

Progress OpenEdge 12.2 End User License Agreement

READ THIS END USER LICENSE AGREEMENT (“**EULA**”) BEFORE INSTALLING OR USING THE PRODUCT TO WHICH THIS EULA APPLIES. BY ACCEPTING THIS EULA, COMPLETING THE REGISTRATION PROCESS, AND/OR INSTALLING OR USING THE PRODUCT, YOU AGREE ON BEHALF OF YOURSELF AND YOUR COMPANY (IF APPLICABLE) TO THE TERMS BELOW. IF YOU DO NOT AGREE WITH THESE TERMS, OR DO NOT HAVE THE AUTHORITY TO BIND YOUR COMPANY, DO NOT INSTALL, REGISTER FOR OR USE THE PRODUCT, AND DESTROY OR RETURN ALL COPIES OF THE PRODUCT. ONCE YOU HAVE DONE THIS, YOU MAY REQUEST FROM THE POINT OF PURCHASE A FULL REFUND OF THE LICENSE FEES, IF ANY, PAID FOR THE PRODUCT (OR, IF THE PRODUCT IS PROVIDED TO YOU AS A HOSTED SERVICE, A REFUND OF THE PREPAID SERVICE FEES FOR THE REMAINDER OF THE SUBSCRIPTION PERIOD OF THE PRODUCT). SUCH REQUEST MUST BE COMPLETED WITHIN THIRTY (30) DAYS OF DELIVERY OF THE PRODUCT TO YOU. UNLESS OTHERWISE SPECIFIED IN THIS EULA, PROGRESS SOFTWARE CORPORATION IS THE LICENSOR OF THE PRODUCT. THE LICENSOR MAY BE REFERRED TO HEREIN AS “**Licensor**”, “**we**”, “**us**”, or “**our**”. IF YOU ARE AGREEING TO THIS EULA ON BEHALF OF YOURSELF IN YOUR INDIVIDUAL CAPACITY, THEN YOU ARE THE LICENSEE AND YOU MAY BE REFERRED TO HEREIN AS “**Licensee**”, “**you**”, or “**your**”. IF YOU ARE AGREEING TO THIS EULA ON BEHALF OF YOUR COMPANY, THEN YOUR COMPANY IS THE LICENSEE AND ANY REFERENCES TO “**Licensee**”, “**you**”, or “**your**” WILL MEAN YOUR COMPANY.

This EULA includes the following sections:

1. [GENERAL TERMS AND CONDITIONS](#) – *these terms apply to all Products;*
 - 2.A. [TERMS FOR ON-PREMISE PRODUCTS](#) – *these terms apply to Products that you or Permitted Third Parties install on computers;*
 - 2.B. [TERMS FOR HOSTED SERVICES](#) – *these terms apply to Products that we host;*
 3. [PRODUCT FAMILY SPECIFIC TERMS](#) – *these terms apply to **all** Products that are part of the family of Products referenced in this section; and*
 4. [PRODUCT SPECIFIC TERMS](#) – *these terms apply to **specific** Products referenced in this section.*
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1. GENERAL TERMS AND CONDITIONS

1.1. Definitions.

1.1.1. “**Affiliate**” means any legal entity that directly or indirectly controls, is controlled by, or is under common control with you or us. 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.

1.1.2. “**Applicable Laws**” means national, federal, state, and local laws, rules, and regulations including, without limitation, those laws and regulations relating to data privacy and security in each applicable jurisdiction.

1.1.3. “**Authorized Reseller**” means a third party who is not our Affiliate and who is authorized by us or our Affiliate to resell the Product.

1.1.4. “**Authorized User**” means you, your employee or a third-party consultant or agent that you authorize to use the Product for your benefit in accordance with section 1.2.3 (Third Party Use).

1.1.5. “**Documentation**” means any technical instructions or materials describing the operation of the Product made available to you (electronically or otherwise) by us for use with the Product, expressly excluding any user blogs, reviews or forums.

1.1.6. “**Hosted Services**” means computer software program(s), content and related services provided by us on a software-as-a-service basis through computers we or our Affiliates or our respective contractors (including cloud infrastructure suppliers) control.

1.1.7. “**Intellectual Property Rights**” means any and all current and future (a) rights associated with works of authorship, including copyrights, mask work rights, and moral rights; (b) trademark or service mark rights; (c) trade secret rights; (d) patents, patent rights, and industrial property rights; (e) layout design rights, design rights, and other proprietary rights of every kind and nature other than trademarks, service marks, trade dress, and similar rights; and (f) registrations, applications, renewals, extensions, or reissues of any of (a) to (e) , in each case, in any jurisdiction throughout the world.

1.1.8. “**On-Premise Product(s)**” means computer software program(s) provided to you to download, install and use on computer(s) controlled directly or indirectly by you.

1.1.9. “**Order**” means a written or electronic order document entered into between you and us (or our Affiliate or an Authorized Reseller) for the Product. Unless an Order says something different, each Order will be governed by the terms of this EULA and include the name of the Product being licensed and any usage limitations, applicable fees, and any other details related to the transaction.

1.1.10. **“Our Technology”** means any software, code, tools, libraries, scripts, application programming interfaces, templates, algorithms, data science recipes (including any source code for data science recipes and any modifications to such source code), data science workflows, user interfaces, links, proprietary methods and systems, know-how, trade secrets, techniques, designs, inventions, and other tangible or intangible technical material, information and works of authorship underlying or otherwise used to make available the Product, including, without limitation, all Intellectual Property Rights therein and thereto.

1.1.11. **“Permitted Third Party”** has the meaning given in section 1.2.3 (Third Party Use).

1.1.12. **“Product”** means the On-Premise Product(s) or Hosted Services, as applicable, identified in an Order, and any Updates.

1.1.13. **“Update”** means any update, enhancement, error correction, modification or new release to the Product that we make available to you.

1.2. General License Terms, Restrictions and Order of Precedence.

1.2.1. **General License Terms.** The Product is licensed, not sold, to you by us under the terms of this EULA and the Order. The scope of license granted by us to you for the Product is set out in section 3 (Product Family Specific Terms) and section 4 (Product Specific Terms).

1.2.2. **Authorized Users.** Anything your Authorized Users do or fail to do will be considered your act or omission, and you accept full responsibility for any such act or omission to the extent you would be liable if it were your act or omission.

1.2.3. **Third Party Use.** You may allow your agents, contractors and outsourcing service providers (each a **“Permitted Third Party”**) to use the Product(s) licensed to you hereunder solely for your benefit in accordance with the terms of this EULA and you are responsible for any such Permitted Third Party’s compliance with this EULA in such use. Any breach by any Permitted Third Party of the terms of this EULA will be considered your breach.

1.2.4. **Restrictions.** Except as otherwise expressly permitted in this EULA, you will not (and will not allow any of your Affiliates or any third party to):

copy, modify, adapt, translate, or otherwise create derivative works of the Product, Documentation, or any software, services, or other technology of third party vendor(s) or hosting provider(s) that we or our Affiliate engage;

disassemble, decompile or “unlock”, decode or otherwise reverse translate or engineer, or attempt in any manner to reconstruct or discover the source code or underlying structure, ideas, or algorithms of the Product except as expressly permitted by law in effect in the jurisdiction in which you are located;

rent, lease, sell, distribute, pledge, assign, sublicense or otherwise transfer or encumber rights to the Product;

make the Product available on a timesharing or service bureau basis or otherwise allow any third party to use or access the Product;

remove or modify any proprietary notices, legends, or labels on the Product or Documentation;

use or access the Product in a manner that: (i) violates any Applicable Laws; (ii) violates the rights of any third party; (iii) purports to subject us or our Affiliates to any other obligations; (iv) could be fraudulent; or (v) is not permitted under this EULA;

use the Product to develop, test, support or market products that are competitive with and/or provide similar functionality to the Product; or

permit your Affiliates to access or use the Product unless specifically authorized elsewhere in this EULA or the Order.

1.2.5. Limitations on Evaluation or Trial Licenses. If the Product is licensed to you on an evaluation or trial basis, then you may use the Product only for such purposes until the earlier of: (a) the end of the evaluation period, if any, specified in the Order, this EULA or otherwise communicated by us to you at the time of delivery; or (b) the start date of a paid for license to the Product; or (c) termination in accordance with the terms of this EULA. You may not extend the evaluation period by uninstalling and re-installing the Product(s) or by any other means other than our written consent. You must not use the Product in a production environment. You will be required to pay for a license for the Product at our then applicable license price if you continue to use the Product, whether in a production or non-production environment, after the evaluation license expires or terminates, and the terms and conditions of the EULA in effect at that time will apply to your continued use of the Product. A Product licensed to you on an evaluation or trial basis may be subject to one or more usage limits specified in section 3 (Product Family Specific Terms), section 4 (Product Specific Terms), the Order or otherwise communicated at the time of delivery (including posting of such limits at the location where you download the Product for evaluation). We may, at our sole discretion, decide whether to offer any maintenance and support for the Product during the evaluation period, and to include any conditions or limits on such maintenance and support. You may not circumvent any technical limitations included in the Product licensed to you on an evaluation or trial basis.

