

## SOFTWARE LICENSE AGREEMENT FOR MARKLOGIC SOFTWARE PRODUCTS ON THE AWS MARKETPLACE

This **Software License Agreement for Marklogic Software Products on the AWS Marketplace** (the “Agreement”) sets forth the terms and conditions applicable to the licensing of Software from Progress Software Corporation (“Licensor”) by the Party subscribing to the Software (“Customer”) through the AWS Marketplace, whether deployed via AMI or SaaS, via a Standard Contract Listing. By using the Software, Customer acknowledges (1) that Customer has read this agreement, (2) that Customer understands it, (3) that Customer agrees to be bound by its terms and conditions, and (4) to the extent the Party subscribing to the Software is entering into this agreement on behalf of a company, such Party has the power and authority to bind that company. Unless defined elsewhere in this Agreement, terms in initial capital letters have the meanings set forth in Sections 1 and 11. Customer and Licensor may be referred to collectively as the “Parties” or individually as a “Party”.

In consideration of the mutual promises, covenants and representations herein, and upon the terms and conditions set forth below, the Parties agree as follows:

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### 1. Definitions

1.1 “**Agreement**” means this Software License Agreement, information contained in a Licensor supplied URL or policy referenced in the foregoing, and such other documents, attachments, and exhibits that the Parties’ authorized representatives may mutually agree to in writing.

1.2 “**Affiliate**” means any legal entity that directly or indirectly controls, is controlled by, or is under common control with a Party to this Agreement. For the purposes of this definition, “control means ownership, directly or indirectly, of more than fifty percent (50%) of the voting shares or other equity interest in an entity.

1.3 “**Applications**” means applications that interact and operate with the Software, according to any restrictions specified in the Order, developed in accordance with the Documentation.

1.4 “**Cloud Subscription Service**” means the cloud subscription service as described in Section 4.

1.5 “**Cluster**” means multiple Instances of the Software working together coordinated by the Software’s clustering functionality or third party clustering software.

1.6 “**Combined Solution**” means the use of the Software interacting, directly or indirectly, with a Customer’s Application. A Combined Solution must (i) add significant or primary functionality to the Software (i.e. dashboards, code editors, utilities and similar technologies are not considered primary functionality of a Combined Solution), (ii) have the Customer Application be the primary functionality of the Combined Solution, (iii) not allow direct access to the Software by an End User, (iv) be delivered to End Users over the internet or private network while residing on Equipment (i.e. the Combined Solution may not be loaded onto an End User’s device) and (v) be used only with a Customer-owned Application, except that such Application may include non-substantive third party software that is embedded in, or operates in support of, the Application.

1.7 “**Confidential Information**” shall be defined as set forth in Section 8.2.

1.8 “**Customer IP**” means any Intellectual Property which is owned or licensed by Customer prior to the Effective Date, or which is developed by Customer outside the scope and unrelated to the subject matter of this Agreement. Customer IP expressly excludes Pre-Existing IP.

1.9 “**Documentation**” means any user instructions, release notes, manuals or other materials, and on-line help files in the form generally made available by Licensor regarding the use of the Software.

1.10 “**End User**” means users of the Combined Solution who are not Customer’s employees, or Customer’s contractors or agents.

1.11 “**Error**” means a material failure of the Software to conform to its functional specifications described in the Documentation.

1.12 “**Error Correction**” means any bug fixes, modifications, additions, or routines intended to correct the practical adverse effect of an Error.

1.13 “**Instance**” means loading the Software into memory and executing one or more of its instructions; an Instance is considered to be running, whether or not its instructions continue to execute, until it is removed from memory.

1.14 “**Intellectual Property Rights**” means patent rights (including patent applications and invention disclosures), copyrights, rights in database, moral rights, trademarks, service marks, trade secrets, know-how and any other intellectual property rights recognized in any country or jurisdiction in the world, now or hereafter existing, and whether or not perfected, filed or recorded.

1.15 “**Intellectual Property**” means technology, inventions, know-how, show-how, designs, formulae, processes, techniques, trade secrets, ideas, artwork, software, works of authorship, and any document or other materials embodying any of the foregoing, whether or not any of the same are patentable or copyrightable, and related documentation.

1.16 “**License Period**” means the period for which the license is granted to Customer for each Software, as set forth in the Order.

