

Micro Focus Partner Program Agreement

This Micro Focus Partner Program Agreement ("Agreement") is made between the entity applying to participate ("Partner") in the Micro Focus partner program ("Partner Program") and Licensor. Licensor, means, depending on Partner's country of residence, the applicable entity identified in the Licensor Entity table at the end of this Agreement.

1. **Purpose.** This Agreement sets forth the terms and conditions under which Partner is authorized to participate in the Micro Focus Partner Program and promote, support, and/or resell Licensor software and service offerings ("Products").

2. **Authorization.** Effective upon issuance by Licensor of a written authorization notice of Partner's admittance into the Micro Focus Partner Program ("Authorization Notice"), Licensor grants Partner authorization to exercise the privileges of the partner type(s) indicated in the Authorization Notice. The requirements to qualify for privileges of, and obligations associated with, a partner type are defined in this Agreement and the Program Guide. Partner's continued authorization is based on its compliance with this Agreement and the requirements of the Program Guide applicable to its level of participation. The authorization is non-exclusive and is personal to Partner's legal entity or branch office that applied for the Partner Program and meets the Program requirements. If Partner has business locations in different countries that wish to participate in the Partner Program, each location should separately apply to the Partner Program and separately enter into this Agreement.

2.1 **Resale of Products.** Partner may acquire for resale eligible Products from a Licensor-authorized distributor which has the contractual right to sell licenses or subscriptions to the Products in the applicable territory. All payment, credit, shipping and other direct purchase terms shall be between Partner and the authorized distributor from which Partner acquires the Products. Partner is authorized to market and resell licenses to the Products only to End User customers in the applicable territory. "End User" means a person or entity acquiring the Products for its own internal use. End User does not include an entity that sells or resells licenses to, or rents or leases the Products to other parties in the regular course of business.

2.2 **Internal Partner Use of Software.** Certain Products may be made available by Licensor to Partner at no cost solely for Partner's internal use to the extent specified in the Program Guide. If Partner chooses to receive, install, or use any such Products, Partner agrees to additionally comply with the terms and conditions set forth in Exhibit A to this Agreement.

2.3 **Training Partner.** If the Authorization Notice indicates that Partner is accepted as a Training Partner, Partner agrees to additionally comply with the Training Partner requirements identified in Exhibit B to this Agreement.

2.4 **Deal Registration.** If Licensor notifies Partner in the Authorization Notice that Partner is eligible for participation in Licensor's deal registration program, and if Partner chooses to participate in such deal registration program, then Partner agrees to additionally comply with the terms and conditions in Exhibit C to this Agreement.

2.5 **Separate Agreement.** Partner and Licensor may choose to enter into a separate written agreement that covers one or more activities covered by this Agreement. The terms and conditions of such agreement shall prevail over the terms and conditions of this Agreement in the event of conflict. Nothing in this Agreement obligates either party to enter into any such separate agreement. Expiration of this Agreement shall not necessarily affect any such separate agreement then in force.

3. **Program Guide.** The Agreement incorporates the online Partner Program guide ("Program Guide") located on the [Partner Portal](#). If a conflict arises between the Agreement terms in this document and any provision in the Program Guide, the Agreement terms in this document will prevail. Licensor may in its discretion and without compensation to Partner change the Program Guide, as well as any requirements, benefits, terms or other features of the Partner Program. Any such changes become effective immediately upon written notice, which may take the form of publication online. If Partner is not satisfied with any such change, Partner may terminate this Agreement for convenience as described below.

4. **Term and Termination.** This Agreement, and the authorization granted hereunder, are effective on the date of the Authorization Notice, and remain in effect for a period of one year from that date. This Agreement will automatically renew for successive one-year periods unless earlier terminated in accordance with the provisions below.

4.1 **Termination for Cause.** Either party may terminate this Agreement for the substantial breach by the other party of a material term. The terminating party will first give the other party written notice of the breach and a reasonable period of at least 14 days in which to cure the alleged breach. If a cure is not achieved during the cure period the non-breaching party may terminate this Agreement upon written notice.

4.2 **Termination for Convenience.** Either party may terminate this Agreement (and Partner's authorization hereunder) for convenience and without showing cause at any time upon 30 days' prior written notice to the other party.

4.3 **Insolvency, Assignment, or Bankruptcy.** Either party may terminate this Agreement upon written notice to the other party if the other party (a) is not paying its debts as such debts generally become due, (b) becomes insolvent, (c) files or has filed against it a petition or other document under any bankruptcy law or similar law, that is unresolved within 60 days of the filing of such petition or document, (d) proposes any dissolution, liquidation, composition, financial reorganization or recapitalization with

creditors, (e) makes a general assignment or trust mortgage for the benefit of creditors, or (f) if a receiver, trustee, custodian or similar agent is appointed or takes possession of any of its property or business.