1.2.6. Redistribution. If the Order or section 3 (Product Family Specific Terms) or section 4 (Product Specific Terms) grants you the express right to redistribute or offer access to all or a portion of the Product (“Redistributables”), then, in conjunction with any such grant, you must comply with any limitations or requirements specified in the Order, section 3 (Product Family Specific Terms) or section 4 (Product Specific Terms), as applicable, and you must distribute or offer access to the Redistributables subject to a license agreement or terms of use between you and each third party receiving or accessing the Redistributables (“your customer”) that: (a) protects our interests consistent with the terms contained in this EULA, (b) prohibits your customer from any further distribution of the Redistributables (unless expressly permitted pursuant to section 3 (Product Family Specific Terms) or section 4 (Product Specific Terms)), (c) includes a limitation of damages clause that, to the maximum extent permitted by applicable law, disclaims on behalf of us, our Affiliates or our or their respective licensors, suppliers or

Authorized Resellers, liability for any and all damages, whether direct, special, incidental or consequential damages, (d) contains terms substantially similar to those in subparts (a) through (g) of section 1.2.4 (Restrictions), section 1.5.1 (Export Compliance) and section 1.5.2 (U.S. Government Customers), and (e) includes a notice substantially similar to section 1.2.7 (Third Party Notices).

1.2.7. Third Party Notices. The Product may contain or be accompanied by certain third-party components which are subject to additional restrictions. These components, are identified in, and subject to, special license terms and conditions which, in the case of On-Premise Product(s), are set out in the “readme.txt” file, the “notices.txt” file, or the “Third Party Software” file accompanying the Product or portions thereof, and in the case of Hosted Services, are set out in the third-party license agreement or notices that comes with the third-party component or is otherwise provided on the web page on which such third-party component is made available (“**Special Notices**”). The Special Notices include important licensing and warranty information and disclaimers. Unless otherwise expressly stated for a given third-party component, all such third-party components may be used solely in connection with the use of the Product subject to and in accordance with the terms and conditions of this EULA and the Special Notices. In the event of conflict between the Special Notices and the other portions of this EULA, the Special Notices will take precedence (but solely with respect to the third-party component(s) to which the Special Notice relates).

1.2.8. Order of Precedence between EULA and Order. If there is any conflict between the terms and conditions in the Order and the terms and conditions of this EULA, or if the Order changes any of the terms of this EULA, the terms and conditions of the Order will apply, except if the Order is between you and an Authorized Reseller, or the Order is issued/generated by you. In the case where the Order is between you and an Authorized Reseller, the terms of the Order will apply subject to the following: (a) any terms and conditions in the Order imposing obligations on the Authorized Reseller that are in addition to or different from the obligations we have to you pursuant to this EULA will be born solely by the Authorized Reseller and our obligations to you and limits on our liability will be governed solely by the terms and conditions of this EULA and (b) any terms and conditions that conflict with or would otherwise alter any of the following under this EULA will have no effect unless expressly agreed to in a written instrument executed by us: our ownership rights, yours and our confidentiality obligations, your export compliance obligations, limitations on your rights as a U.S. Government customer (if applicable), our audit rights, restrictions on your right to assign, our publicity rights or governing law and jurisdiction. In cases where the Order is issued/generated by you, the terms and conditions of Section 1.19.2. of this EULA, governing a purchase order or other document you supply in connection with this EULA, shall apply to such Order.

1.2.9. Order of Precedence within EULA. If there is any conflict among the terms and conditions of this EULA, or if a section changes the terms of another section within this EULA, the order of precedence will be as follows: first, section 4 (Product Specific Terms) (if any); second, section 3 (Product Family Specific Terms) (if any); third, section 2.A (Terms for On-Premise Products) and/or section 2.B (Terms for Hosted Services), as applicable; and fourth and finally, section 1 (General Terms and Conditions).

1.3. License Types.

1.3.1. Overview of License Types. The license type for the Product will, unless otherwise specified in this EULA, be one of the following license types: perpetual, term or subscription. This will be confirmed in the Order or will be the default license type listed in section 3 (Product Family Specific Terms) or section 4 (Product Specific Terms).

1.3.2. Perpetual License Type. Your license to use the Product will continue in perpetuity unless earlier terminated in accordance with the terms of this EULA.

1.3.3. Term License Type. Your license to use the Product will continue until the expiration of the term identified in the Order unless earlier terminated in accordance with the terms of this EULA. If we continue to make the Product generally available to our customers, you may purchase a new term license for the Product from us or our Authorized Reseller.

1.3.4. Subscription License Type. Your license to use the Product will continue until the expiration of the subscription period identified in the Order unless earlier terminated in accordance with the terms of this EULA. The procedure for renewing your license to the Product is set out in section 3 (Product Family Specific Terms) or section 4 (Product Specific Terms). If you upgrade your subscription to the Product, the upgrade will take effect immediately and you will be charged and must pay the applicable fee, and the term of your then-current subscription period may be extended, as described at the time you upgrade. You may not downgrade a subscription to the Product.

1.4. Our Business Principles. We will apply the principles set out in our Code of Conduct and Business Ethics (published on our website at <http://investors.progress.com/governance.cfm>) in our performance under this EULA.

1.5. Export Compliance and U.S. Government Customers.

1.5.1. Export Compliance. Export laws and regulations of the United States and any other relevant local export laws and regulations apply to the Products. You agree that such export control laws, including, without limitation, the U.S. Export Administration Act and its associated regulations, govern your use of the Product (including technical data), and you agree to comply with all such export laws and regulations (including “deemed export” and “deemed re-export” regulations). You agree that no data, information and/or Product (or direct product thereof) will be exported, directly or indirectly, in violation of these laws, or will be used for any purpose prohibited by these laws including, without limitation, nuclear, chemical, or biological weapons proliferation, or development of missile technology.

1.5.2. U.S. Government Customers. If the Product is being acquired by or on behalf of the U.S. Government or by a U.S. Government prime contractor or subcontractor (at any tier), then the U.S. Government’s rights in the Product will be only as set out herein. The Product and Documentation are “commercial items” as that term is defined at 48 C.F.R. 2.101, consisting of “commercial computer software” and “commercial software documentation” as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through

227.7202-4, all U.S. Government end users acquire the Product and such Documentation with only those rights set out herein.

1.6. IP Ownership and Feedback.

1.6.1. IP Ownership. The Product, Our Technology, Documentation, and all other current or future intellectual property developed by us or our Affiliates, and all worldwide Intellectual Property Rights in each of the foregoing and all Updates, upgrades, enhancements, new versions, releases, corrections, and other modifications thereto and derivative works thereof, are the exclusive property of us or our Affiliates or our or their licensors or suppliers. Except for the rights and licenses expressly granted herein, all such rights are reserved by us and our Affiliates and our or their licensors and suppliers. All title and Intellectual Property Rights in and to the content that may be accessed through use of the Product is the property of the respective content owner and may be protected by applicable copyright or other intellectual property laws and treaties. This EULA grants you no rights to use such content.

1.6.2. Feedback. If you provide us any ideas, thoughts, criticisms, suggested improvements or other feedback related to Our Technology (collectively “Feedback”) you own the Feedback and you grant to us a worldwide, royalty-free, fully paid, perpetual, irrevocable license to use, reproduce, modify, translate, distribute, perform, display, import, sell, license, offer for sale, make, have made and otherwise exploit the Feedback in any form, media, or technology, whether now known or hereafter developed, and to allow others to do the same without restriction or obligation of any kind, on account of confidential information, intellectual property rights or otherwise, and may incorporate into our products or services any service, product, technology, enhancement, documentation or other development (“Improvement”) incorporating or derived from any Feedback with no obligation to license or to make available the Improvement to you or any other person or entity. This is true whether you provide the Feedback through use of the Product or through any other method of communication with us, unless we have entered into a separate agreement with you that provides otherwise.

1.7. Maintenance.

1.7.1. Our Maintenance and Support Policies. If we offer and you purchase maintenance and support for the Product, then it will be provided in accordance with our then current maintenance and support policies for the applicable Product in effect at the time of purchase. You may access our maintenance and support policies by clicking on the applicable Product family link located at <https://www.progress.com/support>.