- 1.17 **"Order"** means Customer's order for Software, Cloud Subscription Service and/or Support, under the terms and conditions of this Agreement via a Standard Contract Listing on the AWS Marketplace.
- 1.18 **"Pre-Existing IP"** means any Intellectual Property created or developed solely or primarily by Licensor or its Affiliates, or their respective employees, agents or contractors, other than Software.
- 1.19 **"Software"** means the computer software programs in object code format specified in the Order and all Updates (if Customer has purchased Support).
- 1.20 **"Support"** means the technical support services and Updates for the level of support services specified in the Order, which is provided on an annual basis under the support terms of Licensor or its Affiliate incorporated by reference in the Order, or if no support terms are referenced in the Order, then the version of the support terms located at <http://www.marklogic.com/support-terms.pdf> in effect at the time Support is provided for the level of Support ordered.
- 1.21 **"Territory"** means the certain geographic areas specified in the Order, in which the Software may be used. If no geographic areas are specified in the Order, then the Territory will be worldwide, subject to Customer's compliance with the export provisions set forth in Section 10.11 below.
- 1.22 **"Updates"** means Error Corrections, updates, modifications, or enhancements to the Software developed after commencement of the License Period, which Licensor makes generally available under the Support level ordered by Customer in the applicable Order. Updates expressly exclude new products for which Licensor generally charges a separate license fee.
- 1.23 **"Virtual Core"** means a processing unit in a virtual (or otherwise emulated) hardware system and is the virtual representation of one or more hardware threads. Virtual OSEs use one or more Virtual Cores.
- 1.24 **"Virtual OSE"** means an operating system environment that is configured to run on a virtual (or otherwise emulated) hardware system.
- 2. Orders.** This Agreement contemplates that Customer will be purchasing Software licenses, Cloud Subscription Services and/or Support via the AWS Marketplace as a Standard Contract Listing. Any terms and conditions in AWS's quotation or other order documentation with the Customer imposing obligations on AWS that are in addition to or different from the obligations Licensor has to Customer pursuant to this Agreement will be born solely by AWS and Licensor's obligations to Customer, and limits on Licensor's liability, will be governed solely by the terms and conditions of this Agreement. Any terms and conditions that conflict with or would otherwise alter any terms and conditions of this Agreement (other than the terms pertaining to License Period, License Scope, Definitions, Use Rights/Rules, Detailed Software/Service and Territory information as set forth in the Order, and, if applicable, any terms and conditions included or incorporated by reference in the Order pertaining to a Cloud Subscription Service) will have no effect unless expressly agreed to in a written instrument executed by Licensor.
- 3. Software License**
- 3.1 **Grant.** Subject to the terms and conditions of this Agreement, including but not limited to the Software use rights, rules and definitions described in the applicable Order, Licensor grants to Customer a limited, nonexclusive, nontransferable license in the Territory and for the License Period to (a) install and run the Software on the Equipment in accordance with the Documentation, (b) use the Software for Customer's own internal business operations, (c) use the Documentation in connection with such use of the Software (d) allow its employees, agents and contractors, with a need to know, access to the Software only in support of Customer's rights under the Agreement, provided that Customer shall be responsible for the acts or omissions of such employees, agents and contractors under this Agreement as if they were Customer's own and any breach by any such employee, agent or contractor of the terms and conditions of this Agreement will be deemed a breach by Customer, and (e) allow End Users to access the Software only as part of a Combined Solution. Customer may allow Customer's Affiliates to exercise Customer's rights hereunder subject to the terms and conditions of this Agreement. Customer will be responsible for the acts and omissions of its Affiliates as if they were Customer's own and any breach by any Affiliate of Customer of the terms and conditions of this Agreement will be deemed a breach by Customer.
- 3.2 **Additional Licenses/Copies.** Customer may expand the license granted under this Agreement, or otherwise change the scope of the license granted under an Order, upon Licensor's receipt and acceptance of a new Order specifying the foregoing, and upon AWS's payment of additional license fees for such expanded scope as set forth in the Standard Contract Listing. Notwithstanding the foregoing, Customer may, during the License Period, (i) make and install copies of the Software on temporary substitute or backup equipment for a reasonable period of time; (ii) make and keep copies of the Software at separate facilities only for backup and archival purposes and for emergency use, including disaster recovery and business resumption; (iii) make copies of the Software for a reasonable period of time necessary to relocate the Software. Copies deployed in this regard will not count against any license grant set forth in an Order.
- 3.3 **License Restrictions.** Except as otherwise set forth in this Agreement, Customer shall not itself, or through any Affiliate, employee, consultant, contractor, agent or other third party:
- (a) sell, resell, distribute, host, lease, rent, license or sublicense, in whole or in part, the Software or Documentation, or Licensor's Confidential Information;
  - (b) use the Software or Documentation to provide training or other professional services to third parties;
  - (c) decipher, decompile, disassemble, reverse assemble, modify, translate, reverse engineer or otherwise attempt to derive source code, algorithms, tags, specifications, architectures, structures or other elements of the Software, or Licensor's Confidential Information, in whole or in part, for competitive purposes or otherwise;
  - (d) create license keys or other programs or functionality that enable access to the Software, reverse engineer or otherwise attempt to discover or decipher the Software, distribute the Software to third parties, or cause such third parties to create, use, or distribute the Software, knowingly or otherwise;

