

**GENERAL TERMS AND CONDITIONS FOR CONSULTANCY,
SOFTWARE LICENSE, MAINTENANCE AND CLOUD SERVICES****1 GENERAL PROVISIONS**

- 1.1. These general terms and conditions of contract (hereinafter referred to as **"General Conditions"** or **"this Agreement"**), together with any special terms and conditions of contract contained (i) in a statement of work accepted by the customer (hereinafter referred to as the **"Customer"**) or (ii) in a contractual offer approved in writing (hereinafter referred to as the **"Order Form"**), govern (i) the supply of professional services of IT consultancy; (ii) the use of any PROGRESS software solution; (iii) the supply of maintenance services related to any software solution; (iv) the use of the cloud service, offered by Progress Software Development GmbH, with registered office in Italy, Julius-Durst-Str. 100, I-39042 Brixen (hereinafter referred to as **"PROGRESS"** or **"Supplier"** or **"Licensor"**).
- 1.2. The acceptance of these General Conditions published and available on the website [www.progress-psd.com] is a necessary requirement for the provision and use of the above-mentioned services and software solutions offered and provided by PROGRESS.
- 1.3. These General Conditions enter into force on the date of signature by both parties of a Statement of Work or Order Form (hereinafter referred to as the **"Commencement Date"**).
- 1.4. By accepting the General Conditions, the Customer declares to have read, understood and accepted all contractual clauses contained herein and undertakes to read any changes, additions and/or updates to these General Conditions that will be adopted in the future by PROGRESS and made available to the Customer at the same time.
- 1.5. PROGRESS reserves the right to change, integrate or vary the General Conditions by including such variations in any contractual offer, statement of work or Order Form.
- 1.6. Any different or additional terms or conditions proposed by the Customer, even by means of pre-printed forms or in any other form, or in any case referred to by the Customer in its own documents, shall have no effect with respect to PROGRESS unless expressly accepted in writing by registered letter with return receipt or certified e-mail (hereinafter, **"PEC"**).
- 1.7. Without prejudice to the above, these General Conditions modify the general terms and conditions of contract that may already be applied to the Customer with reference to the form and object of the contract.
- 1.8. The General Conditions govern contractual relations between PROGRESS and Customer unless derogation is provided for in writing by special terms and conditions.
- 1.9. In these General Conditions the following definitions apply:
 - (i) **"Business Day(s)"** means Monday to Friday, excluding any public holidays in South Tyrol-Italy;
 - (ii) **"Cloud Service"** means (i) the third-party services and any software or other materials described in Order Form, and (ii) any ancillary services provided by Progress in connection with such services, as described in the Order Form;
 - (iii) **"Consultant(s)"** any member of the Supplier's Team who is identified in a Statement of Work;
- (iv) **"Customer Data"** means any content, materials, data and information that authorized users enter into the production system of the Cloud Service or that Customer derives from its use of and stores in the Cloud Service.
- (v) **"Damage"** means losses, costs, expenses, liabilities or damages (including interest thereon, if any) suffered or incurred, directly, by a Party in connection with the Services or the Deliverables, whether as a result of breach of contract, breach of statutory duty, tort (including negligence), or other act or omission by that Party;
- (vi) **"Deliverables"** means all documents, products and materials developed by the Supplier, its consultants and employees in relation to the Services in any form, including computer programs, data, reports and specifications (including drafts);
- (vii) **"Documentation"** means Licensor's documentation, delivered to Customer, describing features, functions and operation instructions of Software;
- (viii) **"Fees"** means the fees as set out in the Statement of Work or Order Form signed by the Customer;
- (ix) **"Intellectual Property Rights"** means patents, utility models, rights to inventions, copyright and neighbouring and related rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
- (x) **"License"** means Perpetual License or Subscription, as specified in the Order Form;
- (xi) **"Maintenance Services"** means the provision of help desk service, error correction and access to ongoing development of the Software as further described in Section 4;
- (xii) **"Modification"** means a change to the Software that changes the delivered source code or an enhancement to the Software that is made using Licensor's or Software tools or utilizing or incorporating Licensor's intellectual property or proprietary material;
- (xiii) **"Order Form"** means the statement of work entered into between Customer and Licensor for either a perpetual license or annual subscription of the Software Package ordered by Customer and procured by PROGRESS. The Order Form identifies the licensed Software, license fees, Maintenance Services and related fees and other information necessary for the delivery and use of the Software Package;
- (xiv) **"Perpetual License"** means a permanent licensing, allowing Customer to use the Software Package indefinitely;
- (xv) **"Service Desk Portal"** means the on-line ticketing system used by Customer and its designees to obtain Maintenance Services from Licensor, submitting tickets, messages, incident reports or any other communication or correspondence. Service Desk Portal is also referred to as "help desk", "service desk", "ticket system";

