

COUNTY OF TULARE
SERVICES AGREEMENT AMENDMENT FORM
REVISION APPROVED 01/01/2018

**AMENDMENT TO
TULARE COUNTY AGREEMENT NO. 28768 WITH MICROFOCUS, INC.
FOR THE PROVISION OF MICRO FOCUS SOFTWARE INC. TRUE-UP**

THIS AMENDMENT (“Amendment”) to Tulare County Agreement Number 28768 (the “Agreement”) is entered into by and between the **COUNTY OF TULARE** (“COUNTY”) and **MICRO FOCUS SOFTWARE, INC.** (“CONTRACTOR”) as of _____, with reference to the following:

- A. The COUNTY and CONTRACTOR entered into the Agreement on July 31, 2018, for the purpose of providing Micro Focus Software Inc. True-Up services for a one-year term;
- B. COUNTY and CONTRACTOR now wish to amend the Agreement in order to extend the life and term of Tulare County Agreement Number 28768;

ACCORDINGLY, COUNTY and CONTRACTOR agree as follows:

- 1. Tulare County Agreement No. 28768 the Agreement is hereby amended to extend the term from July 31, 2019 and now shall be in effect through July 31, 2020:
- 2. Furthermore, for the services provided, the COUNTY shall pay to CONTRACTOR \$563,887.
- 3. This First Amendment becomes effective as of _____.
- 4. Except as provided above, all other terms and conditions of the Agreement shall remain in full force and effect.

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AMENDMENT TO
TULARE COUNTY AGREEMENT NO. 28768

THE PARTIES, having read and considered the above provisions, indicate their agreement by their authorized signatures below.

MICRO FOCUS SOFTWARE, INC.

Date July 11, 2019

By 

Print Name Stirling Adams

Title Associate General Counsel & Secretary

Date _____

By _____

Print Name _____

Title _____

[Pursuant to Corporations Code section 313, County policy requires that contracts with a Corporation be signed by both (1) the chairman of the Board of Directors, the president or any vice-president (or another officer having general, operational responsibilities), and (2) the secretary, any assistant secretary, the chief financial officer, or any assistant treasurer (or another officer having recordkeeping or financial responsibilities), unless the contract is accompanied by a certified copy of a resolution of the corporation's Board of Directors authorizing the execution of the contract. Similarly, pursuant to California Corporations Code section 17703.01, County policy requires that contracts with a Limited Liability Company be signed by at least two managers, unless the contract is accompanied by a certified copy of the articles of organization stating that the LLC is managed by only one manager.]

COUNTY OF TULARE

Date _____

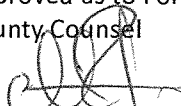
By _____

Chairman, Board of Supervisors

ATTEST: JASON T. BRITT
County Administrative Officer/Clerk of the Board
of Supervisors of the County of Tulare

By _____
Deputy Clerk

Approved as to Form:
County Counsel

By  7/27/19
Deputy

Matter # 20191194

Micro Focus Software Terms and Conditions

Introduction: By signing this Agreement, the entity that purchased the applicable Micro Focus Software Inc. ("Micro Focus") software products and/or services ("Customer") represents that the person performing the acceptance has the authority to commit Customer to these terms and conditions ("Agreement"), and that Customer agrees to be bound by such terms. The Effective Date of this Agreement is the date that Customer accepts this Agreement. Unless Customer is a party to a Micro Focus software volume purchase agreement (MLA, VLA, ALA or SLA) specifying its own term length, the term of this Agreement shall begin on the Effective Date and continue for the period specified in the applicable maintenance renewal quote.

- 1. Applicability.** These terms apply to the Micro Focus software Maintenance, technical support, or other services you receive through your purchase. Maintenance services do not include integration services, installation of Upgrades or Updates, or any other benefits not expressly described in this Agreement. Technical support or other services you may receive as part of your purchase are described on the Micro Focus web page that provides details about your purchase.
- 2. Maintenance Benefits.** The purchase of Maintenance for a specific installation of Micro Focus software entitles Customer to install and use all Upgrades and Updates (see below) made commercially available by Micro Focus during the period covered by the Maintenance, up to the number of installations for which Customer has purchased Maintenance. "Update" means a fix or compilation of fixes released by Micro Focus to correct operational defects (program bugs) in the Micro Focus software product. "Upgrade" means any new version of Micro Focus software which bears the same product name, including version changes evidenced by a number immediately to either the left or right of the decimal. If a question arises as to whether a product offering is an Upgrade or a new product, Micro Focus' opinion will prevail, provided that Micro Focus treats the product offering the same for its end users generally. If Micro Focus commercially releases any Upgrades and/or Updates, Micro Focus will make such Upgrades and/or Updates available to Customer within a reasonable period of time after they become commercially available. Customer acknowledges that Micro Focus cannot guarantee any specific turnaround times and/or regular release intervals.
- 3. Immediate and Preventive Updates.** At its sole discretion, Micro Focus will determine whether to eliminate a program bug – a software defect that impairs the function of the relevant Micro Focus software product according to its specifications – by means of issuing an Update. Micro Focus will inform Customer by e-mail as soon as new Updates are released at the Micro Focus website. The messages will be sent to the email addresses supplied by Customer during its registration for Maintenance.
- 4. Reporting.** Customer acknowledges that the completeness and accuracy of the information Customer provides to Micro Focus may affect Micro Focus' ability and desire to provide Maintenance services. The Maintenance purchased by Customer is intended for use only for the benefit of Customer and only for the specific installations of the Micro Focus software products covered by Maintenance. If Customer purchased Maintenance, Customer must purchase Maintenance for all copies of the Micro Focus software products installed. Each copy must be installed on a server or machine corresponding to the Maintenance sku or part number describing such product or Maintenance offering. Any unauthorized use of Maintenance will be treated as a material breach of this Agreement. If Customer wishes to increase the number of copies of the Micro Focus software product installed, Customer must purchase from Micro Focus or its authorized reseller Maintenance for each additional copy installed. Upon renewal, Customer's submission of a purchase order or payment of Maintenance fees will be deemed a representation of the number of copies of the Micro Focus software product receiving Maintenance benefits. During the term of this Agreement and for two years after its expiration or termination, Micro Focus will have the right, at its expense and upon no fewer than three (3) working days prior written notice, to verify Customer's purchase and use of Maintenance benefits and related records and