4.4. **Effect of Termination.** Agreement termination for any reason will immediately terminate Partner's participation in the Partner Program, including eligibility for the program benefits. Immediately upon termination, Partner shall cease referring to itself as Licensor-authorized partner, or any other title associated with the Partner Program, and shall cease using those titles and any Licensor or Partner trademarks, logos and brands in any communication and advertising or on Partner's websites. Partner shall destroy (or return if so directed by Licensor) all materials, documents, brochures, tools and software (including any copies) that Partner may have obtained from Licensor or its fulfillment agent in connection with its participation in the Partner Program. Any fees owed by Partner shall be due upon termination. Regardless of any other provision of this Agreement, no fees will be refunded and Licensor will not by reason of the termination of the Agreement be liable for compensation, reimbursement, or damages on account of the loss of prospective profits or on account of expenditures, investments, or commitments in connection with Partner's business or goodwill, or otherwise.

5. **End User Satisfaction.** The Products that Partner markets are technically complex and require high-quality, individualized pre-sale and post-sale support. This support is necessary to achieve and maintain high End User satisfaction. Partner agrees that high End User satisfaction is a condition of its continued authorization by Licensor, and agrees to:

5.1. Ensure each Product marketed to the End User is appropriate to the End User's requirements;

5.2. Report promptly to Licensor all suspected and actual problems with any Product;

5.3. Maintain an End User report for each Product sold/licensed (each End User report shall include the name and address of the End User, date of the sale, Product sold/licensed, and the serial number, if applicable);

5.4. Retain all End User reports for two years after the date of sale, and assist Licensor in tracing a Product to an End User to distribute critical product information, locate a product for safety reasons, or to discover unauthorized marketing or infringing acts;

5.5. Conduct business in a manner which reflects favorably at all times on Licensor's products, goodwill and reputation, and avoid deceptive, misleading or unethical practices which are or might be detrimental to Licensor or its products;

5.6. Refrain from making any representations, warranties, or guarantees to customers or other third parties with respect to the specifications, features or capabilities of a Product that are inconsistent with Product literature distributed by Licensor or with a Licensor agreement accompanying the Product. Partner agrees to indemnify and hold Licensor harmless from any loss or damage due to a claim by a third party that results from Partner's breach of this obligation; and;

5.7. Refrain from disclosing passwords and access codes for the Partner Program to any unauthorized third party, and notify Licensor promptly of any such unauthorized use of which Partner may become aware.

6. **Intellectual Property Rights.**

6.1. **Ownership.** Notwithstanding anything to the contrary in this Agreement, Licensor or its supplier(s) owns and retains title to and ownership of all intellectual property rights in the Products, including all software programs, documentation, media, and related materials and all modifications to and derivative works from software made by Partner or any third party. Licensor does not transfer any portion of such title and ownership, or any of the associated goodwill to Partner. All rights which are not expressly granted are reserved.

6.2. **Trademark Usage.** Partner is authorized to use the Licensor trademarks applicable to the Products marketed under this Agreement and the other Licensor marks identified as applicable to Partner's authorization level or type in the Program Guide, but only in accordance with Licensor's then-current trademark usage guide, and only while this Agreement is in effect. Partner is not authorized to do business under any Licensor trade names. Upon Agreement termination, Partner agrees to cease all display, advertising and use of any and all Licensor trademarks. Partner agrees not to alter, erase or overprint any notice provided by Licensor and not to attach any additional trademarks without Licensor's prior written consent or affix any Licensor trademarks to any non-Licensor product. Partner recognizes Licensor's ownership and title to the trade names and trademarks and the goodwill attaching to the trade names and trademarks. Partner agrees that any goodwill that may accrue because of Partner's use of Licensor trademarks will become Licensor property. Partner agrees not to contest Licensor's trademarks or trade names, or make application for registration of any Licensor trademarks or trade names without Licensor's prior written consent. Partner agrees not to use, employ or attempt to register any trademarks, trade names, or internet domains which, in Licensor's opinion, are confusingly similar to Licensor's trademarks or trade names. Partner agrees not to advertise using Licensor's trademarks or trade names in a way that could cause customers to mistakenly believe that they are contacting Licensor by contacting Partner, or that they are visiting Licensor's web site.

6.3. **Protection.** Partner agrees to take all reasonable steps to protect the Products from unauthorized copying or use. The source code of Licensor's proprietary software represents and embodies trade secrets of Licensor and/or its suppliers. The source code and embodied trade secrets are not licensed to Partner or any End User, and any modification, addition, or deletion is strictly prohibited. Partner agrees not to disassemble or decompile the Products to discover the trade secrets contained in the source code. This sub-section 6.3 does not apply to Product components distributed by Licensor under an open source license.

6.4. Infringement. Partner agrees to report any instances of suspected copyright and/or trademark infringement to Licensor and to give Licensor reasonable assistance, at Licensor's expense, in investigating and prosecuting those responsible for the infringing acts.

7. **Limited Warranty.**

7.1. Warranty to End Users. Licensor provides, to End Users only, warranties for Products in the software license agreement accompanying each product. Licensor does not warrant non-Licensor products, or products used by Partner without cost under this Agreement, or other products for which no license or subscription fee is paid. They are provided by Licensor on an "AS IS" basis.