- (xvi) **“Services”** means the services to be provided by the Supplier under these General Conditions, and as described in a Statement of Work.
- (xvii) **“Software”** means any single Software Package specified in the Statement of Work.
- (xviii) **“Software Package”** means:
 - i. all software solutions specified in the agreed upon Order Form hereto, developed by Licensor (including by its parent, affiliates or subsidiaries) and delivered to Customer;
 - ii. any new releases thereof made generally available pursuant to general Maintenance Services, provided by Licensor in accordance with Section 4. of these General Conditions (Maintenance Services);
 - iii. any complete or partial copies of any of the foregoing.
- (xix) **“Statement of Work”** means a specific document describing Services to be supplied and Deliverables to be delivered including the applicable Consultant, the timeframe and financial conditions;
- (xx) **“Subscription”** means a time-limited licensing, allowing Customer to use the Software Package only during the period of time defined in the Order Form, Maintenance Services included;
- (xxi) **“Supplier’s Team”** means the all employees, approved subcontractors and consultants which it potentially engages in relation to Services and/or who maintain a business relation to Supplier;
- (xxii) **“Specification”** means:
 - i. the list of requirements on the Software specified in connection with the implementation services set out in the Order Form;
 - ii. descriptions concerning the Software in the Documentation or otherwise provided to Customer by the Licensor;
 - iii. generally applied norms and criteria for corresponding products and services as those to be supplied by the Licensor; and
 - iv. the general requirements that the functionality and performance of the Software is better than that of the current solution used by the Customer.
- (xxiii) **“VAT”** means value added tax.

2 CONSULTANCY SERVICES

2.1 COMMENCEMENT AND DURATION

- 2.1.1 The Supplier shall provide the Services, the duration of a Statement of Work and any extended period as mutually agreed in writing among the parties.
- 2.1.2 Each Service that will be provided and invoiced shall be described in the Statement of Work

2.2 SUPPLIER’S RESPONSIBILITIES

- 2.2.1 The Supplier shall provide the Services and deliver the Deliverables to the Customer in accordance with Section 2 (Consultancy Services) of these General Conditions and the Statement of Work and shall allocate sufficient resources to the Services to enable it to comply with the obligation.
- 2.2.2 The Supplier shall meet the performance timelines or dates specified in the Statement of Work. If the Supplier fails to do so due solely to the faults of the Supplier, the Customer may (without prejudice to any other rights it may have):
 - (i) terminate the Statement of Work, in whole or in part, in accordance with Section 9 of these General Conditions;
 - (ii) refuse to pay for the implementation services fees and other applicable fees as charged by the Supplier for the delay period.
- 2.2.3 The Supplier shall:
 - (i) Observe, and ensure that the Supplier’s Team observe, all health and safety rules and regulations and any other reasonable security requirements that apply at the Customer’s premises. The Customer reserves the right to refuse the Supplier’s Team access to the Customer’s premises, which shall only be given to the extent necessary for the performance of the Services;
 - (ii) notify the Customer as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Services; and
 - (iii) before the date on which the Services are to start, obtain, and at all times maintain, all necessary licences, permits, visas and consents and comply with all relevant legislation in relation to the Services at the Supplier’s own costs;
 - (iv) If new member is joining the Supplier’s Team, support the costs of onboarding of new individuals due to replacing a sick or non-performing individual.

2.3 CUSTOMER’S OBLIGATIONS

- 2.3.1 The Customer shall:
 - (i) co-operate with the Supplier in all matters relating to the Services;
 - (ii) provide such access to the Customer’s premises and data, and such office accommodation and other facilities as may reasonably be requested by the Supplier and agreed with the Customer in writing in advance, for the purposes of the Services;

- (iii) provide such information and assistance (or cause others to provide) as the Supplier may reasonably request and the Customer considers reasonably necessary, in order to carry out the Services in a timely manner, and ensure that it is accurate in all material respects and confirms that the provision of information to the Supplier will not infringe any copyright or any other third party rights;
- (iv) inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises,
- (v) pay the charges in accordance to clause 2.5 hereunder.

2.4 CHANGES TO SCOPE OF THE SERVICES

2.4.1 If either Party requests a change to the scope or execution of the Services, the Supplier shall, within a reasonable time (and in any event not more than five (5) Business Days after receipt of the Customer's request or after the Customer's receipt of the Supplier's request, as the case may be), provide a written estimate to the Customer of:

- (i) the likely time required to implement the change;
- (ii) any necessary variations to the Supplier's charges arising from the change;
- (iii) the likely effect of the change on the Services; and
- (iv) any other impact of the change on this Agreement and the Statement of Work.

2.4.2 If both Parties consent to a proposed change, the change shall be made only after agreement of the necessary variations to the Supplier's charges, the Services and any other relevant clauses of these General Conditions.