1.7.2. Maintenance and Support for Perpetual or Term License Types. For Perpetual and Term License Types, unless otherwise expressly stated by us in the Order, first year annual maintenance and support (if offered by us) is required for the Product and starts on the date the Product is delivered. Thereafter, you may choose to purchase annual maintenance and support (if offered by us). If you do not purchase renewal maintenance and support services for a Product, then you will not receive any maintenance and support services for that Product and will have no entitlement to any benefits of maintenance and support services including, bug fixes, patches, upgrades, enhancements, new releases or technical support. If you want to reinstate lapsed

maintenance and support services on a Product, and we offer reinstatement to our customers, then you may re-instate maintenance and support services by paying the then-current fee, plus a reinstatement fee for the lapsed maintenance and support period in accordance with our maintenance and support reinstatement policies then in effect.

1.7.3. Maintenance and Support for Subscription License Type. If the license type for the Product licensed to you is the subscription license type, then maintenance and support (if offered by us) is included in the subscription fees for each subscription period.

1.8. Fees and Taxes.

1.8.1. Payment Terms and Taxes. All fees payable to us are payable in the currency specified in the Order, or if no currency is specified, in United States Dollars, are due within 30 days from the invoice date and, except as otherwise expressly specified herein, are non-cancellable and non-refundable. We may charge you interest at a rate of 1.5% per month (or the highest rate permitted by law, if less) on all overdue payments. You agree to pay any sales, value-added or other similar taxes imposed by applicable law that we must pay on such fees, except those based on our income. Invoices may be issued by our Affiliate. If you and we agree that you will pay by credit card, you will provide us with valid and updated credit card information and you authorize us to store such information and bill such credit card for all fees applicable: (a) at the time that you order the Product and (b) at the time of any renewal or upgrade.

1.8.2. Fees for Renewal Subscription Licenses. If the license type for the Product licensed to you is the Subscription License Type then each renewal subscription will be calculated at the then-current price offered for the Product at the time of renewal.

1.8.3. Fees for Renewal Maintenance Terms. If the license type for the Product licensed to you is a Perpetual license or Term license, then, unless otherwise specified in the Order or in section 3 (Product Family Specific Terms) or section 4 (Product-Specific Terms), the fee for an optional annual renewal maintenance and support term for the Product will be calculated based on the annual rate applicable for the initial maintenance and support term or immediately preceding renewal maintenance and support term, whichever is applicable, plus a rate increase, if applicable, calculated at the lesser of any standard price increase or CPI (or equivalent index) after applying any increases as a consequence of our Lifetime Support policy, if applicable.

1.8.4. Orders between You and Our Authorized Reseller. Notwithstanding the above terms of this section 1.8 (Fees and Taxes), if you purchased your license to the Product and/or maintenance and support from an Authorized Reseller, then the fees will be set out in the Order between you and the Authorized Reseller. The Authorized Reseller may be responsible for billing and/or collecting payment from you and if so, the billing and collection terms agreed to between you and the Authorized Reseller may differ from the terms set out in this section 1.8 (Fees and Taxes).

1.8.5. No Reliance on Future Availability of any Product or Update. You agree that you have not relied on the future availability of any Product or Updates in your purchasing decision or in entering into the payment obligations in your Order.

1.9. Warranties.

1.9.1. Authority. Each party represents and warrants that it has the legal power and authority to enter into this EULA.

1.9.2. Product Compliance with Documentation. We warrant to you that, for six (6) months from delivery (in the case of an On-Premise Product) or for the duration of the license (in the case of a Hosted Service), the Product will comply with the applicable Documentation in all material respects. Your exclusive remedy, and our sole liability, with respect to any breach of this warranty will be for us to use commercially reasonable efforts to promptly correct the non-compliance (provided that you notify us in writing within the warranty period and allow us a reasonable cure period). If we, at our discretion, reasonably determine that correction is not economically or technically feasible, we may terminate your license to the Product and provide you a full refund of the fees paid to us with respect to the Product (in the case of an On-Premise Product) or a refund of the prepaid fees for the unused portion of the license period (in the case of a Hosted Service). Delivery of additional copies of, or Updates to, the Product will not restart or otherwise affect the warranty period.

1.9.3. Warranty Exclusions. The warranty specified in section 1.9.2 (Product Compliance with Documentation) does not cover any Product provided on an unpaid evaluation or trial basis, or defects to the Product due to accident, abuse, service, alteration, modification or improper installation or configuration by you, your Affiliates, your or their personnel or any third party not engaged by us.

1.9.4. Warranty Disclaimers. EXCEPT FOR THE WARRANTIES EXPRESSLY STATED IN THIS SECTION 1.9 OR THE ADDITIONAL WARRANTIES (IF ANY) EXPRESSLY STATED IN SECTION 3 (PRODUCT FAMILY SPECIFIC TERMS) OR SECTION 4 (PRODUCT SPECIFIC TERMS), THE PRODUCT, DOCUMENTATION AND OUR TECHNOLOGY ARE PROVIDED “AS IS”, WITH ALL FAULTS, AND WE DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NONINFRINGEMENT, AVAILABILITY, ERROR-FREE OR UNINTERRUPTED OPERATION, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. TO THE EXTENT THAT WE MAY NOT AS A MATTER OF APPLICABLE LAW DISCLAIM ANY IMPLIED WARRANTY, THE SCOPE AND DURATION OF SUCH WARRANTY WILL BE THE MINIMUM PERMITTED UNDER APPLICABLE LAW.

1.10. Indemnification.

1.10.1. Our Indemnification Obligation.

1.10.1.1. Intellectual Property Infringement. We will defend you, and your officers, directors, employees, and agents from and against any and all third party claims, lawsuits, and proceedings alleging that your use of the Product, in accordance with the terms and conditions of this EULA, constitutes a direct infringement or misappropriation of such third party’s patent, copyright or

trade secret rights (the “**IP Claim**”), and we will indemnify you for damages finally awarded against you by a court of competent jurisdiction with respect to the IP Claim.

1.10.1.2. Exceptions. We will not indemnify you to the extent that the alleged infringement or misappropriation results from (a) use of the Product in combination with any other software or item not supplied by us; (b) failure to promptly implement an Update provided by us pursuant to 1.10.1.3 (Our Options); (c) modification of the Product not made or provided by us; or (d) use of the Product in a manner not permitted by this EULA. We also will not indemnify you if we notify you of our decision to terminate this EULA, and the license to the Product granted hereunder, in accordance with section 1.10.1.3 (Our Options) and you have not ceased all use of the Product within thirty (30) days of such notification.

1.10.1.3. Our Options. If a final injunction is, or we reasonably believe that it could be, obtained against your use of the Product, or if in our opinion the Product is likely to become the subject of a successful claim of infringement, we may, at our option and expense, (a) replace or modify the Product so that it becomes non-infringing (provided that the functionality is substantially equivalent), (b) obtain for you a license to continue to use the Product, or (c) if neither (a) nor (b) are reasonably practicable, terminate this EULA on thirty (30) days’ notice and, if the Product was licensed to you on a Perpetual License or Term License basis, refund to you the license fee paid to us for the Product less an amount for depreciation determined on a straight-line five year (or actual term if shorter) depreciation basis with a commencement date as of the date of delivery of the Product, or if the Product was licensed to you on a Subscription License basis, refund to you the unused portion of the fees paid in advance to us for the then-current subscription period for the Product. **THE INDEMNIFICATION PROVISIONS SET OUT IN THIS SECTION 1.10.1 STATE OUR ENTIRE LIABILITY AND YOUR SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY INFRINGEMENT OR ALLEGED INFRINGEMENT BY US OF ANY INTELLECTUAL PROPERTY RIGHTS OR PROPRIETARY RIGHTS IN RESPECT OF THE PRODUCT OR ITS USE.**

1.10.2. Your Indemnification Obligation.

1.10.2.1. Indemnification for Third Party-Claims. To the extent permitted by applicable law, you will defend us and our Affiliates, and our and their respective officers, directors, employees, and agents from and against any and all third party claims, lawsuits, and proceedings that arise or result from (a) your breach of this EULA, (b) your use, distribution and/or licensing of the Redistributables, if applicable, except to the extent it arises from an IP Claim covered under section 1.10.1 above, or (c) your failure or alleged failure to comply with Applicable Laws or any violation of a third party’s rights in connection with your use of the Product (each a “**Third-Party Claim**” and collectively “**Third-Party Claims**”) and you will indemnify for damages finally awarded by a court of competent jurisdiction with respect to any Third-Party Claim.