7.2. DISCLAIMER OF WARRANTIES. LICENSOR MAKES NO WARRANTY EXCEPT AS EXPRESSLY SET FORTH IN THE SOFTWARE LICENSE AGREEMENT APPLICABLE TO THE PRODUCT IN QUESTION. LICENSOR DISCLAIMS AND EXCLUDES ANY AND ALL OTHER EXPRESS, IMPLIED, AND STATUTORY WARRANTIES, INCLUDING WITHOUT LIMITATION WARRANTIES OF GOOD TITLE, WARRANTIES AGAINST INFRINGEMENT, AND THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. LICENSOR DOES NOT WARRANT THAT ANY OF ITS PRODUCTS SATISFY END USER REQUIREMENTS OR THAT THE PRODUCTS ARE WITHOUT DEFECT OR ERROR OR THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED.

8. **Limitation of Liability.**

8.1. TO THE EXTENT ALLOWED BY APPLICABLE LAW, IN NO EVENT SHALL LICENSOR BE LIABLE (WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY) FOR ANY INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF PROFIT, BUSINESS, OR DATA) SUSTAINED OR INCURRED IN CONNECTION WITH THIS AGREEMENT, WHETHER OR NOT SUCH DAMAGES ARE FORESEEABLE.

8.2. Aggregate Liability. For death or personal injury caused by the negligence of Licensor or its employees, Licensor's liability to Partner shall not be limited. Except in those two cases, Licensor's liability to Partner for direct damages related to or arising under this Agreement shall be limited to the total amount paid by Partner under this Agreement in the 12 months prior to the date on which the cause of action arose or US\$5,000, whichever is higher.

8.3. Australia Competition and Consumer Act. Where in accordance with section 9.1 this Agreement is governed by the laws of a state of Australia, this section applies. WHERE ANY LEGISLATION, SUCH AS THE COMPETITION AND CONSUMER ACT, IMPLIES INTO THIS AGREEMENT ANY CONDITION OR WARRANTY AND THAT LEGISLATION AVOIDS OR PROHIBITS PROVISIONS IN A CONTRACT EXCLUDING THE APPLICATION OF THE CONDITION OR WARRANTY, THE LIABILITY OF LICENSOR FOR ANY BREACH OF THE CONDITION OR WARRANTY IS LIMITED AT THE OPTION OF LICENSOR TO ANY ONE OR MORE OF THE FOLLOWING: A) IF THE BREACH RELATES TO GOODS, REPLACING THE GOODS OR THE PAYMENT OF THE COST OF ACQUIRING EQUIVALENT GOODS OR REPAIRING THE GOODS OR PAYMENT OF THE COST OF REPAIRING THE GOODS; B) IF THE BREACH RELATES TO SERVICES, THE SUPPLYING OF THE SERVICES AGAIN OR THE PAYMENT OF THE COST OF HAVING THE SERVICES SUPPLIED AGAIN. NOTHING HEREIN IS INTENDED TO RESTRICT OR EXCLUDE ANY LIABILITY OF LICENSOR UNDER PART 3-5 OF THE AUSTRALIAN CONSUMER LAW (SCHEDULE 2 OF THE COMPETITION AND CONSUMER ACT 2010).

8.4. New Zealand. Where in accordance with section 9.1 this Agreement is governed by New Zealand law, then this section applies. WHERE ANY LEGISLATION, SUCH AS THE FAIR TRADING ACT, IMPLIES INTO THIS AGREEMENT ANY CONDITION OR WARRANTY AND THAT LEGISLATION AVOIDS OR PROHIBITS PROVISIONS IN A CONTRACT EXCLUDING THE APPLICATION OF THE CONDITION OR WARRANTY, CUSTOMER ACKNOWLEDGES THAT, IN ENTERING INTO THIS AGREEMENT, SAVE FOR THOSE EXPRESSLY STATED HEREIN, IT HAS NOT RELIED ON ANY STATEMENT, OR REPRESENTATION OR INFORMATION SUPPLIED BY LICENSOR. FOR AVOIDANCE OF DOUBT, NOTHING IN THIS AGREEMENT EXCLUDES ANY LIABILITY OF A PARTY UNDER, OR LIMITS OR AFFECTS THE APPLICATION OF, THE FAIR TRADING ACT.

8.5. Consumer Guarantee's Act. CUSTOMER ACKNOWLEDGES THAT IT ACQUIRES THE SERVICES FOR ITS BUSINESS PURPOSES AND ACCORDINGLY THE PROVISIONS OF THE CONSUMER GUARANTEES ACT DO NOT APPLY.

8.6. Singapore. Where in accordance with section 9.1 this Agreement is governed by Singapore law, then this section applies. A PERSON WHO IS NOT A PARTY TO THIS AGREEMENT SHALL HAVE NO RIGHT UNDER THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT (CAP 53B) TO ENFORCE ANY OF ITS TERMS.

9. **General Provisions.**

9.1. Law and Jurisdiction. Choice of law and jurisdiction for all matters arising out of or relating to this Agreement shall be as

follows:

9.1.1. Americas. If Partner is located in the Americas, the Agreement is governed by the substantive laws of the State of Utah and applicable federal U.S. laws, without regard to any conflict of laws provision.