2.4.3 If the Supplier requests a change to the scope or execution of the Services, in order to comply with any applicable safety or statutory requirements, and such changes do not materially affect the nature, scope of, or charges for the Services, the Customer shall not unreasonably withhold or delay consent to it. Unless the Supplier's request was attributable to the Customer's non-compliance with the Customer's obligations, neither the Fees, the Services or any other terms of these General Conditions shall vary as a result of such change.

2.5 CHARGES AND PAYMENT TERMS

2.5.1 In consideration of the provision of the Services by the Supplier, the Customer shall pay the charges as set out in the rate card agreed in the Statement of Work.

2.5.2 The charges payable for the Services shall be calculated in accordance with the Supplier's hourly rates, as follows:

- (i) The Supplier's fees for each individual person are calculated based on an hourly rate, with work being billed for each hour or part thereof. The minimum billing increment is set at half an hour.

(ii) all charges quoted to the Customer shall be exclusive of VAT, which the Supplier shall add to its invoices at the appropriate rate (if any);

(iii) the Supplier shall ensure that the Consultant complete time sheets recording time spent on the Statement of Work, and, subject to the written approval of them by the Customer, the Supplier shall use such time sheets to calculate the charges covered by each monthly invoice referred to in clause 2.5.2 (iv) hereunder; and

(iv) the Supplier shall invoice the Customer monthly in arrears for its charges (together with VAT where appropriate) for the month concerned, calculated as provided in this clause 2.5.2 (v) and clause 2.5.3. Each invoice shall set out the time spent by each member of the Consultant and provide a detailed breakdown of any expenses and materials, accompanied by the relevant receipts.

2.5.3 Any hourly rate contained in the rate card agreed in the Statement of Work excludes: (a) the cost of hotel, subsistence, and any other ancillary expenses reasonably and properly incurred by the Consultant and approved by the Customer in connection with the Services on-site. Such expenses, be invoiced by the Supplier at cost; (b) VAT, which the Supplier shall add to its invoices at the appropriate rate (if any).

2.5.4 The Customer shall pay each undisputed invoice which is properly due and submitted to it by the Supplier, within thirty (30) days end of month.

2.5.5 The Supplier shall maintain complete and accurate records of the time spent by the Supplier in providing the Services in such form as the Customer shall approve. The Supplier shall allow the Customer to inspect such records at all reasonable times on request and at no cost to Customer.

2.5.6 Both parties shall bear its own bank charges separately.

2.6 QUALITY OF SERVICES

2.6.1 The Supplier warrants to the Customer that:

- (i) will perform the Services in good faith and in a professional manner, with reasonable care and skill and in accordance with generally recognised commercial practices and standards in the industry for similar services;
- (ii) the Services will conform with all descriptions and specifications provided to the Customer by the Supplier; and
- (iii) the Services and Deliverables will be provided in accordance with the applicable law and regulations, and the Supplier will inform the Customer as soon as it becomes aware of any changes in any applicable legislation.

2.6.2 The supplier disclaims all other warranties not included in clause 2.6.1 above, either express or implied, including, without limitation, warranties of merchantability and fitness for a particular purpose.

3 SOFTWARE LICENSE**3.1 LICENSE GRANT, LICENSE RESTRICTIONS AND INTELLECTUAL PROPERTY**

3.1.1 This Section 3 (Software License) states the terms and conditions under which Licensor will license to Customer the use of Software Package and proprietary items ordered by Customer, as defined in the Order Form. In case of Subscription, the use of Software Package is granted as long as Customer maintains a valid Subscription to Software Package.

3.1.2 License Grant

3.1.2.1 Licensor grants to Customer and its affiliates a non-exclusive, non-transferable license to install and use the Software as set forth in an Order Form and related Documentation, at specified sites to run Customer's and its affiliates' business and to provide internal training and testing for Customer's and its affiliates' business operations, subject to Section 3 of these General Conditions.

3.1.2.2 Customer represents that Customer has or will obtain the required Software licenses for use the Software. In addition, the Software can be used only by the employees or authorized personnel of the Customer and its affiliates.

3.1.3 License Restrictions

3.1.3.1 Customer and its affiliates may allow its contractors to access the Software solely for purposes of using the Software on behalf of the Customer or its affiliates in the same manner contemplated hereunder and provided such contractors have agreed in writing to be bound to confidentiality obligations at least as protective as those set forth in clause 3.8 below.

3.1.3.2 Customer and its affiliates shall not (and shall not permit any employee, contractor or other party to) use, copy, sublicense, operate as a service bureau, rent, assign, transfer, modify, create derivative works, reverse engineer, decompile, disassemble, translate, or apply any procedure or process to the Software in order to ascertain, derive, or appropriate the source code or any trade secret or process contained in the Software.