- (e) allow access, provide, divulge or make available the Software, Documentation or Licensor's Confidential Information to any user other than to (i) Customer's employees and independent contractors who have a need for such access and who shall be bound by a written nondisclosure agreement with provisions that are no less restrictive than the terms of this Agreement and/or (ii) End Users for access only as part of the Combined Solution in accordance with Section 3.1(e).
- (f) except for Applications independently developed by Customer, write or develop any derivative software or any other software program based upon the Software, the Documentation or any Confidential Information;
- (g) modify, adapt, translate or otherwise make any changes to the Software or Documentation, or any part thereof;
- (h) use the Software, Documentation or Licensor's Confidential Information alone to provide processing services to third parties, or otherwise use the Software on a 'service bureau' basis;
- (i) use any name, mark or designation of Licensor, any of its Affiliates or licensors or their respective products or services, unless expressly permitted herein or by Licensor in writing;
- (j) disclose or publish, without Licensor's express prior written consent, performance or capacity statistics or the results of any benchmark test performed on Software; or
- (k) otherwise use or copy the Software and Documentation except as expressly permitted herein.

#### **4. Support/Cloud Subscription Service.**

**4.1 Support.** When ordered, Support must be ordered for all copies of the Software licensed by Customer under this Agreement. If Customer allows Support to lapse, Customer may reinstate Support only in accordance with Licensor's then-current business policies concerning reinstatement which may require, among other things, payment to Licensor of all Support fees that would have been paid previously had Customer not terminated Support.

**4.2 Cloud Subscription Service.** If Licensor makes cloud hosting services for the Software generally available to its customers to purchase on a subscription basis ("**Cloud Subscription Service**"), then Customer may obtain such Cloud Subscription Service in accordance with this Agreement and the terms and conditions included or incorporated by reference in the Order for the Cloud Subscription Service. Such Cloud Subscription Service may be offered based on a "bring your own license" or "BYOL" model, in which case Customer's license to use the Software will be purchased by Customer under a separate Order. Notwithstanding anything to the contrary in this Agreement, during any Cloud Subscription Service period, all references to "Equipment" shall be deemed to refer to the cloud infrastructure environment made available by Licensor for the operation of the Software. In the event of termination of the Cloud Subscription Service offered by Licensor under a BYOL model, Customer may continue to use the Software subject to the terms and conditions of this Agreement and the relevant Order pursuant to which the Software license was procured.

**5. Fees and Taxes.** As Customer will make purchases from the AWS Marketplace, the fees will be set out in the quotation or other ordering document between Customer and AWS. All terms of payment, including billing and collection terms, are solely between Customer and AWS.

#### **6. Warranties, Disclaimers and Limitation of Liability**

**6.1 Software.** Licensor warrants that the Software, as updated and used in accordance with the Documentation and this Agreement, will perform in substantial accordance with the Documentation for a period of 90 days after the commencement of the License Period for such Software. As Customer's exclusive remedy for any claim under the warranty in this Section 6.1, Customer shall promptly notify Licensor in writing of its claim and, provided that such claim is determined by Licensor to be Licensor's responsibility, Licensor shall, within 30 days of its receipt of Customer's written notice, (i) use commercially reasonable efforts to correct any Error in the Software or (ii) provide Customer with a plan reasonably acceptable to Customer for correcting any such Error. The preceding warranty cure shall constitute Licensor's entire liability and Customer's exclusive remedy for cure of the warranty set forth in this Section 6.1.

**6.2 Requirements.** The warranty set forth above is made to and for the benefit of Customer only. The warranty shall apply only if (i) the Software has been properly installed and used at all times in accordance with this Agreement and the Documentation; (ii) no modification, alteration or addition has been made to the Software by persons other than Licensor or Licensor's authorized representative; and (iii) a defect in or malfunction of the Software has not been caused by Customer, Equipment, Customer's other equipment or software, including, without limitation, Applications, or third party software or equipment.

**6.3 Disclaimer.** Customer acknowledges that no employee, agent, representative or affiliate of Licensor has authority to bind Licensor to any oral representations or warranties concerning the Software, or any other product or service provided to Customer hereunder. Any written representation or warranty not expressly contained in this Agreement is expressly disclaimed and is not enforceable. Except as set forth in this Section 6 or, with regard to the Cloud Subscription Service, except for the warranties, if any, expressly set forth in the Order relating to the Cloud Subscription Service, Licensor makes no warranties, whether express, implied, or statutory regarding or relating to the Software, Documentation, Cloud Subscription Service, Support, Pre-Existing IP, or any other materials or services provided to Customer hereunder. **LICENSOR HEREBY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT WITH RESPECT TO THE SOFTWARE, CLOUD SUBSCRIPTION SERVICE, SUPPORT, PRE-EXISTING IP AND OTHER MATERIALS PROVIDED TO CUSTOMER HEREUNDER. LICENSOR DOES NOT REPRESENT OR WARRANT THAT THE SOFTWARE, CLOUD SUBSCRIPTION SERVICE, SUPPORT, PRE-EXISTING IP OR ANY OTHER MATERIALS PROVIDED BY LICENSOR OR ITS AFFILIATES WILL BE ERROR-FREE, PERFORM IN AN UNINTERRUPTED MANNER, OR THAT LICENSOR WILL BE ABLE TO CORRECT ALL ERRORS.**