9.1.2. Europe, Middle East, or Africa (EMEA). For Partners located in Europe, the Middle-East or Africa (EMEA), this Agreement will be governed by the substantive laws of the country in which Partner has its principal residence where that country is (a) a member state of the European Union, or (b) a member state of the European Free Trade Association, or (c) the Republic of South Africa. For a Partner whose principal residence is in any other country in EMEA, the applicable law will be the laws of England. An action at law under this Agreement may only be brought before a court of appropriate jurisdiction in the state whose law governs this Agreement under the terms of this section.

9.1.3. Asia-Pacific. If Partner is located in the Asia Pacific region, the Agreement is governed by the substantive laws of the State of Utah and applicable federal U.S. laws, without regard to any conflict of laws provision, unless the subsections below apply.

9.1.3.1. If Partner's country of principal residence is Australia and/or New Zealand, this Agreement will be governed by the laws, excluding the private international law rules, of the state of New South Wales.

9.1.3.2. If Partner's country of principal residence is New Zealand, this Agreement will be governed by the laws, excluding the private international law rules of New Zealand.

9.1.3.4. If Partner's country of principal residence is Singapore, Thailand, Vietnam, the Philippines, Indonesia or Pakistan, this Agreement will be governed by the laws, excluding the private international law rules, of Singapore.

9.1.3.5. If Partner's principal residence is in China (including Hong Kong, S.A.R.), then this Agreement will be governed by the laws of Hong Kong, S.A.R.

9.1.3.6. Any suit, action or proceeding arising out of or relating to the Agreement may only be brought before a court of appropriate jurisdiction in the state whose law governs this Agreement. To the extent their exclusion is permissible, the terms of the United Nations Convention on the International Sale of Goods shall not apply to the Agreement, even where adopted as part of the domestic law of the country whose law governs this Agreement. If either party initiates legal proceedings to enforce a term of the Agreement, the prevailing party will be entitled to recover reasonable attorneys' fees. Each party will, at its own expense, comply with any applicable law, statute, ordinance, administrative order, rule and regulation.

9.2. Confidential Information. The parties agree that any Confidential Information provided under the Agreement will be held and maintained in strict confidence. Each party agrees to protect the confidentiality of such information in a manner consistent with the way a reasonable person would protect similar Confidential Information. "Confidential Information" means the information and materials noticed or marked by Licensor or Partner as confidential and proprietary. "Confidential Information" does not include information that (a) is already known to the receiving party at the time it is disclosed and has not been obtained wrongfully, (b) becomes publicly known without fault of the receiving party, (c) is independently developed by the receiving party, (d) is approved for release in writing by the disclosing party, (e) is disclosed without restriction by the disclosing party to a third party, or (f) is disclosed pursuant to legal obligations beyond the control of the disclosing and receiving parties. The recipient of Confidential Information retains the right to use its knowledge and experience (including processes, ideas, and techniques) learned or developed in the course of providing any services. All Confidential Information is provided "AS IS" WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED.

9.3. Verifications. Partner agrees that Licensor may, at its own expense, verify Partner's use of Partner Use Software as well as Partner's business activities related to the Partner Program, to determine Partner's compliance or non-compliance with this Agreement and the applicable Partner Program requirements including, if applicable, any related business plans or other specific arrangements between the parties. Such verifications will take the form of requests for information, documents or records, on-site visits, or both. Any on-site visit will occur during regular business hours at Partner's offices, and will not interfere unreasonably with Partner's business activities. For an on-site visit, Licensor will give Partner at least 10 days prior written notice of the date of each visit.

9.4. Entire Agreement. This Agreement and the Program Guide comprise the whole agreement between the parties. Unless otherwise expressly provided herein, this Agreement supersedes all prior representations or agreements between the parties relating to the same subject matter. The Agreement will not be supplemented or modified by any course of dealing or usage of trade. Variance from or addition to the terms and conditions of this Agreement in any purchase order or other written notification from Partner (including but not limited to any specification of a price different than Licensor's current list price) will be of no effect.

9.5. Survival. The provisions of this Agreement which by their nature extend beyond termination of the Agreement, including sections 6, Intellectual Property Rights, 7, Limited Warranty, 8, Limitation of Liability, and 9, General Provisions, will survive termination of the Agreement.

9.6. Assignment. This Agreement may not be assigned by Partner, in whole or in part, without Licensor's prior written consent. Licensor will not unreasonably withhold consent to an assignment to Partner's parent company or subsidiary. Any attempted assignment without Licensor's written consent will be null and void. Licensor may assign all or a portion of its rights and obligations under this Agreement to any company that controls, is controlled by (whether directly or indirectly) or is in common control with Licensor or its parent, or to a purchaser of the intellectual property rights of a Licensor.