1.10.3. Control of the Defense or Settlement. For any indemnification obligation covered in section 1.10.1, “**Indemnifying Party**” means us, “**Indemnified Party**” means you, and “**Claim**” means an IP Claim. For any indemnification obligation covered in section 1.10.2, “**Indemnifying Party**” means you, “**Indemnified Party**” means us, and “**Claim**” means a Third-Party Claim. The Indemnified Party must provide the Indemnifying Party with prompt

written notice of a Claim; however, the Indemnified Party's failure to provide or delay in providing such notice will not relieve the Indemnifying Party of its obligations under this section except to the extent the Indemnifying Party is prejudiced by the Indemnified Party's failure or delay. The Indemnified Party will give the Indemnifying Party full control of the defense and settlement of the Claim as long as such settlement does not include a financial obligation on or admission of liability by the Indemnified Party. If the Indemnified Party does not do so, then the Indemnified Party waives the Indemnifying Party's indemnification obligations under section 1.10.1 or 1.10.2, as applicable. The Indemnified Party will reasonably cooperate in the defense of the Claim and may appear, at its own expense, through counsel reasonably acceptable to the Indemnifying Party.

1.11. Confidentiality.

1.11.1. Confidentiality Obligations. Except as otherwise provided herein, each party agrees to retain in confidence all information and know-how transmitted or disclosed to the other that the disclosing party has identified as being proprietary and/or confidential or should reasonably be understood to be confidential given the nature of the information and the circumstances surrounding its disclosure, and agrees to make no use of such information and know-how except under the terms of this EULA. However, neither party will have an obligation to maintain the confidentiality of information that (a) it received rightfully from a third party without an obligation to maintain such information in confidence; (b) was known to the receiving party prior to its disclosure by the disclosing party; (c) is or becomes a matter of public knowledge through no fault of the receiving party; or (d) is independently developed by the receiving party without use of the confidential information of the disclosing party. Further, either party may disclose confidential information of the other party as required by governmental or judicial order, provided such party gives the other party prompt written notice prior to such disclosure (unless such prior notice is not permitted by applicable law) and complies with any protective order (or equivalent) imposed on such disclosure. You will treat any source code for the Product as our confidential information and will not disclose, disseminate or distribute such materials to any third party without our prior written permission. Each party's obligations under this section 1.11 will apply during the term of this EULA and for five (5) years following termination of this EULA, provided, however, that (i) obligations with respect to source code will survive forever and (ii) trade secrets will be maintained as such until they fall into the public domain.

1.11.2. Product Benchmark Results. You acknowledge that any benchmark results pertaining to the Product are our confidential information and may not be disclosed or published without our prior written consent. This provision applies regardless of whether the benchmark tests are conducted by you or us.

1.11.3. Remedies for Breach of Confidentiality Obligations. Each party acknowledges that in the event of a breach or threat of breach of this section 1.11, money damages will not be adequate. Therefore, in addition to any other legal or equitable remedies, the non-breaching party will be entitled to seek injunctive or similar equitable relief against such breach or threat of breach without proof of actual injury and without posting of a bond.

1.12. Data Collection and Personal Data.

1.12.1. Data Collection through use of the Product. THE PRODUCT MAY INCLUDE FEATURE(S) THAT (A) GATHER PRODUCT ACTIVATION, USAGE AND/OR ENVIRONMENT INFORMATION, (B) IDENTIFY TRENDS AND/OR BUGS, (C) COLLECT USAGE STATISTICS, AND/OR (D) TRACK OTHER DATA RELATED TO YOUR USE OF THE PRODUCT, AS FURTHER DESCRIBED IN THE CURRENT VERSION OF OUR PRIVACY POLICY AVAILABLE AT <https://www.progress.com/legal/privacy-policy>. BY YOUR ACCEPTANCE OF THE TERMS OF THIS EULA AND/OR USE OF THE PRODUCT, YOU AUTHORIZE THE COLLECTION, USE AND DISCLOSURE OF THIS DATA FOR THE PURPOSES PROVIDED FOR IN THIS EULA AND/OR THE PRIVACY POLICY.

1.12.2. Additional Data Collection Terms. Depending on the Product licensed to you, this EULA may contain additional data collection terms in section 3 (Product Family Specific Terms) or section 4 (Product Specific Terms) and/or, if we are hosting the Product, in section 2.B (Terms for Hosted Services).

1.12.3. Your Personal Data. If you determine that you will be supplying us with your Personal Data (as defined in the Data Processing Addendum referenced below) for us to process on your behalf, in the provision of maintenance and support services or hosting services (if the Product licensed to you is a Hosted Service) or during the course of any audits we conduct pursuant to section 1.14 (Audit), you may submit a written request at privacy@progress.com for the mutual execution of a Data Processing Addendum substantially in the form we make available at <https://www.progress.com/docs/default-source/progress-software/data-processing-addendum.pdf> and we will enter into such Data Processing Addendum with you. To the extent there is any conflict between this EULA and such Data Processing Addendum, the Data Processing Addendum will prevail with respect to our handling and processing of your Personal Data.

1.13. Limitation of Liability and Disclaimer of Certain Types of Damages.

1.13.1. Limitation of Liability. EXCEPT FOR A PARTY'S INDEMNIFICATION OBLIGATIONS SET OUT IN THIS EULA OR A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS PURSUANT TO SECTION 1.11 (CONFIDENTIALITY), OR YOUR MATERIAL VIOLATION OF OUR INTELLECTUAL PROPERTY RIGHTS OR OF THE LICENSE RESTRICTIONS SET OUT IN THIS EULA, TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL EITHER PARTY'S LIABILITY FOR ALL COSTS, DAMAGES, AND EXPENSES ARISING OUT OF OR RELATED TO THIS EULA WHETHER BASED UPON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE AT LAW EXCEED, IN THE AGGREGATE, THE FEES PAID TO US FOR THE PRODUCT AND/OR SERVICE THAT IS THE SUBJECT OF THE CLAIM, PROVIDED, HOWEVER, THAT IF THE FEES PAID FOR SUCH PRODUCT AND/OR SERVICE ARE PAID ON A RECURRING BASIS, THEN THE NOT TO EXCEED LIMIT WILL BE THE FEES PAID TO US FOR THE PRODUCT AND/OR SERVICE DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE THE CLAIM AROSE. OUR AFFILIATES AND LICENSORS, AND THE SUPPLIERS TO US, OUR AFFILIATES OR LICENSORS, WILL, TO THE EXTENT PERMITTED BY APPLICABLE LAW, HAVE NO LIABILITY TO YOU OR TO ANY OTHER PERSON OR ENTITY FOR DAMAGES,

DIRECT OR OTHERWISE, ARISING OUT OF THIS EULA, INCLUDING, WITHOUT LIMITATION, DAMAGES IN CONNECTION WITH THE PERFORMANCE OR OPERATION OF OUR PRODUCTS OR OUR PERFORMANCE OF SERVICES.

1.13.2 Disclaimer of Certain Types of Damages. Except for a party's indemnification obligations set OUT in this EULA or your material violation of our intellectual property rights or the license restrictions set OUT in this EULA, to the extent permitted by applicable law, in no event will either party, its Affiliates or its licensors or their respective suppliers be liable for any special, indirect, consequential, incidental, punitive or tort damages arising in connection with this EULA or either party's performance under this EULA or the performance of Our Products, or FOR any damages resulting from loss of use, loss of opportunity, loss of data, LOSS OF REVENUE, loss of profits, or loss of business, even if the party, its Affiliates, its licensors, or any of their respective suppliers have been advised of the possibility of those damages.

1.14. Audit. We may install and use automated license tracking, management and/or enforcement solutions with the Product, which you may not disrupt or alter. You will maintain records in connection with this EULA and the use of the Product and any Updates and/or services provided hereunder. Such records will include at a minimum the number of licenses purchased and being used by you. At our expense and with reasonable written notice to you, we or a third party appointed by us may audit the records, and if necessary and as applicable, the systems on which the Product or any Update is installed for the sole purpose of ensuring compliance with the terms of this EULA. We will have the right to conduct audits as necessary. These audits may be conducted on site at a location where you have installed the Product, remotely from our offices, or a combination of both, if applicable to the Product. On-site audits will be conducted during regular business hours, and neither on-site nor remote audits will interfere unreasonably with your business operations. You agree to share with us copies of all records referenced herein, as well as Product log files and other information reasonably requested by us promptly following such request, but in no event more than five (5) business days following receipt of our written request (or such longer period, if applicable, that we specify in the written request). We will treat all such information obtained or accessed by us during the audit as confidential information pursuant to section 1.11 (Confidentiality) for use by us only as necessary to ensure compliance with and enforcement of the terms of this EULA. If any audit reveals that you have underpaid license, maintenance and support or subscription fees, you will be invoiced for all such underpaid fees based on our list price in effect at the time the audit is completed. If the underpaid fees exceed five percent (5%) of the fees previously paid by you, then you will also pay our reasonable costs of conducting the audit and enforcement of this EULA.