3.1.3.3 Customer shall not alter or remove any proprietary notices, graphics or text contained on or in the Software. Customer's rights in the Software will be limited to those expressly granted in these General Conditions, and Licensor reserves all rights and licenses in and to the Software not expressly granted to Customer under Section 3 (Software License) of these General Conditions.

3.1.4 Software License and Intellectual Property Rights

3.1.4.1 Without prejudice to the provisions of clause 3.1.3, Intellectual Property Rights are licensed to Customer in accordance with Section 6 (Intellectual Property Rights) of these General Conditions.

3.2 PRICE AND PAYMENT**3.2.1 License Fees, Maintenance Services Fees & Payment**

3.2.1.1 Customer shall pay to Licensor License Fees and Maintenance Services Fees for the Software as stated in Order Form. Any fees not paid when due shall accrue interest at the rate of the reference rate as determined by the European Central Bank plus two (2) per cent per annum on the amount of the delayed payment from the due date until payment has been made.

3.2.2 Taxes

3.2.2.1 All fees are exclusive of taxes, and Customer shall pay all sales, use, services or other similar taxes, if any, applicable to the fees.

3.2.2.2 If Licensor is required to pay Taxes on Customer's behalf, Customer shall reimburse Licensor for such amounts.

3.3 WARRANTIES, REMEDIES & DISCLAIMER OF WARRANTIES**3.3.1 Warranties**

3.3.1.1 The Licensor warrants within the warranty period (Section 3.3.2 Warranty Period) that the Software will fulfil the Specification during the agreed term. In the event that any defect or deficiency is identified in the Software, the Licensor shall promptly rectify all such defects or deficiencies through the Maintenance Service set forth in Section 4 of these General Conditions or deliver replacement software with equivalent functionality as the Software.

3.3.1.2 If the Licensor has not promptly rectified a defect or deficiency or delivered replacement software with functionality equivalent to that of the Software, the Customer may grant the Licensor a final grace period within which rectification shall be completed.

3.3.1.3 If the defect or deficiency is not rectified by the expiry of the grace period, the Customer shall be entitled to terminate this Agreement immediately, without prejudice to any other rights and remedies available to Customer under applicable law.

3.3.1.4 The classification of defect and deficiency has to be agreed mutually by both parties.

3.3.1.5 The Licensor does not warrant that the Software will operate uninterrupted or that it will be free from minor defects or errors that do not materially affect such performance, or that the applications contained in the Software are designed to meet all of Customer's business requirements.

3.3.2 Warranty period

3.3.2.1 The claims of the Customer for material or legal defects expire 12 (twelve) months from delivery or, if installation is required, from the installation of the software.

3.3.2.2 The warranty rights relate to the initial provision of the software to the customer. If the customer is granted additional or other usage rights to the software by PROGRESS (e.g., additional workstation licenses, modifications), the warranty period will neither be extended nor will it start anew.

3.3.3 Disclaimer of Warranties

3.3.3.1 EXCEPT AS SET FORTH HEREIN, THE LICENSOR HEREBY DISCLAIMS ALL OTHER EXPRESS AND IMPLIED WARRANTIES, CONDITIONS OR REPRESENTATIONS (WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN) INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, OR FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENTMENT.

3.4 INDEMNIFICATION

3.4.1 Licensor Indemnity for Intellectual Property Infringement

3.4.1.1 Licensor will defend or settle, at its option and expense, any third party action brought against Customer to the extent that it is based upon a claim that the Software, as provided by Licensor under this Agreement and used within the scope of this Agreement, infringes patent, trademark, service mark, copyright, or misappropriates any trade secret of a third party, and Licensor will pay all costs, damages and reasonable attorneys' fees attributable to such claim that are finally awarded against Customer. Licensor's obligations hereunder are subject to the following conditions:

- (i) Customer shall notify Licensor in writing promptly after Customer becomes aware of a claim or the possibility thereof; and
- (ii) Customer shall grant Licensor sole control of the settlement, compromise, negotiation, and defense of any such action; and
- (iii) Customer shall cooperate in good faith in the defense of any such action or claim and shall provide Licensor with all information related to the action that is reasonably requested by Licensor.

3.4.2 Limitations on Indemnity Obligations

3.4.2.1 The foregoing indemnity shall not apply to any infringement claim that arises from:

- (i) Modification of the Software by anyone other than Licensor;
- (ii) Customer's use of the Software in conjunction with Customer data or other third party material where use with such data or material gave rise to the infringement claim;
- (iii) Customer's use of the Software with software or hardware not provided or recommended by Licensor, where use with such other software or hardware gave rise to the infringement claim;
- (iv) use of other than the most current, unaltered update or upgrade to the Software available from Licensor, if such claim would have been avoided by Customer's use of such update or upgrade; or
- (v) Customer's distribution, marketing or use of the Software in violation of this Agreement. Licensor shall not be liable hereunder for any settlement made by Customer without Licensor's advance written approval, or for any award from any action in which Licensor was not granted control of the defense.