9.7. Independent Contractors. Any use of the term "partner" in this Agreement is in a sales and marketing sense, and the parties are not (and will not represent that they are) partners under the technical legal definition of that term. Nothing in this Agreement, and no course of dealing between the parties, shall be construed to create an employment or agency relationship or a legal partnership between a party and the other party or the other party's employees or agents. Neither party has the authority to bind the other, to incur any liability or otherwise act on behalf of the other. Each party shall be solely responsible for payment of its employees' salaries (including withholding of income taxes and social security), workers compensation, and all other employment benefits.

9.8. 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.

9.9. Anti-Corruption. Neither Partner nor its officers, employees, agents, or sub-contractors shall offer, promise, give, request, accept or agree to accept from any person (whether for themselves or on behalf of another) any advantage, gift, payment, consideration or benefit of any kind which is intended to influence a decision or gain advantage or which otherwise constitutes a bribe and/or an illegal or corrupt practice under the applicable laws of any country, either directly or indirectly in connection with this Agreement or Licensor's business ("the Anti-Corruption Obligation"). Partner shall disclose in writing to Licensor details of any breach or alleged breach of the Anti-Corruption Obligation. Licensor may terminate this Agreement immediately upon written notice to Partner in the event of any breach of the Anti-Corruption Obligation. Partner's attention is drawn to the [Licensor Partner Code of Conduct](#) available ("the Code") which describes the standards of conduct and ethics expected of Licensor's channel partners. Partner shall comply with the Code, which is incorporated into this Agreement.

9.10. Export Restrictions. Any products or technical information provided under this Agreement may be subject to U.S. export controls and the trade laws of other countries. The parties agree to comply with all export control regulations and to obtain any required licenses or classification to export, re-export or import deliverables. The parties agree not to export or re-export to entities on the current U.S. export exclusion lists or to any embargoed or terrorist countries as specified in the U.S. export laws. The parties will not use deliverables for prohibited nuclear, missile, or chemical biological weaponry end uses. Please consult the Bureau of Industry and Security web page <http://www.bis.doc.gov> before exporting Licensor products from the U.S. Upon request, Licensor will provide Partner with specific information regarding applicable restrictions. However, Licensor assumes no responsibility for Partner's failure to obtain any necessary export approvals.

Licensor Entity Table

Licensor means, depending on Partner's country of residence, the applicable entity identified in the table below.

Activities related to Micro Focus Software (formerly Novell)	
Country	Entity
Americas & Asia Pacific, except as detailed otherwise below	Micro Focus Software Inc.
Canada	Micro Focus Software (Canada) Inc.
India	Novell Software Development (India) Private Ltd.
Japan	Novell Japan, Ltd.
Europe, Middle-East or Africa	Micro Focus Software (Ireland) Ltd

Activities related to NetIQ	
Country	NetIQ Entity
Americas, Asia Pacific, except as detailed otherwise below	NetIQ Corporation
Canada	Micro Focus Software (Canada) Inc.
Japan	NetIQ K.K
India	Attachmate India Private Limited
Europe, the Middle-East or Africa	NetIQ Europe Limited

Activities related to Attachmate	
Country	Attachmate/Micro Focus Entity
Americas, Asia Pacific, except as detailed otherwise below	Attachmate Corporation
Japan	NetIQ K.K
Australia	Attachmate Group Australia Pty Ltd
New Zealand	NetIQ New Zealand 1 Ltd
Europe, the Middle-East or Africa	Attachmate Ireland Limited

Activities related to Micro Focus	
Country	Micro Focus Entity
United States	Micro Focus (US), Inc.
Asia Pacific, except as detailed otherwise below	Micro Focus Pte. Ltd
Europe, the Middle-East or Africa, except as detailed otherwise below	Micro Focus Limited
South Korea	Micro Focus Korea Limited
Japan	Micro Focus K.K
UK, China, Hong Kong, Mexico, India	Micro Focus Limited
South Africa	Micro Focus South Africa (PTY) Limited
Switzerland	Micro Focus AG
Spain, Portugal, Chile	Micro Focus SLU
France	Micro Focus SAS
Netherlands	Micro Focus NV
Italy	Micro Focus Srl
Germany	Micro Focus GmbH
Belgium	Micro Focus SA
Norway, Sweden, Denmark, Finland	Micro Focus AS
Ireland	Micro Focus Ireland Limited
Israel	Micro Focus Israel Limited
Australia	Micro Focus Pty Limited
Brazil	Micro Focus Programacao De Computadores Ltda
Canada	Micro Focus (Canada) Limited

Exhibit A - Internal Use License

Internal Partner Use of Software. This Exhibit provides the terms under which Licensor makes available certain software products for Partner's internal use to assist Partner in familiarizing itself with Licensor software to improve its ability to promote and market such software to End Users. The software products made available under this section for internal use are those so identified in the Program Guide ("Partner Use Software"), and exclude, unless otherwise agreed by Licensor in writing, third-party products or products identified in writing by Licensor as not available under this section. The Partner Use Software products are made available AS IS with no warranty. Licensor may modify the Program Guide to remove a Product from the list of Partner Use Software products. Licensor is not obligated to provide any technical support to Partner for such use.