payment. If Customer has underpaid amounts owing, Customer must immediately purchase from Micro Focus or its authorized reseller sufficient units of Maintenance to support the actual number of copies installed and pay all amounts owing.

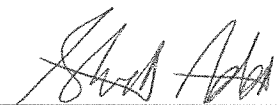
5. **Warranty Disclaimer; Limitation of Liability; Reserved Rights.** EXCEPT AS OTHERWISE RESTRICTED BY LAW, MICRO FOCUS AND ITS DISTRIBUTOR, DEALER, RETAILERS AND RESELLER (COLLECTIVELY, "THIRD PARTIES") DISCLAIM AND EXCLUDE ANY AND ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. MICRO FOCUS MAKES NO WARRANTY, REPRESENTATION OR PROMISE NOT EXPRESSLY SET FORTH IN THE END USER LICENSE AGREEMENT ACCOMPANYING THE SOFTWARE. NEITHER MICRO FOCUS NOR ITS THIRD PARTIES WARRANT THAT THE SOFTWARE OR SERVICES WILL SATISFY CUSTOMER'S REQUIREMENT OR THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED. MICRO FOCUS AND ITS THIRD PARTIES RESERVE ALL RIGHTS NOT EXPRESSLY GRANTED HEREIN AND GRANT NO ADDITIONAL RIGHTS, LICENSE OR COVENANTS BY IMPLICATION, ESTOPPEL OR OTHERWISE.

NEITHER MICRO FOCUS NOR ITS THIRD PARTIES, SUBSIDIARIES OR EMPLOYEES WILL IN ANY CASE BE LIABLE FOR ANY OF THE FOLLOWING: (A) ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT, TORT, ECONOMIC OR PUNITIVE DAMAGES ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE OR SERVICES, INCLUDING WITHOUT LIMITATION LOSS OF PROFITS, BUSINESS OR DATA, EVEN IF ADVISED OF THE POSSIBILITY OF THOSE DAMAGES; OR (B) AGGREGATE LIABILITY FOR DIRECT DAMAGES TO PROPERTY OR PERSON (WHETHER IN ONE INSTANCE OR A SERIES OF INSTANCES) EXCEEDING 1.25 TIMES THE AMOUNT PAID BY CUSTOMER FOR THE SOFTWARE OR SERVICES OUT OF WHICH SUCH CLAIM AROSE [OR \$50 (U.S.) IF CUSTOMER RECEIVED THE SOFTWARE OR SERVICES FREE OF CHARGE].

6. **Law; Integration.** This Agreement is governed by the laws of the State of Utah. This Agreement includes the entire agreement with respect to the services between (a) Customer and (b) Micro Focus and its Third Parties with respect to the services. It may be modified only by a written agreement signed by the entity to be bound.
7. **Export Compliance.** Any person or entity exporting or re-exporting Micro Focus software products directly or indirectly and via any means, including electronic transfer, is wholly responsible for doing so in accordance with the U. S. Export Administration Regulations and the law of those countries. Micro Focus assumes no responsibility or liability for your failure to obtain any necessary export approval. Approvals are dependent upon an item's technical characteristics, the destination, end-use and end-user, as well as other activities of the end-user. Specifically, no Micro Focus software product may be exported to embargoed or otherwise restricted countries or end-users. Please consult the Bureau of Industry and Security web page and other sources before exporting Micro Focus software products from the U.S. and familiarize yourself with the laws of destination countries before re-exporting Micro Focus software products. This provision shall survive the expiration or earlier termination of this Agreement. Please refer to the export matrix for Micro Focus software products for more information on exporting Micro Focus software products. You can download a copy from <http://www.microfocus.com/info/exports/> or obtain a copy from your local Micro Focus office.
8. **Transfer.** This Agreement may not be transferred or assigned without the prior written approval from Micro Focus.