1.15. Termination.

1.15.1. Termination for Breach. We may terminate this EULA by written notice at any time if you do not comply with any of your obligations under this EULA and fail to cure such failure to our satisfaction within thirty (30) days after such notice. This remedy will not be exclusive and will be in addition to any other remedies which we may have under this EULA or otherwise.

1.15.2. Effect of Termination. Upon expiration of your license term to the Product (if applicable) or earlier termination of this EULA, your license to access and/or use the Product and/or distribute the Redistributables (if applicable) will terminate. You must immediately cease use of the Product and destroy all copies of the Product in your possession (and required any Permitted Third Parties to do the same). Any licenses you have granted to the Redistributables in accordance with the terms and conditions of this EULA will, unless otherwise specified in section 3 (Product Family Specific Terms) or section 4 (Product Specific Terms), survive termination of this EULA.

1.15.3. Survival. Any provisions of this EULA containing licensing restrictions, warranties and warranty disclaimers, confidentiality obligations, limitations of liability and/or indemnity terms, audits rights, and any term of this EULA which, by its nature, is intended to survive termination or expiration, will remain in effect following any termination or expiration if this EULA, as will your obligation to pay any fees accrued and owing to us as of termination or expiration.

1.16. Assignment. You may not, without our prior written consent, assign or novate this EULA, any of your rights or obligations under this EULA, or the Products or any of our Confidential Information, in whole or in part, by operation of law, sale of assets, merger or otherwise, to any other party, including any parent, subsidiary or affiliated entity. Your Change of Control will constitute an assignment for purposes of the preceding sentence. A “Change of Control” will include, but not be limited to, any merger, consolidation, amalgamation, reorganization or sale, transfer or exchange of the capital stock or equity interests of you in a transaction or series of transactions which results in the holders of your capital stock or equity interests holding less than 50% of the outstanding capital stock or equity interests immediately following such transaction(s).

1.17. Choice of Law. This EULA is governed by the laws of the Commonwealth of Massachusetts, U.S.A., without regard to the conflict of laws principles thereof. If any dispute, controversy, or claim cannot be resolved by a good-faith discussion between the parties, then it will be submitted for resolution to a state or federal court in Boston, Massachusetts, USA, and the parties hereby irrevocably and unconditionally agree to submit to the exclusive jurisdiction and venue of such court. The Uniform Computer Information Transactions Act and the United Nations Convention on the International Sale of Goods will not apply to this EULA.

1.18. Publicity. You agree that we may, in our sole discretion, publicize your use of the Product, and you license to us (and our Affiliates and necessary sublicensees) any intellectual property rights required to allow us (and our Affiliates and necessary sublicensees) to use your name, trade name(s), trademark(s), service mark(s), logo(s) and domain name(s) in connection with such publicity.

1.19. Miscellaneous.

1.19.1. Notices. Notices of termination, material breach, your insolvency or an indemnifiable claim (“**Legal Notices**”) must be clearly identified as Legal Notices and sent via overnight courier or certified mail with proof of delivery to the following addresses: For us: 14 Oak Park Drive, Bedford, MA 01730, Attention: General Counsel. For you: your address set out in the

Order. Legal Notices sent in accordance with the above will be effective upon the second business day after mailing. Either party may change its address for receipt of notices upon written notice to the other party.

1.19.2. Entire Agreement. This EULA, and any terms expressly incorporated herein by reference, will constitute the entire agreement between you and us with respect to the subject matter of this EULA and supersedes all prior and contemporaneous communications, oral or written, signed or unsigned, regarding such subject matter. Use of any purchase order or other document you supply in connection with this EULA will be for administrative convenience only and all terms and conditions stated therein will be void and of no effect. Except as otherwise expressly contemplated in this EULA, this EULA may not be modified or amended other than in writing signed by you and us.

1.19.3. Severability. If any provision of this EULA is terminated or held by a court of competent jurisdiction to be invalid, illegal, or unenforceable, the remainder of this EULA will remain in full force and effect.

1.19.4. Waiver. Failure or delay in exercising any right, power, privilege or remedy hereunder will not constitute a waiver thereof. A waiver of default will not operate as a waiver of any other default or of the same type of default on future occasions.

1.19.5. English Language. This EULA has been drawn up in English at the express wish of the parties. Le présent contrat a été rédigé en anglais à la demande expresse des parties.

1.19.6. Force Majeure. Neither you nor we will be liable for any delay or failure to take any action required under this EULA (except for payment) due to any cause beyond the reasonable control of you or us, as the case may be, including, but not limited to unavailability or shortages of labour, materials, or equipment, failure or delay in the delivery of vendors and suppliers and delays in transportation.

1.19.7. Our Use of Our Affiliates. We may, at our discretion, engage one or more of our Affiliates in the fulfilment of our obligations, including, our obligations for delivery of the Product to you and/or the provision of any maintenance and support services.

2.A. TERMS FOR ON-PREMISE PRODUCTS

2.A.1. Delivery. Unless otherwise specified by us, On-Premise Product(s) will be provided to you via electronic delivery, and delivery is deemed complete when the On-Premise Product(s) is/are made available at the electronic software download site specified by us and you are e-mailed or otherwise provided with any necessary instructions, password and/or license keys required for you to be able to access, download and install the On-Premise Product(s). If we provide the On-Premise Product(s) on physical media, shipping terms will be FOB shipping point.

2.A.2. **Updates.** Each Update to an On-Premise Product replaces part or all of the On-Premise Product (or earlier Update) previously licensed to you (“**Replaced Product**”) and will terminate such previously licensed Replaced Product to the extent replaced by the Update; provided, however, that you may continue to operate the Replaced Product for up to ninety (90) days from delivery of the Update to allow you to complete your implementation of the Update. You must cease all use of the Replaced Product at the end of the ninety (90) day period. Each Update will be subject to the terms and conditions of the license agreement accompanying the Update which must be accepted by you at the time you download or install the Update. If you do not agree to the license agreement accompanying the Update, do not download or install the Update.

2.A.3. **Cloud Environment.** You may upload the On-Premise Product(s) licensed to you pursuant to this EULA onto a cloud instance supplied by a third party, provided that the operation of the On-Premise Product(s) in the cloud instance complies with all license model restrictions and usage limitations applicable to the On-Premise Product(s). You may also allow the third party to upload, install, operate and/or use the On-Premise Products on the cloud instance, provided that the third party’s access to and use of the On-Premise Products is solely for your benefit in accordance with the terms of this EULA. The third party will be considered a Permitted Third Party, and you will be responsible for the Permitted Third Party’s compliance with this EULA in accordance with section 1.2.3 (Third Party Use).

2.B. TERMS FOR HOSTED SERVICES THIS SECTION IS NOT APPLICABLE

3. PRODUCT FAMILY SPECIFIC TERMS

This section specifies terms and conditions that are applicable to the following On-Premise Products, as made generally available by us to our customers: (1) all Progress OpenEdge products (excluding Progress OpenEdge Developer Kit), (2) all Progress DataDirect ODBC, JDBC, ADO.NET, SequeLink, OpenAccess, Hybrid Data Pipeline and Data Integration products; and (3) all Progress Corticon products.

Default License Type for each of the above-referenced On-Premise Products: Perpetual

3.1. Product Family Definitions.

Any defined term used in this section 3 (Product Family Specific Terms) but not defined herein will have the meaning ascribed to it in section 1 (General Terms and Conditions) or section 2 (Terms for On-Premise Products).

3.1.1. “**Client Device**” means any input technology that allows you to access the Product, including but not limited to a workstation, a personal computer, a PDA device, a cellular phone, a tablet, a laptop or other device that is operated by an individual.

3.1.2. “**Container**” means a software package that relies on virtual isolation to deploy and run on the same Server multiple Product instances, components of the Product, or the applications utilizing the Product, while accessing a shared operating system kernel.

3.1.3. “**Core**” means a core processor of a CPU as allocated by you made up of an independent processor combined onto a single integrated circuit or silicon chip, in both a virtualized and/or non-virtualized environment, and regardless of whether used in a production or non-production (e.g., test, development) environment.

3.1.4. “**CPU**” means a central processing unit, also known as a processor or microprocessor. It can contain multiple cores in both virtualized and/or non-virtualized environments.

3.1.5. “**Disaster**” means any unplanned event or condition that renders you unable to use an application or database for its intended computer processing and related purposes.

3.1.6. “**Named User**” means a single individual, Non-Human Operated Device or Process.

3.1.7. “**Non-Human Operated Device**” means a device that is not operated by an individual including, but not limited to, a temperature device, a production line bar code scanner, or a tracking device.

3.1.8. “**Platform**” means a specific combination of the hardware and the operating system, a change to either would constitute a platform change.