1.1. License. Subject to the Agreement's terms, Licensor grants Partner a terminable, non-exclusive, non-transferable and restricted license to copy and use Partner Use Software during the term of this Agreement, only within Partner's company, by its employees, and for its internal business. Such use is subject to the terms and conditions of the applicable End User License Agreement ("EULA") provided with individual Partner Use Software. However, notwithstanding anything to the contrary in the EULA, Partner expressly agrees that its use of the Partner Use Software is subject to the following restrictions, and as to a specific product any further restrictions described in the Program Guide.

1.1.1 NetIQ and Micro Focus Software Products Only. Copying or use of a NetIQ or Micro Focus Software Product is allowed in a development or production environment but is limited to the total number of licenses specified in the Program Supplement, which in any case shall not exceed 250 users.

1.1.1.1 License Use Across Partner's Global Enterprise. If Partner's enterprise has an office located in a different country, the office may separately complete an application for membership to the Partner Program. Each such office that is accepted by Licensor as a separate Partner member may make use of the number of licenses specified for Partner Use Software in the Program Guide, provided that the total number of licenses copied or used by all Partner locations within Partner's global enterprise (including affiliates) may not exceed three times the number of licenses specified in the Program Guide. If Partner has multiple locations in different countries that have separate Partnership memberships, the different Partner locations may allocate among themselves the total number of authorized licenses, as long as the copying or use by all Partner locations within Partner's global enterprise (including affiliates) does not exceed the total number of authorized licenses.

Example 1. If Partner has two offices or entities in different countries with separate Partner agreements, between the two locations the Partner may make use of twice the number of licenses specified for Partner Use Software in the Program Guide; one of the locations may copy or use most or all of those licenses as long as the total copying or usage by the two entities does not exceed twice the number of licenses specified for Partner Use Software.

Example 2. If Partner has three or more offices or entities in different countries with separate Partner agreements, between the different locations the Partner may make use of three times the number of licenses specified for Partner Use Software in the Program Guide; a single location may copy or use most or all of those licenses as long as the total copying or usage by all such locations does not exceed three times the number of licenses specified for Partner Use Software.

1.1.2. Development Tool. If the Partner Use Software is or contains a development tool, Partner shall not develop any product with the development tool or distribute any product based on any portion of the Partner Use Software. No other right to use or reproduce the Partner Use Software is granted; if the development tool is licensed under an open source license, the terms of that license apply.

1.1.3. Regional Restrictions. The Program Guide may identify country- or region-specific restrictions regarding the use of Partner Use Software.

1.1.4. Except as expressly authorized in this Agreement, Partner may not transfer, copy, modify, or disassemble or decompile the Partner Use Software, or any documentation shipped with Partner Use Software. Partner may not sublicense, resell, rent, lease, timeshare or otherwise distribute any of the Partner Use Software, or use them to provide hosting, outsourcing or other similar services to third parties.

1.2. Product Return. Upon Agreement termination, this license for Partner Use Software will terminate automatically. Partner must remove from its systems Partner Use Software obtained under this license and must return to Licensor any applicable software media within 15 days after termination. Licensor shall be entitled to consider Partner's failure to return Partner Use Software as an order to purchase a retail license for the Partner Use Software, and Licensor may invoice Partner for the retail price of the Partner Use Software used by Partner. Partner shall pay such invoices within 30 days. Late payments will be accrue interest at the rate of the lesser of 1% per month or the maximum rate allowed by law. After Partner's payment in full, Partner's use of the Partner Use Software shall be governed solely by the EULA terms for use of the Product by a retail end-user.

Exhibit B - Training Service Partner Terms

This Exhibit provides the terms and conditions applicable to organizations approved to participate in the Global Training Service Partner Program.

1. Definitions. Capitalized words or phrases used in the Agreement are defined as follows:

- a. "Authorized Course" means a course is taught at a Licensor-authorized facility by an instructor certified by Licensor to teach such course. An Authorized Course must include and cover all concepts in the Licensor Materials and must meet the minimum number of student contact hours as recommended in the Authorized Course instructor guide.
- b. "Channel Link" means the secure training web site designed to assist Partner in obtaining program information and documents referenced in this Agreement.
- c. "Certified Instructor" means an instructor that has met the requirements defined in the Certified Instructor Program Description and Application located on Channel Link, as such publication may be revised from time to time.
- d. "Effective Date" means the date the Partner is notified in the written Authorization Notice that it is approved as a Global Training Service Provider.
- e. "GTSP" means Global Training Service Partner.
- f. "GTSP Program" means the terms and conditions set forth in the GTSP Program Documents.
- g. "GTSP Program Documents" means the Training Service Partner sections of the Program Guide and the Global Training Services Price List, the Certified Instructor Program Description and Application, and Training Service Partner content made available on Channel Link.
- h. "Licensor Materials" means materials obtained from Licensor or a Licensor-authorized distributor under the terms of this Agreement such as student kits, instructor kits, and course completion certificates.
- i. "Marks" means then-current Licensor trademarks, service marks, and certification marks, whether registered or unregistered, that Licensor identifies as applicable to the Licensor Materials Partner is authorized to utilize as a participant of the GTSP program.