3.5 LIMITATIONS OF LIABILITY

3.5.1 IN NO EVENT SHALL A PARTY BE LIABLE FOR LOST PROFITS, CONSEQUENTIAL, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES, HOWSOEVER ARISING OUT OF OR RELATED TO THIS AGREEMENT REGARDLESS OF THE BASIS OF THE CLAIM.

3.6 VERIFICATION

3.6.1 Licensor shall be permitted to audit (at least once annually and in accordance with Licensor standard procedures) Customer's usage of the Software. The standard procedures forces to launch a report on the Software server by the Licensor. In the event an audit reveals that Customer under paid License and/or Maintenance Services Fees, Customer shall pay such underpaid fees based on Licensor's list of prices and conditions in effect at the time of the audit.

4 MAINTENANCE SERVICES

4.1 This Section 4 (Maintenance Services) states the terms and conditions under which PROGRESS will provide Maintenance Services, if ordered by Customer.

4.2 This Section describes the Maintenance Services provided by Licensor for the Software licensed in an executed Order Form. In each instance in which provisions of this Section contradict or are inconsistent with the provisions of Section 3 above (Software License), the provisions of this Section 4 shall prevail and govern.

4.3 SCOPE OF LICENSOR DELIVERED SUPPORT

4.3.1 Customer may request and Licensor shall provide, to such degree as Licensor makes such services generally available, the Maintenance Services.

4.3.2 The Maintenance Services consist of the delivery of new functionality and releases of Software, Software correction packages, and providing information on how to remedy, avoid and bypass errors in the Software.

4.3.3 The Maintenance Services will be provided via remote support/updates. The main channel for such support will be the support infrastructure provided by Licensor's Service Desk Portal.

4.3.4 Customer may send an error/incident message to Licensor at any time and Licensor will accept and respond to such error/incident messages in accordance with the Service Levels in paragraph 4.9 (*Service Desk Operations and Service Levels*) hereunder.

4.3.5 All persons involved in the message solving process can access the status of the message at any time. For the Service Desk Portal support, Licensor requires that Customer provide remote access as specified in paragraph 4.7 hereunder (*Customer's Responsibilities*).

4.3.6 The Maintenance Services do not include information or consulting inquiries beyond error reporting and correction and delivery of new functionality and releases.

4.4 ONGOING DEVELOPMENT OF SOFTWARE

- 4.4.1 Licensor continues to develop its Software in terms of quality, functionality and modernity, adapts it to changing conditions and as part of the Maintenance Services.
- 4.4.2 Licensor will provide the Customer with new versions of the respective licensed Software as they become available through Licensor. Licensor will provide:
- (i) extensions or modifications in the context of performance optimization; and
 - (ii) patches and hot fixes available to Customer for correction of errors.
- 4.4.3 The Maintenance Services do not include Licensor providing support to Customer for implementing a version upgrade or importing support packages (corrections) or enhancement packages or consultancy services; such services will be charged separately.
- 4.4.4 The service fee for Maintenance and Support Services shall be charged, if not specified in the Order Form, according to the pricelist defined in paragraph 4.11 hereunder and the Licensor shall submit the invoice for payment upon completion of the said work.

4.5 SOFTWARE ENHANCEMENT

- 4.5.1 If Customer desires any Software Enhancement, Customer may notify Licensor by sending a Change Request. Licensor shall within reasonable time submit to Customer a Change Proposal including a functional description, a quotation and estimated delivery date. In such Change Proposal Licensor shall show and account if and in what amount the Software Change is subject to an increase of the Annual Maintenance Fee.
- 4.5.2 If Customer decides to accept the Change Proposal, Customer shall transmit to Licensor Customer's Change Acceptance and Licensor shall deliver such change.
- 4.5.3 Customer shall, following delivery of the change, test the change to ensure it performs in accordance with the Change Proposal.
- 4.5.4 Changes requested by Customer which represent a partial or full withdrawal of a previously implemented Software Enhancement, or the re-instatement of the situation existing before a previously implemented Software Change shall be considered as additional Software Enhancement, except if the reason of the change is due to Licensor's fault in understanding Customer's unambiguous request.
- 4.5.5 Licensor will be responsible for the installation of Change Requests in the test environment and the production environment as well if not otherwise agreed.
- 4.5.6 With each Software Enhancement Licensor will deliver Release Notes describing the installation and the functionality of the Change.