Each of the parties agrees to the terms contained herein and has caused this Agreement to be executed by its duly authorized representative.

MICRO FOCUS SOFTWARE INC.

Signature: 

Print Name: Stirling Adams _____

Title: Associate General Counsel _____

Date: July 11, 2019

CUSTOMER

Signature: _____

Print Name: _____

Title: _____

Date: _____



Quote Information

Date: 5/23/19
 Quote ID: 052319 011854
 Subject: 2019 MicroFocus True-Up Renewal

Novacoast Rep

Shelly Cobb
 scobb@novacoast.com
 605-453-8792

Client Information

Customer: County of Tulare TCCT
 Address: 221 South Mooney Boulevard, Room 9E
 City, State, ZIP: Visalia, CA 93291
 Contact: Kennan Keeseyan
 Email: kkeeseyan@co.tulare.ca.us
 Phone: 559-636-4885

Inside Sales Support

Rachel Hakis
 rhg@novacoast.com
 800-949-0933 x4999

Micro Focus Contract - Discount 7126997 MLA - 48%

Line	QTY	Description	MNT	MSRP	Price	Extended Price
1	5000	Micro Focus Enterprise Messaging Upgrade License (per mailbox)	N/A	\$ 65.00	\$ 26.90	\$ 130,000.00
2	5000	Micro Focus Enterprise Messaging Initial Business Support 1-Year (per mailbox)	Aug 01, 2019 - Jul 31, 2020	\$ 54.00	\$ 22.00	\$ 110,000.00
3	1600	GroupWise including Mobile Server 1-Mailbox 1-Year Renewal Business Support	Aug 01, 2019 - Jul 31, 2020	\$ 44.51	\$ 21.84	\$ 34,944.00
4	600	GroupWise Inactive 1-Mailbox 1-Year Renewal Business Support	Aug 01, 2019 - Jul 31, 2020	\$ 10.00	\$ 4.94	\$ 2,964.00
5	4600	Unbundle NOWS ZENwork Configuration Management 1-User/Device License	N/A	\$ 48.00	\$ 7.95	\$ 36,570.00
6	4600	ZENworks Configuration Management 1-Year Renewal Business Support	Aug 01, 2019 - Jul 31, 2020	\$ 23.00	\$ 10.92	\$ 50,232.00
7	4600	ZENworks Patch Management Cross-Platform Renewal Business Support Subscription 1-Year 1-Device	Aug 01, 2019 - Jul 31, 2020	\$ 19.00	\$ 9.36	\$ 43,056.00
8	5000	Micro Focus iPrint Desktop 1-User License	N/A	\$ 30.00	\$ 6.50	\$ 32,500.00
9	5000	Micro Focus iPrint Desktop 1-User 1-Year Initial Business Support	Aug 01, 2019 - Jul 31, 2020	\$ 6.70	\$ 3.48	\$ 17,400.00
10	100	Micro Focus iPrint Enterprise (Mobile & Desktop) 1-User 1-Year Renewal Business Support	Aug 01, 2019 - Jul 31, 2020	\$ 10.00	\$ 5.20	\$ 520.00
11	800	Micro Focus File Advanced License 1- User	N/A	\$ 134.00	\$ 27.00	\$ 21,600.00
12	800	Micro Focus File Advanced Initial Business Support 1-Year 1-User	Aug 01, 2019 - Jul 31, 2020	\$ 30.00	\$ 15.60	\$ 12,480.00
13	4500	Micro Focus File Reporter 1-User 1-Year Renewal Business Support	Aug 01, 2019 - Jul 31, 2020	\$ 3.60	\$ 1.77	\$ 7,965.00
14	5800	NetIQ Identity Manager Advanced Edition 1-User 1-Year Renewal Business Support	Aug 01, 2019 - Jul 31, 2020	\$ 17.00	\$ 8.32	\$ 48,256.00
15	5500	NetIQ Identity Manager Integration Module for Tools 1-User License	N/A	\$ 13.00	\$ 1.40	\$ 7,700.00
15	5500	NetIQ Identity Manager Integration Module for Tools 1-User 1-Year Initial Business Support	Aug 01, 2019 - Jul 31, 2020	\$ 2.90	\$ 1.40	\$ 7,700.00
Total:						\$ 563,887.00
Sales Tax:						Exempt - Electronics Delivered
Total w Tax:						\$ 563,887.00

Comments

Quote valid through Jul 30, 2019.

Failure to renew before the current Novell products' expiration dates may result in a 20% reinstatement fee at the time of renewal.

Terms

Programs and pricing can change at any time. POs accepted with approval, terms of Net30 or less required. Credit card accepted on approval only (with 3% surcharge). No refunds. No returns. Shipping for any hardware will be invoiced at actual cost.

If sales tax is not quoted, it will be added to the invoice if applicable. Please include tax exempt certificate with PO. Sales tax is simply the highest rate within your zip code as Novacoast has no way to differentiate city/county lines; if your rate differs please advise.