**6.4 Limitation of Liability.** IN NO EVENT WILL LICENSOR OR ITS AFFILIATES BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, STATUTORY OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING, WITHOUT

LIMITATION, LOSS OF PROFITS, LOSS OF USE OR DATA, DAMAGE TO SYSTEMS OR EQUIPMENT, BUSINESS INTERRUPTION OR COST OF COVER) IN CONNECTION WITH OR ARISING OUT OF THE DELIVERY, PERFORMANCE OR USE OF THE SOFTWARE, DOCUMENTATION, CLOUD SUBSCRIPTION SERVICE, SUPPORT, PRE-EXISTING IP OR ANY OTHER MATERIALS PROVIDED BY LICENSOR OR ITS AFFILIATES, WHETHER ALLEGED AS A BREACH OF CONTRACT OR TORTIOUS CONDUCT, INCLUDING NEGLIGENCE AND STRICT LIABILITY, EVEN IF LICENSOR AND/OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. OTHER THAN LICENSOR'S OBLIGATIONS TO INDEMNIFY CUSTOMER AS SET FORTH IN SECTION 7 HEREIN, THE MAXIMUM AGGREGATE LIABILITY OF LICENSOR AND ITS AFFILIATES UNDER THIS AGREEMENT FOR ANY DAMAGES AND COSTS SHALL NOT, IN ANY EVENT, EXCEED THE FEE PAID BY AWS (ON CUSTOMER'S BEHALF) TO LICENSOR FOR THE SOFTWARE, CLOUD SUBSCRIPTION SERVICE OR SUPPORT UPON WHICH SUCH DAMAGES AND/OR COSTS ARE BASED.

## 7. Indemnification

**7.1 Customer Indemnity.** Licensor shall indemnify, defend and hold Customer harmless against any action, suit or proceeding brought against Customer alleging that the Software infringes any copyright or misappropriates any trade secret of any third party and shall pay any final judgments awarded or settlements entered into and agreed to by Licensor; provided, that Customer gives prompt written notice to Licensor of any such action, suit or proceeding and gives Licensor the authority to proceed as contemplated herein. Licensor shall have the exclusive right to defend any such action, suit or proceeding and make settlements thereof at its own discretion, and Customer may not settle or compromise such action, suit or proceeding, except with the prior written consent of Licensor. Customer shall give such assistance, cooperation and information as Licensor may reasonably require to defend, settle or oppose any such action, suit or proceeding.

**7.2 Remedy.** In the event any such infringement action, suit or proceeding is brought or threatened, Licensor may, at its sole option and expense: (i) procure for Customer the right to continue use of the Software or the allegedly infringing part thereof; (ii) modify or amend or replace the same with other software or material having substantially similar functionality and performance; or (iii) if neither of the foregoing is commercially practicable as determined by Licensor in its sole discretion, Licensor shall have the right to terminate the license for the Software involved, and repay to Customer a portion, if any, of the fees paid by AWS (on Customer's behalf) equal to the amount paid by AWS for the affected Software less 1/36 thereof for each month or portion thereof that the applicable Order has been in effect.

**7.3 Exclusions.** The foregoing obligations set forth in this Section 7 shall not apply to the extent the action, suit or proceeding for infringement and/or misappropriation arises or results from (i) modifications to the Software made by any party other than Licensor or its authorized representative, (ii) Software or components thereof made in whole or in part to Customers' specifications upon Customer's request, (iii) Software that does not incorporate all of the Updates provided by Licensor to Customer or is not being used in compliance with this Agreement, (iv) use of the Software beyond the scope of or not in compliance with the terms of the Documentation, (v) breach of this Agreement by Customer, (vi) combination of the Software or components thereof with other products (hardware or software), processes or materials to the extent the alleged infringement relates to such combination, or (vii) where Customer continues the allegedly infringing activity after being notified thereof and is provided modifications, replacements or other remedies that would have avoided the alleged infringement.

**7.4 Limitation.** This Section 7 states the entire liability of Licensor with respect to infringement of any Intellectual Property Right.