4.6 NEW STANDARD VERSION

- 4.6.1 Due to future developments of the Software caused by adaptations to the advanced technology in software development in general, regarding the Warranty in connection with new Standard Versions the following shall apply. Licensor reserves the right to change any new Standard Version in a way that it may contain variations to the originally delivered Software including but not limited to:
- 4.6.1.1 Change in standard features:
- (i) obsolete standard features or obsolete standard configuration may change or cease to exist;
 - (ii) changes in the standard modeling and/or configuration may occur and result in the need for the Customer to adapt his modeling and/or configuration to achieve the known results;
 - (iii) the exact look and feel of the GUIs (e.g. dialogues, menus, tool bars, colors) may change.
- 4.6.1.2 Customized Features:
- (i) the look and feel of customer-specific dialogues, menus and/or tool-bar elements may be adapted to the new standard dialogues but the customer-specific functionality will not be removed;
 - (ii) any such change in a new Standard Version including possible commercial impact shall be discussed with the Customer in advance before delivery of a new Standard Version.

4.7 CUSTOMER'S RESPONSIBILITIES

- 4.7.1 Customer agrees to establish and maintain Customer Competency Center(s) ("CCC") sufficient for efficient and effective communication of suspected software problems to Licensor.
- 4.7.2 The CCC must maintain an internal helpdesk to provide first level support to Customer. Only Customer CCC employees are authorized to contact Licensor after attempting to resolve the matter.
- 4.7.3 Each CCC shall coordinate Customer's modification notification and disclosure requirements and shall coordinate Customer's development requests.
- 4.7.4 Customer's CCC is responsible for the administration and management of the requirements specified in the Agreement including, but not limited to performing periodic self-audits if requested by Licensor to ensure Customer's compliance with the license grant maintaining master and installation data and managing the release order process.
- 4.7.5 Upon request, the Customer's CCC is responsible for providing Licensor a list of contacts who are authorized to submit messages, contact(s) who may approve message estimates and/or transports, and a single point of contact for escalation and message prioritization.
- 4.7.6 The Customer shall ensure that the CCC have a good level of knowledge of the functions of the application and the customer's business organisation. Requests from CCC who do not fulfil these requirements may be rejected by PROGRESS.

4.7.7 The Customer is also responsible for evaluating a message and working jointly with the Service Desk Center personnel to assign a priority that is consistent with the definitions provided in paragraph 4.9 hereunder (*Service Desk Operations and Service Levels*).

4.7.8 Other Requirements

4.7.8.1 In order to receive Maintenance Services hereunder, Customer must:

- (i) Pay all Maintenance Services Fees and Consultancy Services in accordance with this Agreement and any executed Order Form(s).
- (ii) Fulfill its obligations under Section 3 and Section 4 of these General Conditions;
- (iii) Provide and maintain remote access via a technical standard procedure as defined by Licensor and grant Licensor all necessary authorizations, in particular for problem analysis as part of message handling. Such remote access shall be granted without restriction to the Licensor employee(s) who process support messages regardless of the country in which they are located. Customer acknowledges that failure to grant access may lead to delays in message handling and the provision of corrections, or may render Licensor unable to provide help in an efficient manner.
- (iv) Establish and maintain a CCC meeting the requirements specified in paragraph 4.7 above within twelve (12) months from the Commencement Date.
- (v) Maintain adequate and current records of all modifications, enhancements or other changes and, if needed, promptly provide such records to Licensor.
- (vi) Contact and work with the Licensor's Service Desk Portal personnel for all maintenance issues.

4.8 **MAINTENANCE SERVICES FEES**

4.8.1 The annual fees for the Maintenance Services delivered by PROGRESS under these General Conditions:

- (i) for Software Package related to a Perpetual License are specified in the Order Form(s) ("Maintenance Services Fees"). If not otherwise specified in the Order Form, the Annual Maintenance Service Fee shall be increased according to the addition or extension of Licenses or to Software Changes, if any;
- (ii) for Software Package related to a Subscription, fees for Maintenance Service are already incorporated into the subscription fee, therefore no separate Maintenance Services Fee will be charged to Customer.

4.8.2 The applicability of increases of the Annual Maintenance Fee shall be as follows:

- (i) For License additions: upon use in production
- (ii) For Software Changes: upon Acceptance and use in production of the Software Enhancement.
- (iii) Each calendar year, PROGRESS shall be entitled to change the charges of the Annual Maintenance Fee (Pricelist) by written notice to Client sixty (60) days prior to the end of each calendar year. In the event PROGRESS changes the charges (Pricelist), the Customer retains the right to terminate this Agreement by providing written notice to the Licensor, as set forth in these General Conditions.

4.8.3 Maintenance Services Fees are invoiced on an annual basis effective January 1st of a calendar year and are payable 30 days from date of receipt invoice. Any Maintenance Services Fees due prior to January 1st are invoiced on a pro-rata basis for the given calendar year in effect.

4.8.4 Customer understands that if Customer licenses any additional Software, the additional Licenses will require Maintenance Services and, as a result, the Maintenance Services Fees will increase to cover the additional delivered Maintenance Services.