2. Appointment. Subject to the Agreement provisions and during the Agreement term Licensor appoints Partner as a GTSP and authorizes Partner to offer Authorized Courses to students and to use the Marks in marketing and advertising as described in section 6, Advertising. This appointment is non-exclusive and is conditional upon Partner's compliance with the Agreement terms. Partner is not authorized to provide Licensor Materials to any anyone other than its students and may not distribute Licensor Materials to any other entity.

3. Global Training Service Partner Program. The GTSP Program Documents are incorporated into this Agreement. Licensor may subsequently change the GTSP Program Documents; any revised GTSP Program Document will supersede earlier versions and will become binding upon Partner 30 days after notice of the change is published on Channel Link. However, if any conflict arises between this Agreement and the GTSP Program Documents, this Agreement will govern. If Partner is unsatisfied with any change made to a GTSP Program Document, Partner's sole remedy is to terminate the Agreement upon 30 days written notice.

4. Partner Obligations

- a. Use of Qualified Certified Instructors. Partner will comply with all Certified Instructor guidelines set forth in the GTSP Program Documents. Partner may have the same Certified Instructor certified to teach more than one course at all authorized sites. Partner must ensure that any person teaching Authorized Courses is a certified to teach the particular course in question. The cost of any required certified training will be incurred by Partner or the Certified Instructor.
- b. Course Delivery and Curriculum. Partner will deliver Authorized Courses in a professional and competent fashion by a Certified Instructor at approved Partner facilities using only current, original Licensor Materials. Each student will be supplied with a separate, unused, and unopened student kit. In the event any course is canceled, Partner will provide the students with at least 72 hours advance notice of cancellation.
- c. Channel Link / Program. Partner will review Channel Link weekly and the GTSP Program Documents at least semi-annually to ensure Partner's compliance with GTSP policy and program changes.
- d. Anti-Piracy. Partner agrees not to engage in the manufacture, use, distribution, supply, marketing or promotion of any counterfeit, pirated, or illegal software, student kits or other course materials, whether directly or indirectly, and will assist Licensor as reasonably required in the investigation of any such activities.

e. Un-authorized Curriculum. During the Agreement, for Licensor products and solutions for which Licensor offers an Authorized Course, Partner may offer only the Authorized Course and will not distribute, offer or sell any training course (including any instructor-led or self-study course) that competes directly with the Authorized Course or has as principal subjects the Licensor product(s) and/or solution(s) covered in the Authorized Course, unless otherwise approved by Licensor in writing. Nothing herein shall prevent Partner from offering any course for any product or service where no Authorized Course exists for such product or service, provided that once an Authorized Course for a particular product and/or service is available to Partner then Partner shall switch to the Authorized Course within 45 days of the date such course becomes available to Partner. Nothing in this section requires Partner to offer any minimum number of Authorized Courses.

f. Facilities and Equipment

i. Availability. Partner will at all times meet the requirements for facilities and equipment (including audiovisual equipment) as set forth in the Classroom Requirements Matrix section of the GTSP Program Documents.

ii. Equipment. Partner will maintain its equipment in good working order. Partner will procure the appropriate version and number of copies of the software products for each specific course as required and described in the Classroom Requirements Matrix.

iii. On-Site Courses. Partner must receive prior written approval from the Training Account Manager to teach a Licensor Authorized Course at a non-GTSP location to a clients' employees. Only off-site classes consisting entirely of a clients' employees will be considered.

g. Course Documentation

i. Course. In providing an Authorized Course, Partner must order and use the Licensor Materials identified in the GTSP Program Documents as applicable to the course.

ii. No Reproduction of Materials. All Licensor Materials, including those identified in the Licensor Classroom Requirements Matrix, are copyrighted and may not be reproduced.

iii. Software licenses. Use of any software licenses received under this Agreement shall be governed exclusively by the applicable end user license agreement accompanying the software.

iv. Supplemental Materials. Partner may not replace Licensor Materials for Authorized Courses with any other materials. A Partner instructor may use Novell Press books or other materials for the purposes of adding value to Novell Authorized Course so long as such materials do not distract from course objectives.

v. Certificates. An Authorized Course certificate must be given to each student who successfully completes an Authorized Course within the first two weeks of its completion, except that these certificates may not be given for self-study courses.

vi. Student Kits. One unused and unopened Licensor student kit must be provided to each student for the Authorized Course being presented.

h. Student Satisfaction. Partner agrees that high student satisfaction is a condition of Partner's continued authorization by Licensor. To ensure high student satisfaction, Partner agrees to:

i. Conduct business in a manner that reflects favorably at all times on the Licensor Materials, products, goodwill and reputation of Licensor.

ii. Avoid deceptive, misleading or unethical practices that are or might be detrimental to Licensor, Licensor Materials or Licensor products.

iii. Take reasonable measures to ensure student customer satisfaction, including, but not limited to, refunding a dissatisfied student customer's course tuition.