3.1.9. “**Process**” means any automated process that is not initiated by a Client Device or a Non-Human Operated Device and includes, without limitation, automated controls and background jobs.

3.1.10. “**Server**” means a logical computer (can be a physical hardware or a virtual machine) with one or more CPUs on which the Product resides, along with the applications utilizing the Product, and which can be accessed by other computers. If the Product is installed on a Container, such Container is treated as a separate Server.

3.1.11. “**Site**” means a single building or campus of buildings sharing the same postal address.

3.1.12. “**Use Case**” means a description in the Order of one or more limitation(s) on the way the Product may be used by you. Such limitation(s) may include, but are not limited to, use of the Product only for a specific project, application, line of business, purpose of use or group of users.

3.2. License Grant. Subject to the terms and conditions contained in this EULA, including all Orders and License Addenda (as defined below), we grant to you a non-exclusive, non-transferable, limited, personal license (without the right to sublicense) to use the Product identified in the Order. We also grant you a non-exclusive, non-transferable, limited, personal license (without the right to sublicense) to use the Documentation. The license model applicable to the Product license granted to you will be identified in the Order and described in section 3.4 (Product Family License Models) or section 4.2 (Product-Specific License Models).

3.3. Product Family Applicable License Restrictions. The following license restrictions apply in addition to those set forth in section 1.2.3 (Restrictions):

3.3.1. Internal Use; No Affiliate Use. Your use of the Product and Documentation is limited to internal use within your company. The Product and Documentation may not be used by your Affiliates unless specifically authorized in the Order. Use will be in accordance with this EULA and any additional terms, if any, set out in any Order or additional agreement executed by us and you in connection with this EULA which specifically states the terms thereof will be in addition to or in lieu of any of the terms set out in this EULA (each a “**License Addendum**” and collectively, the “**License Addenda**”).

3.3.2. No Use by Others. Except as otherwise expressly permitted in this EULA, you may not allow the Product to be accessed, used or possessed by another party. For these purposes, the term “use” will include, without limitation, direct or indirect use via thin-client or web-based remote access software which but for the use thereof would have required a copy of the Product to be installed or used locally by that user.

3.3.3. No Time Sharing or Similar Services. You will have no right to use the Product to provide outsourced services, or facility management services or to act as or operate a service bureau or provide information, data processing, subscription or hosting services for another party.

3.4. Product Family License Models. This section specifies license models that may be applicable to one or more Products. Note that not all license models are available for all Products.

3.4.1. CPU License. A CPU License grants you the right to run the Product, or an application which can access the Product, on a single CPU, on a single Server and on a single Platform, where such CPU contains only one Core. If the CPU contains more than one Core, then you must either purchase a Core License for the Product or, if no Core License model is available for the Product, then each Core in the CPU will count as one (1) CPU. Additional CPU License(s) are required for each CPU on a Server that runs the Product, including, without limitation, Servers configured for disaster recovery, load balancing, clustering, development, testing and reporting. A CPU License may not be transferred from one Server or Platform to another.

3.4.2. Named User/Seat License. A Named User or Seat License grants you the right to designate a Named User to access and use the Product or access and use an application which can access the Product. You must be able to identify and count each Named User. A Named User License is a multi-server license in that it is not limited by Core, CPU or Server count, but the Product must be used on a single Platform. A Named User may not be designated concurrently on different computers or devices or shared by multiple users. A Named User does not have to be logged on to the Product to be counted as a Named User. A Named User License designation may be transferred from one Named User to another provided that the original Named User no longer requires and is no longer permitted access to the Product. The foregoing transfer right will not affect the assignment prohibition set forth in section 1.16 (No Assignment). All Named Users must be bound to the terms and conditions of this EULA.

3.4.3. Server/Machine License. A Server or Machine License grants you the right to install and use the Product, or an application which can access the Product, on a single Server and on a single Platform. Additional Server or Machine License(s) are required for each Server that runs the Product including, without limitation, Servers configured for disaster recovery, load balancing, clustering, development, testing and reporting. A Server or Machine License may not be transferred from one Server or Platform to another.

3.4.4. Site License. A Site License grants you the right to install and use the Product, or an application which can access the Product, in any Server at a single Site and on any device (wherein the device can be a Client Device, a Non-Human Operated Device or a Process) operated by users who share the same principal place of business as the Site location, regardless of whether the Product, or an application which can access the Product is used in a virtualized and/or non-virtualized environment.

3.4.5. Application Specific License. If the Order lists a specific application authorized for use with the Product, or if you obtained the Product in conjunction with a software application provided by a third party, the Product is licensed for use only with that application. Use with any other application/product is strictly prohibited. You will also be subject to the license terms of the appropriate license model for the Product (e.g., CPU License, Core License, Named User/Seat License, etc.) designated in the Order. In no event do we make any representations or warranties, express, implied or arising by custom or trade usage, regarding a third party's application and assume no liability or responsibility for such application.

3.4.6. Developer License. A Developer License limits your access to and use of the Product to internal application development and support purposes only. If the license is for components of the Product only, then this right is limited to those components. You will also be subject to the license terms of the appropriate license model for the Product (e.g., CPU License, Core License, Server/Machine License, etc.) designated in the Order. A Developer License may not be transferred.

3.4.7. Disaster Recovery License. A Disaster Recovery License will only be used by you for the sole purpose of application recovery in the event a system fails or crashes or the Product or database files become corrupt. In that case, a Disaster Recovery License grants you the right to use the Product for a period not to exceed ninety (90) days ("**D/R Deployment Period**"). You will notify us in writing within five (5) business days of the commencement of the D/R Deployment Period. You will also be subject to the same quantity limits and license terms of the appropriate license model for the Product (e.g., CPU License, Core License, Server/Machine License, etc.) designated in the Order. A Disaster Recovery License may be transferred from one Server or CPU to another with prior notice to us so long as such change is permitted by the underlying license model. No Disaster Recovery License is required for a switch from a primary Server to a secondary Server so long as the primary Server is permanently disabled. However, a Disaster Recovery License is required for any other temporary reassignment between the primary Server and any other Server. The foregoing transfer right will not affect the assignment prohibition set forth in section 1.16 (No Assignment).

3.4.8. Evaluation License. An Evaluation License grants you the right to use the Product solely for evaluation, demonstration, prototyping, testing and/or proof of concept purposes in accordance with the terms set forth in section 1.2.5 (Limitations on Evaluation or Trial Licenses), and not in conjunction with the development or deployment of any software application. No commercial product development work is authorized. **YOU UNDERSTAND AND ACKNOWLEDGE THAT THE PRODUCT LICENSED TO YOU PURSUANT TO AN EVALUATION LICENSE CONTAINS A DISABLING DEVICE THAT WILL AUTOMATICALLY DISABLE THE PRODUCT THIRTY (30) DAYS FROM INSTALLATION OR AT THE END OF SUCH LONGER OR SHORTER PERIOD OF TIME AS MAY BE SPECIFIED IN AN ORDER OR AGREED BY YOU AND US IN WRITING.**

3.4.9. Testing and Staging License. A Testing and Staging License grants you the right to use the Product for internal quality assurance testing purposes only and you may not deploy the Product in a production environment. You will also be subject to the license terms of the appropriate license model for the Product (e.g., CPU License, Core License, Server/Machine License, etc.) designated in the Order. A Testing and Staging License may not be transferred.

3.5. General Usage Limitations

3.5.1. Templates, Samples and/or Accelerators.

3.5.1.1. No Warranties. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS EULA, INCLUDING WITHOUT LIMITATION ANYTHING TO THE CONTRARY IN SECTION 1.9 (WARRANTIES), ANY TEMPLATES, SAMPLES OR ACCELERATORS THAT ARE LOCATED IN THE PRODUCT AND DESCRIBED IN THE DOCUMENTATION AS A SAMPLE, TEMPLATE OR ACCELERATOR, ARE PROVIDED SOLELY ON AN “AS IS” BASIS WITHOUT WARRANTY OF ANY KIND. WE MAKE NO WARRANTIES WITH RESPECT TO SUCH TEMPLATES, SAMPLES AND/OR ACCELERATORS, EXPRESS, IMPLIED, OR ARISING BY CUSTOM OR TRADE USAGE, AND SPECIFICALLY MAKE NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

3.5.1.2. No Maintenance and Support. Any maintenance and support services offered by us for the Product will not include maintenance and support for the above-mentioned templates, samples or accelerators, as may be configured by you for your own implementation. You will be solely responsible for the use and configuration of said templates, samples and/or accelerators.

3.5.1.3. Ownership of Templates, Samples and/or Accelerators. We retain all ownership rights in and to the above-mentioned templates, samples and/or accelerators, and any modifications thereto or derivatives thereof, in accordance with section 1.6.1 (IP Ownership).