4.9 **SERVICE DESK OPERATIONS AND SERVICE LEVELS**

4.9.1 The following Service Desk Operations and Service Levels apply to messages submitted by Customer for Maintenance Services that Licensor accepts and which fulfil the prerequisites specified herein. Such Service Desk Operations and Service Levels shall commence following the Go Live Date set out in the Order Form. As used herein, "Calendar Quarter" is the three (3) month period ending on March 31st, June 30th, September 30th and December 31st respectively of any given calendar year.

4.9.2 Help Desk Operating Hours

4.9.2.1 Licensor will respond to messages reported through the Service Desk portal, in accordance with the Operating Hours and Service Levels identified herein. The Licensor Service Desk's Normal Operating Hours are shown in the table below:

Kuala Lumpur	5x8 (8 AM – 5 PM SGT)	Eight (8) hours per day, five (5) days per week, Monday – Friday*
DE	5x8 (8 AM – 5 PM CET)	Eight (8) hours per day, five (5) days per week, Monday – Friday*

*Excludes published holidays

4.9.2.2 After Hours (times outside of the Normal Operating Hours) notification is available for Priority Very High (1) messages only and should be made the service-number

Service Desk	+603 86865030 / +39 0472979337
e-Mail	support@progress-psd.com

4.9.3 Service Levels

4.9.3.1 **Messages Reported During Normal Operating Hours**

Customer will report messages to Licensor and the priority level of such messages will be determined jointly by the parties based on the impact to Customer's business and in accordance with the definitions for message priority as defined in Appendix 1 ("Service Levels):

Upon Licensor's receipt of the initial message, the priority of the message will be determined jointly by the Customer and the Service Desk Center personnel using the priority definitions set forth above. Licensor will contact the appropriate Customer message owner or responsible person within the Initial Response Time for a given message Priority Level in accordance with the Service Levels table specified below.

For messages reported during Normal Operating Hours for the Service Desk Center, Licensor will comply with the following Service Levels:

Very High (1)	Within 2 hours
High (2)	Within 4 hours
Medium (3)	Within 1 day
Low (4)	Within 2 days

After meeting the Initial Response Times specified in the table above, Licensor will use commercially reasonable efforts to resolve and close messages as soon as possible.

PRIORITY: VERY HIGH (1) MESSAGES

In the event that Customer experiences a Priority Very High (1) After Hours, Customer should report the matter to Licensor via the Service Desk Portal and Licensor will then use commercially reasonable efforts to respond to an After Hours Priority Very High (1) message within the Initial Response Time specified in the table above, however, the service level does not apply to After Hours.

At the direction of a Customer representative, Licensor will work with Customer to resolve a Priority Very High (1) message without first classifying whether the Services required to resolve the matter are within the scope of Maintenance Services provided under this Agreement. If it is determined that the Priority Very High issue is outside the scope of the Maintenance Services, since Licensor performed the Services under the direction and approval of the Customer, the Customer agrees to compensate Licensor for each hour worked in accordance with the rates and fees identified in Customer's current Application Management Services Statement of Work if applicable, or through a separate Statement of Work with Licensor.

4.9.4 Service After Hours

The Customer can activate a extended Support Hotline which will cover incidents of Service Level 1 – VERY HIGH.

DE	Monday to Friday	06:00 – 22:00 CET
	Saturday	07:00 – 13:00 CET

The extended Support Hotline will be charges according to internal Pricelist (Annual Maintenance Fees).

4.9.5 Messages Reported After Hours

For the purpose of the Service Levels in the table above, any notification or message sent to the Online Helpdesk during After Hours, shall be deemed to be received at the opening of the following Business Day

4.10 OTHER TERMS AND CONDITION

4.10.1 In order to receive Maintenance Services hereunder, Customer shall have obtained Licenses for the Software and the only support and/or maintenance services received by Customer for Software shall be the Maintenance Services described in this Section 4.

4.10.2 As a condition of receiving Maintenance Services hereunder, Customer shall not reallocate users and/or Software to other Software that are not covered under Maintenance Services, without the express consent of Licensor.

4.10.3 FAILURE TO USE MAINTENANCE SERVICES PROVIDED BY LICENSOR MAY PREVENT LICENSOR FROM BEING ABLE TO IDENTIFY AND ASSIST IN THE CORRECTION OF POTENTIAL PROBLEMS WHICH, IN TURN, COULD RESULT IN UNSATISFACTORY SOFTWARE PERFORMANCE.

In order to receive Maintenance Services hereunder, Customer undertakes to inform Licensor without undue delay of any changes to Customer's installations and users and all other information relevant to the Maintenance Services. To ensure compliance with the terms of this Section 4, Licensor shall be entitled to periodically monitor the correctness of the information Customer provided.

4.10.4 The license includes a right for the Customer and its affiliates to configure and integrate the Software with any other systems and to copy software and Documentation for back-up or training purposes. The license includes a right for the Customer and its affiliates to access or export data from Software without any restriction.