5. Advertising. Partner may not advertise itself as having GTSP status before the Effective Date or after such authorization is terminated. Partner shall not represent or imply that courses are Licensor-approved if they are not. Licensor course names and numbers must be accurately used in all advertising, and any non-Licensor courses taught must be clearly differentiated from Licensor courses.

a. Corporate Name. If Licensor so requests, when advertising Licensor Authorized Courses Partner must clearly indicate that it is acting as a currently authorized Licensor licensee.

6. Ordering and Payment Terms. Partner may order Licensor Materials through a Licensor-authorized distributor for such materials in accordance with terms agreed to between Partner and the distributor.

7. Quality Compliance. During the Agreement and for 1 year afterwards Licensor may, at its expense and upon no less than 3 business days prior written notice, audit Partner's facilities and records to determine compliance with the Agreement terms. Such audit may be conducted by Licensor or by its authorized representative(s), shall not interfere unreasonably with Partner's business activities, and shall be conducted no more than once per calendar year, unless a previous audit disclosed non-compliance with this Agreement. Any deficiency identified will be submitted in writing by Licensor to Partner and may be accompanied by a corrective action plan for resolving outstanding issues. Partner's failure to cure such deficiencies within 10 business days after receipt of written notification will be grounds for immediate termination of the Agreement.

Exhibit C - Deal Registration Terms

1. **Eligibility** - The Deal Registration Program (the "Program") eligibility is as follows:
 - a. Available to: Partners who have been specially invited to participate in the Program in the Authorization Notice.
 - b. After receiving notification in the Authorization Notice that Partner is eligible for participation in Licensor's deal registration program, and if Partner chooses to participate in deal registration, then Partner agrees to the terms and conditions relating to deal registration in the Program Guide ("Deal Registration Terms"). By submitting your application to the Program you agree to these Deal Registration Terms, and that the Deal Registration Terms are incorporated into and become a part of the Agreement. Capitalized terms used and not defined in these Deal Registration Terms have the meaning given to them in the Agreement.
 - c. The special discounts, rebates and/or other incentives available under this Program may be administered locally by those Licensor and Partner entities doing business in the applicable market.
 - d. The benefits of the Program cannot be combined with any other rebate or discount.
 - e. The Program benefits are only available on New Business. "New Business" means a new license, an initial one-year subscription, or the first year of maintenance (some exclusions apply) sold to new or existing customers.
 - f. Renewals are not eligible for rebates within the Program.
 - g. Some countries are not eligible for participation in the Program. Contact the partner team to verify whether a particular country is eligible.
 - h. RFP and other bid requests (whether involving government or private-sector customers) are excluded and not eligible for registration until they are awarded. Managing Service Agents and Managing Distributors are not eligible for the Program, except when they have been individually invited by management to participate and only after agreeing in writing to these terms along with any other terms and conditions communicated by Licensor.
2. **Registered Opportunity Benefits** – Successful closing of New Business that has been pre-registered via the Program and approved by Licensor in writing (each such transaction is an "Eligible Opportunity") will provide the Partner with Program benefits on the Net Revenue to Licensor according to the Rebate Table contained in the Program Guide. "Net Revenue" means net proceeds paid to Licensor Eligible Opportunity. For avoidance of doubt, "Net Revenue" shall not include taxes or tax charges of any kind (Including but not limited to, income tax, corporation tax, customs duties, tariffs, excise, gross receipts, sales and use and value added tax), margin, rebates, or commissions payable to Licensor's distributors or resellers.
 - a. The Program benefits shall be paid by Licensor within the number of days specified in the Program Guide after the end of the month in which the relevant transaction closed and satisfactory proof of closure was submitted to Licensor by Partner. Such proof shall consist of the following: the Electronic License Delivery "ELD" email sent to the customer or a copy of the dated purchase order "P.O." (Customer P.O. or your P.O. to distribution). Licensor shall not pay any fees to the extent prohibited by applicable law or governmental authority. If any fees under the Program have been previously paid to Partner and is subsequently determined to be prohibited or in excess of the amount approved or allowed, then Partner shall, within thirty (30) days of demand, reimburse Licensor the amount paid to Partner that is prohibited or in excess of the amount approved or allowed.
 - b. Qualifying for Program benefits also requires an authorized partner to create a vendor relationship with Licensor, and in some cases depending on regional payment practices, a partner may be required to invoice Licensor for payment following Licensor's submission of a P.O. All federal, state, and local taxes on rebates paid or other program benefits are the responsibility of the authorized partner.
3. **Single Opportunity Requirement** - Partner rebates shall only apply to the Eligible Opportunity described in Licensor's approval notice. Partner may register subsequent New Business for the same end-user account if such opportunities otherwise satisfy the criteria of the Program. Eligible Opportunities or end-user accounts may not be combined and require separate registration. Licensor is not obligated to approve any New Business submitting for registration as part of the Program.
4. **Program Revisions** - Licensor reserves the right to modify, supersede or eliminate all or any of these Deal Registration Terms and to terminate the Program without notice. Any Eligible Opportunities approved prior to any such revisions shall be honored by Licensor in accordance with the Program terms.