**7.5 Licensor Indemnity.** Customer shall indemnify, defend and hold harmless Licensor from and against any action, suit or proceeding for infringement and/or misappropriation that arises or results from any of the exclusions set forth in Section 7.3 above.

## 8. Ownership/Confidentiality.

**8.1 Ownership.** Licensor retains sole and exclusive ownership of the Software, Documentation and all Intellectual Property Rights in, to and/or embodied in or associated with the Software, Documentation, Cloud Subscription Service and Support provided by Licensor or its Affiliates hereunder, and all copies and derivative works, adaptations, modifications and translations thereof (whether developed by Licensor, Licensor's Affiliate, Customer or a third party). Customer acknowledges that no source code of the Software will be provided to Customer. Licensor shall retain all rights, title and interest in and to any and all Pre-Existing IP and all Intellectual Property Rights in, to and/or embodied in or associated with the Pre-Existing IP. To the extent Pre-Existing IP may be included with or embodied in any deliverable(s) delivered hereunder, Licensor grants Customer, upon full payment of the applicable fees and charges, a personal, nonexclusive, non-transferable, worldwide, royalty-free license to, during the License Period, use, execute, reproduce, display, perform, and internally distribute the Pre-Existing IP and prepare for internal use only derivative works based upon such Pre-Existing IP in each case solely in conjunction with the deliverable(s) provided in connection with the Order. Further, Customer acknowledges that Licensor and its Affiliates may create original works for third parties that may appear similar to a deliverable, Application, Combined Solution or any Intellectual Property that interacts with the Software. Customer agrees that, so long as such original work does not embody and is not created with reference to any of Customer's Confidential Information or any portion of the Customer IP, Licensor and its Affiliates will not be prevented from independently creating original, but similar, works for the benefit of third parties. All rights not expressly granted in this Agreement are reserved by Licensor.

**8.2 Confidentiality.** By virtue of this Agreement, each Party (or its Affiliates, if necessary to directly further the purposes of this Agreement) may be exposed to or be provided with certain confidential and proprietary information of the other Party, including, but not limited to, information designated as confidential in writing and information, which ought to be in good faith considered confidential and proprietary to the disclosing Party ("**Confidential Information**"). Notwithstanding the foregoing, the following are Confidential Information of Licensor: the terms and conditions (but not the existence) of this Agreement and all Orders, all trade secrets, software, including, without limitation, the Software and Pre-Existing IP, source code, object code, specifications, as well as results of testing and benchmarking of the Software or other services, product roadmap, data and other information of Licensor

and its licensors relating to or embodied in the Software and Pre-Existing IP. Each Party will protect the other's Confidential Information from unauthorized dissemination and use with the same degree of care that each such Party uses to protect its own non-public and confidential information, but in no event less than a commercially reasonable degree of care. Neither Party will use the other's Confidential Information for purposes other than those necessary to directly further the purposes of this Agreement. Neither Party will disclose to third parties the other's Confidential Information without prior written consent of such other Party. Information shall not be considered Confidential Information to the extent, but only to the extent, that the receiving Party can establish that such information (i) is or becomes generally known or available to the public through no fault of the receiving Party; (ii) was in the receiving Party's possession before receipt from the disclosing Party; (iii) is lawfully obtained from a third party who has the right to make such disclosure; (iv) has been independently developed by the receiving Party without use of or reference to any Confidential Information of the disclosing Party; or (v) is required to be disclosed by law provided the receiving Party has, unless legally impermissible, promptly notified the disclosing Party of such requirement and allowed the disclosing Party a reasonable time to oppose such requirement.

## 9. Term and Termination

**9.1 Term.** This Agreement shall take effect on the Effective Date and shall remain in force until the earlier of expiration of all License Periods specified in the Orders or termination in accordance with this Section 9.

**9.2 Termination by Customer.** This Agreement and/or an Order may be terminated by Customer upon 30 days' prior written notice to Licensor, with or without cause; provided, that if such written notice sets forth that the termination is for cause, Licensor shall have 30 days after Licensor's receipt of Customer's written notice to cure, and upon such cure, Customer shall withdraw its written notice of termination. Except as otherwise expressly set forth herein, no termination for any reason shall entitle Customer (or AWS, on Customer's behalf) to a refund of any portion of the fees paid to Licensor for any purchases made pursuant to this Agreement or relieve Customer (or AWS, on Customer's behalf) from its obligation to pay any fees or charges incurred through the effective date of termination, which shall become immediately due and payable.