3.5.2. Optional Components. The Product licensed and delivered to you may include on the media or in the electronically delivered files, as applicable, components, features or other Products for which a separate license purchase and license key(s) or control code(s) are required. You are permitted to use only the Product(s) and/or components thereof for which you have ordered and received a valid license key or control code.

3.5.3. Use Case and/or User Group Restrictions. If the Order indicates that the Product may be used for specific Use Case(s) or by specific user group(s), the Product may only be used for the Use Case(s) and/or by the user group(s) listed in the Order.

3.5.4. Products Available via a Container Method. If we offer a download option for the Product in a container image then the Product will be provided in a container image that may also contain third party product(s) as identified in the Special Notices accompanying the Product, and subject to the additional licensing terms referenced in the Special Notices. Notwithstanding anything to the contrary in this EULA, we make no representations or warranties and assume no indemnification obligations in regard to such third party product(s), its/their operation or its/their security. User modifications to the version of the third party product(s) provided by us in the container image, even if permitted under the applicable license referenced in the Special Notices, may result in errors or instability in performance of the Product which are not covered by us under warranty or maintenance terms. You are responsible for obtaining, at your own expense, any required licenses from the supplier of the container technology to deploy the container image that contains the Product and the above-referenced third-party products and any such deployment of the Product must comply with the terms and conditions of this EULA.

3.5.5. Technical Preview Features. Product(s) may include features that are identified as a “Technical Preview”, and if included, such features are documented in the Documentation such as the Product Releases Notes. We are not obligated to provide any maintenance, technical or other support for the Technical Preview features, but may, from time to time, provide technical support and/or Updates to the Technical Preview features at our sole discretion. All such Updates will be subject to the terms and conditions of this EULA, including, without limitation, the terms and conditions set forth in this section. **NOTWITHSTANDING ANYTHING TO THE CONTRARY IN IN SECTION 1.9 (WARRANTIES), TECHNICAL PREVIEW FEATURES, ANY UPDATES THERETO AND ANY RELATED TECHNICAL SUPPORT SERVICES ARE PROVIDED “AS IS” WITHOUT WARRANTY OF ANY KIND. WE MAKE NO WARRANTIES WITH RESPECT TO THE TECHNICAL PREVIEW FEATURES, ANY UPDATES THERETO, OR ANY RELATED TECHNICAL SUPPORT SERVICES, WHETHER EXPRESS, IMPLIED, OR ARISING BY CUSTOM OR TRADE USAGE, AND SPECIFICALLY MAKE NO WARRANTY OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, TITLE OR NONINFRINGEMENT.**

4. PRODUCT-SPECIFIC TERMS

This section specifies terms and conditions that are applicable to Products included in the Progress® OpenEdge product line.

4.1. Product Specific Definitions. Any defined term used in this section 4 (Product-Specific Terms) but not defined herein will have the meaning ascribed to it in section 1 (General Terms and Conditions), section 2 (Terms for On-Premise Products) or section 3 (Product Family Specific Terms).

4.1.1. “**Access Agent**” means a user (or Non-Human Operated Device) that (i) cannot be uniquely identified and/or (ii) can only access the Product or an application which accesses the Product for less than two (2) hours a week.

4.1.2. “**Instance**” means an image of the Product that is created by executing the Product installation or by duplicating an existing Instance.

4.2. Product Specific License Models. This section specifies license models that may be applicable to one or more Products in the Progress® OpenEdge product line. Note that not all license models are available for all Products.

4.2.1. **Access Agent License.** An Access Agent License grants you the right to install and use the Product, or access and use an application which can access the Product by an Access Agent, on a single Platform. This Access Agent License should always be purchased in combination with a Named User and/or Registered Device License; except for environments where none of the users or the Non-Human Operated Devices that access the Product or an application that accesses the Product may be identified and/or accesses the Product or the application for two or more hours per week.

4.2.2. **Concurrent Device License (also may be known or referred to as a “Concurrent User License”).** A Concurrent Device License grants you the right to install and use the Product, or access and use an application which can access the Product, on a single Server and on a single Platform. A Concurrent Device may be a Client Device, a Non-Human Operated Device or a Process. You may have in use at any given time a maximum number of Concurrent Devices accessing the Product, or accessing an application which can access the Product, as purchased under the Concurrent Device License. In addition, under this model, you are required to license the Concurrent Devices per Server, so that there is an associated Concurrent Device License dedicated to each Server that runs the Product including, without limitation, Servers configured for disaster recovery, load balancing, clustering, development, testing and reporting. For example, if your Concurrent Device License permits a maximum of 100 Concurrent Devices, and you direct 50 Concurrent Devices to Server A and 50 Concurrent Devices to Server B, you would have to purchase an additional 50 Concurrent Device License for Server B. A Concurrent Device License may not be transferred from one Server or Platform to another.

4.2.3. **Core License.** A Core License grants you the right to run the Product on a single Core, on a single Server. The total number of Cores on the Server may not exceed the total number licensed to you. Additional Core License(s) are required for each Core of a Server on which the Product runs, including, without limitation, Servers configured for disaster recovery, load balancing, clustering, development, testing and reporting.

4.2.4. **Registered Device License (also may be known or referred to as “Registered Client License”).** A Registered Device License grants you the right to designate a specific device (a “**Registered Device**”) to access and use the Product or access and use an application which can access the Product. You must be able to identify and count each Registered Device. A Registered Device may be a Client Device, a Non-Human Operated Device or a Process. The Registered Device License cannot be used to account for, and the Product may not be used by, unknown

users. A registered Device License is a multi-server license in that it is not limited by Core, CPU or Server count, but the Product must be used on a single Platform and may not be used concurrently on different computers or devices or shared by multiple devices. A Registered Device does not have to be logged on to the Product to be counted as a Registered Device. A license right designation may be transferred from one Registered Device to another provided that the original Registered Device is no longer permitted access to the Product. The foregoing transfer right will not affect the assignment prohibition set forth in section 1.16 (No Assignment).

4.2.5. Server/Machine Unlimited User License. A Server or Machine Unlimited User License is no longer a valid license and, if you previously licensed the Product under this model, then you are required to relicense under a current licensing model if any of the circumstances described in this section apply. Under the Server or Machine Unlimited User license, you had the right to install and use the Product on a specific combination of machine/server, vendor operating system and site. If there is a change to any of these elements, the license is no longer valid and a new license needs to be purchased for the Product. Due to the specific grant of this license, a Server or Machine Unlimited User License may not be transferred from one Server or Platform to another.

4.2.6. Instance license. An Instance License grants you the right to install and use one (01) Instance of the Product, or an application which can access the Product. An Instance License is not limited by Core, CPU or Server count. If more than one (01) Instance is running per one (01) or multiple Servers without limitation, including uses for disaster recovery, load balancing, clustering, development, testing and reporting, additional Instance License(s) will be required for each additional Instance.

4.2.7. Specific Availability of Some License Models. Unless otherwise provided in this EULA or in any specific Order, Machine License, CPU License and Access Agent License models are available only to certain products of the Progress® OpenEdge product line for versions 11.7 and lower or for subsequent releases provided to you as updates of previous license if you were granted the rights to those certain products under any of those license models on or prior February 15, 2019.

4.3. Product-Specific Usage Limitations.

4.3.1. ABL Source Code. You may utilize any unencrypted Advanced Business Language (“ABL”) source code contained in the Product for any purpose. The ABL source code may change without notice, and we make no representations regarding the ABL source code with regard to its use outside of the Product and will have no responsibility for such outside use by you.

4.3.2. Progress® OpenEdge® Business Process Modeler. We may, at our discretion, make the Progress® OpenEdge® Business Process Modeler software (“**Business Modeler Software**”) available to our customers on a no charge “AS IS” basis. If we make Business Modeler Software available to you in accordance with the preceding sentence and you download the Business Modeler Software from our electronic software delivery site or otherwise obtain the Business

Modeler Software from us or our Authorized Reseller, then you will have a non-exclusive, non-transferable, royalty-free, perpetual, limited license to use the Business Modeler Software without limitation on license model or quantity but subject to all other terms and conditions of this EULA. We are not obligated to provide any maintenance, technical or other support for the Business Modeler Software, but may, from time to time, provide technical support and/or Updates to the Business Modeler Software at our sole discretion. All such Updates will be subject to the terms and conditions of this EULA, including, without limitation, the terms and conditions set forth in this section. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN IN SECTION 1.9 (WARRANTIES), THE BUSINESS MODELER SOFTWARE, ANY UPDATES THERETO AND ANY RELATED TECHNICAL SUPPORT SERVICES ARE PROVIDED “AS IS” WITHOUT WARRANTY OF ANY KIND. WE MAKE NO WARRANTIES WITH RESPECT TO THE BUSINESS MODELER SOFTWARE, ANY UPDATES THERETO, OR ANY RELATED TECHNICAL SUPPORT SERVICES, WHETHER EXPRESS, IMPLIED, OR ARISING BY CUSTOM OR TRADE USAGE, AND SPECIFICALLY MAKE NO WARRANTY OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, TITLE OR NONINFRINGEMENT.

