, missile or biological weapons-related end uses.

d. **Survival.** Rights and obligations of the parties in Sections 3 (Use Restrictions), Error! Reference source not found. (Effect of Termination), 7 (Disclaimer of Warranty), 8 (Limitation of Liability), 10 (Ownership), 11 (Open Source Software and Third Party Software), 13 (License Fees and Payment Terms), 14 (License Verification), Error! Reference source not found. (Privacy), 15 (Use of Customer Information), 16 (Customer Feedback), 17 (Confidential Information), 18 (Indemnification for Intellectual Property Rights Infringement) and 19 (Miscellaneous) will survive termination or expiration of this EULA.

e. **Notices.** All notices permitted or required under this EULA will be in writing, signed by the party giving notice, and delivered personally, by courier, telecopy, first class mail, electronic mail, or similar transmission to the other party. Notices to Licensor shall be sent to its address listed on page 1 of this EULA, or at such other address as may be supplied by Licensor in writing. Notices to Customer shall be sent to its address as most recently specified by Customer in its Marketplace profile. The date of personal delivery or the date of mailing will be the date of notice.

f. **Entire Agreement.** This EULA and the Micro Focus Marketplace End User Participation Terms and ALA(s) represent the entire understanding of the parties with respect to the subject matter of this EULA and supersede any previous communications or agreements that may exist regarding the same subject matter.

g. **Order of Precedence.** Any conflicting terms and conditions will be resolved according to the following order of precedence: this EULA, the Micro Focus Marketplace End User Participation Terms, and the applicable ALA.

h. **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 Licensor) to this Agreement.

i. **Waiver.** No waiver of any right under or in connection with this EULA will be effective unless in writing, signed by authorized representatives of both parties. 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 or in connection with this EULA.

j. **Severability.** If any provision in this EULA or the applicable ALA(s) or the Micro Focus Marketplace End User Participation Terms is held 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 will remain unaffected.