**Termination by Licensor.** Licensor may, by written notice to Customer, terminate this Agreement or an Order effective immediately if:

- (a) Customer is in breach of its obligations under Section 3 (Software License) or Section 8 (Ownership/Confidentiality) and such breach continues for 5 days after written notification from Licensor of such breach;
- (b) Customer is in breach of any term, condition or provision of this Agreement, which breach, if capable of being cured, is not cured within 30 days after Customer's receipt of Licensor's notice of such breach;
- (c) Customer (i) terminates or suspends its business, (ii) becomes insolvent, admits in writing its inability to pay its debts as they mature, makes an assignment for the benefit of creditors, or becomes subject to control of a trustee, receiver or similar authority, or (iii) becomes subject to any voluntary or involuntary bankruptcy or insolvency proceeding under federal or state statutes; or
- (d) Licensor elects to return Customer's fees in accordance with Section 7.2.

**Effect of Termination.** Sections 1, 5, 6, 8, 9 and 10 shall survive expiration or any termination of this Agreement for as long as necessary to permit their full discharge. On and after the effective date of expiration or termination of this Agreement, all of Customer's rights to the Software, the Pre-Existing IP and other materials provided by Licensor or its Affiliates, granted under this Agreement and its rights to any Support shall immediately cease. No later than 30 days after the date of expiration, termination or discontinuance of this Agreement for any reason whatsoever, Customer shall return or destroy, at Licensor's option, the Software (including the Documentation and any Updates released by Licensor), the Pre-Existing IP and any other materials provided by Licensor or its Affiliates, any other Confidential Information in its possession or control and all copies of any of the foregoing in any medium. Customer shall furnish Licensor with a certificate signed by an authorized officer of Customer verifying that the above has been done.

## 10. Miscellaneous

**10.1 Audit.** Upon 15 days' notice and not more frequently than once per calendar year (unless deficiencies are found, in which case as frequently as is required to ensure that deficiencies are eliminated), Licensor, or its designated agent, may periodically carry out an audit of Customer's facilities and systems to ensure Customer's compliance with the terms of the Agreement. Customer will reasonably cooperate with Licensor in such an exercise and provide Licensor with reasonable access to its facility and systems to enable Licensor's audit. Licensor shall reasonably endeavour not to disrupt Customer's normal business activities and shall perform the audit in a professional manner. If such audit reveals any noncompliance by Customer of this Agreement, Customer shall reimburse Licensor for the costs and expenses of such audit incurred by Licensor and pay Licensor for any use of the Software beyond the scope or number of licenses authorized or granted in the applicable Order at Licensor's then-current list price, and Customer shall promptly cure any such noncompliance; provided, however, that the obligations under this Section 10.1 do not constitute a waiver of Licensor's termination rights or any other rights hereunder.

**10.2 Assignment.** Neither this Agreement nor any rights under this Agreement may be assigned or otherwise transferred by Customer, in whole or in part, whether voluntary or by operation of law, including by way of sale of assets, merger, consolidation or similar transaction, each which shall be considered an assignment for purposes of this section, without the prior written consent of Licensor. Any assignment by Customer without Licensor's prior written consent is null and void. Licensor may, without consent, assign and delegate its rights and obligations under this Agreement without restriction. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

**10.3 Notices.** Any notice required or permitted under this Agreement or required by law must be in writing and must be (i) delivered in person, (ii) sent by first class registered mail, or air mail, as appropriate, or (iii) sent by an internationally recognized overnight air courier, in each case properly posted and fully prepaid to the appropriate address set forth on the first page of this Agreement. Notices shall be considered to have been given at the time of actual delivery in person, 3 business days after deposit

in the mail as set forth above or 1 day after delivery to an overnight air courier service, provided in each case that delivery in fact is affected.

**10.4 Independent Parties.** The Parties will at all times be independent contractors and will so represent themselves to all third parties. Neither Party has granted to the other the right to bind it in any manner whatsoever, and neither Party shall hold itself out as entitled to do the same. Nothing herein will be deemed to empower either Party to be the agent or legal representative of the other nor to constitute the Parties as partners, co-owners, or joint venturers.

**10.5 No Third Party Beneficiary.** This Agreement will not confer any rights or remedies upon any person or entity other than Licensor, Customer and their respective heirs, executors, successors and assigns.

**10.6 Force Majeure/Delays.** Neither Party shall incur any liability to the other Party on account of any loss, claim, damage or liability to the extent resulting from any delay or failure to perform all or any part of this Agreement (except for payment obligations), if and to the extent such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond the control and without any negligence on the part of the Party seeking protection under this Section 10.6. Such events, occurrences, or causes shall include, without limitation, acts of God, strikes, lockouts, riots, acts of war, terrorism, earthquake, fire or explosions, but the inability to meet financial obligations is expressly excluded. Further, in no event shall Licensor be in breach of this Agreement or be responsible for delays in performance of its obligations hereunder to the extent caused by Customer's failure or delay in performing its obligations hereunder or taking such other action or inaction which causes in whole or in part a delay of Licensor's performance.