4.3.3. Progress® OpenEdge® Add On Products.

4.3.3.1. If the Product identified in the Order is (i) Progress® OpenEdge® Transparent Data Encryption, (ii) Progress® OpenEdge® Multi-Tenant Tables, (iii) Progress® OpenEdge® Replication for Enterprise, (iv) Progress® OpenEdge® Replication for Workgroup, (v) Progress® OpenEdge® Replication Plus for Enterprise, (vi) Progress® OpenEdge® Replication Plus for Workgroup, (vii) Progress® OpenEdge® Management, (viii) Progress® OpenEdge® Table Partitioning, or (ix) Progress® OpenEdge® Change Data Capture (each referred to herein as an “**OpenEdge Add On Product**”), then you must, as a pre-requisite, have a valid license for a Progress® OpenEdge® database product that allows production use of said database product and the OpenEdge Add On Product license model (as identified in the Order) and license unit quantity (as also identified in the Order) must be the same as the license model and license unit quantity applicable for said database product. If the OpenEdge Add On Product is Progress® OpenEdge® Replication for Enterprise or Progress® OpenEdge® Replication Plus for Enterprise, then the database product referenced in the preceding sentence must be the Progress® OpenEdge® Enterprise RDBMS product. If the OpenEdge Add On Product is (i) Progress® OpenEdge® Replication for Workgroup or (ii) Progress® OpenEdge® Replication Plus for Workgroup, then the database product referenced in the first sentence must be the Progress® OpenEdge® Workgroup RDBMS product.

4.3.3.2. If the OpenEdge Add On Product identified in the Order is (i) a Progress® OpenEdge® Replication product or (ii) a Progress® OpenEdge® Replication Plus product, then, in addition to the product-specific terms set forth in section 4.3.3.1 above, the following applies: the replicated database may be used for Disaster recovery, including failover and standby, and may be used for application recovery in the event a system fails or crashes or the application or database files become corrupt as a result of a Disaster.

4.3.3.3. If the OpenEdge Add On Product identified in the Order is Progress® OpenEdge® Management, then, in addition to the product-specific terms set forth in section 4.3.3.1 above, the

following applies: you may use the OpenEdge Add On Product and Documentation solely to configure, monitor and manage your OpenEdge resources, databases, system resources, network resources, file resources, log data, or any other assets or resources in accordance with the Documentation.

4.3.3.4. If the OpenEdge Add On Product identified in the Order is Progress® OpenEdge® Table Partitioning, then, in addition to the product-specific terms set forth in section 4.3.3.1 above, the following applies: you must, as a pre-requisite, have a valid license for version 11.4 or higher of Progress® OpenEdge® database product.

4.3.4. **Progress® Application Server for OpenEdge® - Development.** If the Product identified in the Order is Progress® Application Server for OpenEdge® - Development, then you may use such Product solely for the purposes of internal development and testing of applications that utilizes Progress® Application Server for OpenEdge® - Development. You may not use Progress® Application Server for OpenEdge® - Development in a production environment.

4.3.5. **Progress® OpenEdge® Authentication Gateway.**

4.3.5.1. If the Product identified in the Order is Progress® OpenEdge® Authentication Gateway, you may not use Progress® OpenEdge® Authentication Gateway for any purpose other than for authenticating users, including but not limited to use as a general-purpose Web server or application server.

4.3.5.2. If the Product identified in the Order is Progress® Application Server for OpenEdge® - Development, then you may use such Product for the purposes of internal development and testing of applications that utilize Progress® OpenEdge® Authentication Gateway. You may not use Progress® OpenEdge® Authentication Gateway capabilities supplied with Progress® Application Server for OpenEdge® - Development in a production environment.

4.3.6. **Progress® OpenEdge® Pro2™ Products.** If the Product identified in the Order belongs to the Progress® OpenEdge® Pro2™ line of products (“**Pro2 Product**”), then you may receive additional Product(s) in conjunction with such Pro2 Product (“**Additional Product(s)**”). Such Additional Product(s) may only be used with or as part of the Pro2 Product and may not be used in any other manner. If the license unit type identified for the Pro2 Product in the Order is a “Site” license, then the Pro2 Product and the Additional Product(s) will be subject to the Site License limitations set forth in section 3.2.9 (Site License). Furthermore, the Additional Product(s) may have a unit quantity limitation specified in the Order. Notwithstanding the unit type of “Site” specified in the Order, the unit quantity limitation for the Additional Product(s) will be deemed to mean the total number of Client Devices, Non-Human Operated Devices or Processes operating the Additional Product(s) either located at the Site or used by users with a principal business address at the Site. Machine License model is available for Pro2 Product and can be identified in the Order.

4.3.7. **Progress® OpenEdge® Pro Dump/Load-Single Use.** If the Product identified in the Order is the Single Use version of the Progress® OpenEdge® Pro Dump/Load, then you may only use the Product for a single iteration of a dump and load of your database(s) and any

associated databases. Additional use of the Product to repeat the dump and load in the foregoing manner or to perform maintenance tasks requires additional licensing. Progress® OpenEdge® Pro Dump/Load is only available for versions 11.7 and lower of the Progress® OpenEdge product line or for subsequent releases provided to you as updates of previous license if you were granted the rights to this product on or prior February 15, 2019.

4.3.8. Telerik® UI for WinForms. Certain Product(s) may include a trial license to the Telerik UI for WinForms product. You acknowledge that if the Product licensed to you includes such trial license, then your right to install and use the trial license of the Telerik UI for WinForms product is governed by the terms and conditions of the End User License Agreement for Progress Telerik UI for WinForms located in the “readme.txt” file, the “notices.txt” file, or the “Third Party Software” file accompanying the Product.

4.3.9. Kendo UI® in Progress® OpenEdge® Business Process Server or Kendo UI® in Progress® OpenEdge® Management. If the Product identified in the Order is Progress OpenEdge Business Process Server or Progress OpenEdge Management, then the Product will include the base configuration of Kendo UI. You acknowledge that your right to use the Kendo UI product is governed by the terms and conditions of the End User License Agreement for Progress Kendo UI located in the “readme.txt” file, the “notices.txt” file, or the “Third Party Software” file accompanying the Product. You further acknowledge that your use of the Kendo UI product, all portions thereof, will be limited to use solely with the Product and, more specifically, solely within an OpenEdge Business Process Management or OpenEdge Management portal in the Product.

4.4. Redistributables. Subject to the terms and conditions of this EULA and the restrictions and exceptions, if any, set forth in the applicable file header, we grant you a non-exclusive, non-transferable, royalty free, limited license to reproduce and distribute those files, if any, in the Product specifically identified as “Redistributable Code” in the file header. Your license to reproduce and distribute the Redistributable Code is subject to the limitations and conditions set forth in section 1.2.5 (Redistribution) as well as the following additional limitations and conditions: (i) you distribute the Redistributable Code complete and unmodified, and only bundled as part of the software developed by you (“**Application**”) and (ii) you do not use our name, logo, or trademarks to market your Application. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN IN SECTION 1.9 (WARRANTIES), REDISTRIBUTABLE CODE, ANY UPDATES THERETO AND ANY RELATED TECHNICAL SUPPORT SERVICES ARE PROVIDED “AS IS” WITHOUT WARRANTY OF ANY KIND. WE MAKE NO WARRANTIES WITH RESPECT TO THE REDISTRIBUTABLE CODE, ANY UPDATES THERETO, OR ANY RELATED TECHNICAL SUPPORT SERVICES, WHETHER EXPRESS, IMPLIED, OR ARISING BY CUSTOM OR TRADE USAGE, AND SPECIFICALLY MAKE NO WARRANTY OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, TITLE OR NONINFRINGEMENT. You agree not to permit further distribution of the Redistributable Code by your customers except you may permit further redistribution of the Redistributable Code by your distributors to your end-user customers if your distributors only distribute the Redistributable Code in conjunction with, and as part of, your Application.

4.5. Renewal of Subscription Licenses. Notwithstanding anything in the contrary in this EULA or in the Quote, if the Product was licensed to you under the Subscription License Type then the license will not auto renewal and for each mutually agreed subscription renewal the fees will be calculated at the then-current price offered for the Product at the time of renewal.

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