**10.7 Waiver.** Any waiver of the provisions of this Agreement or of a Party's rights or remedies under this Agreement must be in writing to be effective. Any such waiver shall constitute a waiver only with respect to the specific matter described in such writing and shall in no way impair the rights of the party granting such waiver in any other respect or at any other time. The waiver by either of the Parties hereto of a breach or of a default under any of the provisions of this Agreement shall not be construed as a waiver of any other breach or default of a similar nature, or as a waiver of any of such provisions, rights or privileges hereunder. The rights and remedies herein provided are cumulative and none is exclusive of any other, or of any rights or remedies that any Party may otherwise have at law or in equity. Failure, neglect, or delay by a Party to enforce the provisions of this Agreement or its rights or remedies at any time, shall not be construed and shall not be deemed to be a waiver of such Party's rights under this Agreement and shall not in any way affect the validity of the whole or any part of this Agreement or prejudice such Party's right to take subsequent action.

**10.8 Severability.** If any term, condition, or provision in this Agreement is found to be invalid, unlawful or unenforceable to any extent, the Parties shall endeavor in good faith to agree to such amendments that shall preserve, as far as possible, the intentions expressed in this Agreement. If the Parties fail to agree on such an amendment, such invalid term, condition or provision shall be severed from the remaining terms, conditions and provisions, which shall continue to be valid and enforceable to the fullest extent permitted by law.

**10.9 Integration.** This Agreement contains the entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all communications, representations, understandings and agreements before the Effective Date, either oral or written, between the Parties with respect to said subject matter. This Agreement may not be amended, supplemented or modified except in writing signed by both Parties.

**10.10 Other Documents.** No terms, provisions or conditions of any purchase order, acknowledgement or other business form that Customer may use in connection with the licensing of the Software will have any effect on the rights, duties or obligations of the Parties under, or otherwise modify, this Agreement, regardless of any failure of Licensor (or AWS) to object to such terms, provisions or conditions. Orders are non-cancelable, non-refundable, non-returnable.

**10.11 FCPA/Export.** Customer acknowledges and understands that the Foreign Corrupt Practices Act of 1977 (15 U.S.C. §§ 78dd-1, 78dd-2) ("FCPA") prohibits unlawful payments made to foreign government officials, political parties, and their agents with the intent of influencing or inducing that official to misuse his official position, do or omit to do something in violation of that official's lawful duty, or misuse his or her office for the purposes of obtaining, retaining, or directing business to or for the benefit of Licensor. Customer warrants and represents that neither Customer, nor to the best of its knowledge, Customer's agents, brokers, or other third-parties, have or intend to undertake any act or omission that would contravene the FCPA in connection with this Agreement. Customer further acknowledges and understands that other foreign anti-corruption laws may be applicable to the Parties in connection with this Agreement. Customer warrants and represents that neither Customer, nor to the best of its knowledge, Customer's agents, brokers, or other third-parties, have or intend to undertake any act or omission that would contravene any applicable foreign anti-corruption law, including, but not limited to, the UK Bribery Act of 2010, in connection with this Agreement. In addition, Customer understands that the Software licensed under this Agreement is subject to the export laws and restrictions of the United States of America. Customer shall comply with all applicable export laws, restrictions, national security controls, and regulations of the United States or other applicable foreign agency or authority. Customer hereby agrees that, without express approval of Licensor, pursuant to the issuance of an export license or other approval from the U.S. Department of Commerce, Customer will not reexport or release or allow the reexport or release of any Software, direct product or copy of the Software, or any confidential information related to the Software to a country or national of a country specified in Country Groups D:1, E:1, or E:2 as set forth in 15 C.F.R. Part 740, Supplement No. 1 or to an embargoed country as set forth in Part 746 of the U.S. Export Administration Regulations (or any successor regulations or supplement).

**10.12 U.S. Government Customers.** If Customer is a United States government agency or acquired the license to the Software hereunder pursuant to a government contract or with government funds, then as defined in FAR §2.101, DFAR §252.227-7014(a)(1) and DFAR §252.227-7014(a)(5) or otherwise, all Software provided in connection with this Agreement are "commercial items," "commercial computer software" and/or "commercial computer software documentation." Consistent with DFAR §227.7202 and FAR §12.212, any use, modification, reproduction, release, performance, display, disclosure or distribution thereof by or for

the United States government shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted by the terms of this Agreement. Customer shall ensure that each copy used or possessed by or for the United States government is labeled to reflect the foregoing.

**10.13 Publicity:** Each Party acknowledges that the other Party may desire to use such other Party's name in vendor and customer lists, press releases, product brochures and financial reports indicating that Customer is a customer of Licensor, and each Party agrees that the other Party may use the other Party's name in such a manner, subject, in the case of press releases, to such other Party's prior written consent, which consent shall not be unreasonably withheld.

**10.14 Counterparts.** This Agreement and any attachments hereto and any other agreement, instrument or document associated with and incorporated by reference in this Agreement may be executed in counterparts, each of which so executed shall be deemed to be an original and such counterparts together shall constitute one and the same agreement.

**10.15 Telemetry.** Customer acknowledges Software has telemetric features, which, if enabled, will permit automatic reporting of anonymized Software usage information to Licensor and/or its Affiliates for internal compliance verification purposes. Such telemetric features will be enabled by default and will report non-personal usage information to Licensor and/or its Affiliates. Such information includes core usage statistics, including the number and type of cores and operating environments (e.g. production, test, dev, etc.) dedicated to running the Software. Information reported by the Software's telemetric features also may include the version of Software and operating system(s) used by Customer. Such information will not include personally identifiable information. Licensor agrees that Customers with enabled telemetric features shall be deemed to be in compliance with audit responsibilities set forth herein, and as a result, Licensor agrees to forego in-person audits at Customer's facility for so long as telemetric functions are enabled and no instances of non-compliant usage are reported to Licensor. Customer agrees to notify Licensor if telemetric features are disabled in order to schedule an in-person audit of Customer's facility and systems.

**10.16 Governing Law.** This Agreement shall be interpreted and construed in accordance with the laws of the State of Delaware and the United States of America, without regard to conflict of law principles and excluding the U.N. Convention on Contracts for the International Sale of Goods. The Parties hereby consent to the exclusive jurisdiction of the state or federal court in Boston, Massachusetts, USA, and any courts of appeal therefrom, and waives any objection on the grounds of lack of jurisdiction (forum non conveniens or otherwise) to the exercise of such jurisdiction over it by any such courts for resolution of any disputes arising out of or related to this Agreement.

## **11. Additional Use Rights and Rules**

**11.1 Essential Enterprise Edition** entitles Customer, during the License Period and in accordance with the license grant herein, use of the Essential Enterprise Edition without restriction to the number of users, the quantity of data processed or quantity of data managed. Use of Database Replication in the Essential Enterprise Edition shall be limited to: (i) each Production Cluster not replicating to more than one Standby Cluster and (ii) each Standby Cluster not receiving updates from more than one Production Cluster. In no event shall a license for Essential Enterprise Edition be allowed to use the following: Flexible Replication, XA Transaction, or Geospatial Storage.

**11.2 Developer Edition** Customer, during the License Period and in accordance with the license grant herein, use of the Developer Edition only be used for the purpose of (a) authoring and preparing tests, (b) prototyping and developing Applications that interact and operate with the Software (as developed in accordance with the Documentation) and (c) demonstrating Applications.

**11.3 Cluster Deployment:** During the License Period and in accordance with the license grant herein, all Instances in one Cluster must utilize and run the Essential Enterprise Edition only. For any licenses of Essential Enterprise Edition, Customer shall be able to deploy no more than (a) 9 Instances or (b) 144 Physical Cores or Virtual Cores, combined, of the Essential Enterprise Edition in a single Cluster. Further, Customer shall be able to deploy unlimited licenses in a single Cluster so long as the capacity deployed does not exceed the quantity licensed by the license grant herein. Applications where a Customer or end-user accesses multiple Clusters as part of a single user experience – through federation, proxying or other access – should be counted as if they were in the same Cluster even if the Instances or Clusters of Instances accessed do not share data with each other.

**11.4 Production** licenses may only be used for any Application including, but not limited to, content processing and serving content to Customer's employees, customers and vendors. Customer may permit third party users to use Customer's Applications running on any Customer Equipment for Customer's own business purposes, solely as consistent with Customer's licensed use of the Software. Production licenses can be used in a Test environment.

**11.5 Test** licenses may only be used for the testing of Applications that process and serve content and includes verification of data and code for Customer acceptance, staging, performance or system test. Test licenses may not be used in a Production environment (for purposes of clarity, preparation and enhancement of content in a staging environment before the content is transferred from staging to Production requires a Production license). However, Test licenses may be used in a Development environment.

**11.6 Standby** licenses may only be used to build a Standby Cluster for disaster recovery in the event of a Cluster failover. A Standby Cluster can only serve queries while the Production Cluster it mirrors is inactive. A Standby Cluster can be the target of replication from a Production Cluster, or it can be kept up-to-date by some other mechanism, however Standby licenses cannot be combined with Production licenses within the same Cluster. A Standby Cluster should have the same licensing options as the Production Cluster it mirrors and can only serve queries while the Production Cluster is inactive. For use of Standby licenses with Essential Enterprise Edition, such Standby licenses can only be used to provide failover/recovery to a single Essential Enterprise Edition Production Cluster.