4.11 PRICELIST

4.11.1 Future System Extensions

For future system extensions, the Annual Maintenance Fee is calculated as the sum of

- (i) the 20 % of the accumulated software licenses paid by Customer as set forth in clause 4.8.1(i) above, plus
- (ii) 20 % of the accumulated fees paid by Customer for any Software Enhancement, as detailed in Clause 4.5 above.

4.11.2 Service Fees

The costs of services listed in the internal Pricelist do not include services from external suppliers (in particular hardware and network suppliers, other software suppliers, other consulting firms). Services are invoiced per half hour or part thereof.

The Licensor regularly adapts this Agreement to the Specification and shares with the Customer these adaptations in writing. The Customer retains the right to terminate this Agreement by providing written notice to the Licensor, as set forth in these General Conditions.

5 CLOUD SERVICES

5.1 USAGE RIGHTS AND RESTRICTIONS

5.1.1 Grant of Rights

PROGRESS grants to Customer a non-exclusive and non-transferable right to use the Cloud Service (including its implementation and configuration), solely for Customer's internal business operations. Customer shall not use the Cloud Service from countries where such use is prohibited by Export Laws.

5.1.2 Authorized users

Customer may permit selected authorized users to use the Cloud Service. Usage is limited to the usage metrics and volumes stated in the statement of work. Access credentials for the Cloud Service may not be used by more than one individual but may be transferred from one individual to another if the original user is no longer permitted to use the Cloud Service. Customer is responsible for breaches of the Agreement caused by authorized users.

5.1.3 Verification of Use

Customer will monitor its own use of the Cloud Service and report any use in excess of the usage Metrics and volumes. PROGRESS may verify compliance with usage metrics and volume.

5.1.4 Suspension of Cloud Service

PROGRESS may suspend or limit use of the Cloud Service if continued use may result in material harm to the Cloud Service or its users. PROGRESS will promptly notify Customer of the suspension or limitation.

5.1.5 Third Party Web Services

The Cloud Service may include integrations with web services made available by third parties (other than PROGRESS or its affiliates) that are accessed through the Cloud Service and subject to terms and conditions with those third parties. These third party web services are not part of the Cloud Service and this Agreement does not apply to them. PROGRESS is not responsible for the content of these third party web services.

5.2 **PROGRESS RESPONSIBILITIES**

5.2.1 Provisioning

PROGRESS provides access to the Cloud Service as described in these General Conditions. PROGRESS makes the Cloud Service available and is responsible for its operation.

5.2.2 Support

PROGRESS provides support for the Cloud Service as referenced in the statement of work.

5.2.3 Security

PROGRESS will implement and maintain appropriate technical and organizational measures to protect the personal data processed as part of the Cloud Service as described in the statement of work, in compliance with applicable data protection law.

5.2.4 Modifications

- (i) As the Cloud Service evolves, PROGRESS may improve or modify the Cloud Service (including support services);
- (ii) PROGRESS shall inform Customer of modifications to the Cloud Service with an adequate period in advance.

5.3 **CUSTOMER AND PERSONAL DATA**

5.3.1 Customer Ownership and Data

Customer is responsible for the Customer Data and entering it into the Cloud Service. Customer retains all rights in and related to the Customer Data. PROGRESS may use Customer-provided material solely to provide and support the Cloud Service. Customer grants to PROGRESS a non-exclusive right to process and use Customer Data to provide and support the Cloud Service and as set out in this Agreement.

5.3.2 Personal Data

Customer will collect and maintain all personal data contained in the Customer Data in compliance with applicable data privacy and protection laws.

5.3.3 Security

Customer will maintain reasonable security standards for its authorized users' use of the Cloud Service. Customer will not conduct or authorize penetration tests of the Cloud Service without advance approval from PROGRESS.

5.3.4 Access to Customer Data

5.3.4.1 During the Subscription Term, Customer can access its Customer Data at any time. Customer may export and retrieve its Customer Data in a standard format. Export and retrieval may be subject to technical limitations, in which case PROGRESS and Customer will find a reasonable method to allow Customer access to Customer Data.

5.3.4.2 Before the Subscription Term expires, Customer may use PROGRESS's self-service export tools (as available) to perform a final export of Customer Data from the Cloud Service.

5.3.4.3 At the end of this Agreement, PROGRESS will delete the Customer Data remaining on servers hosting the Cloud Service unless applicable law requires retention. Retained data is subject to the confidentiality provisions of this Agreement.

5.3.4.4 In the event of third party legal proceedings relating to the Customer Data, PROGRESS will cooperate with Customer and comply with applicable law (both at Customer's expense) with respect to handling of the Customer Data.

5.4 **FEES AND TAXES**

5.4.1 Fees and Payment

Customer shall pay fees as stated in the Order Form. If Customer does not pay fees in accordance with the provided terms then, in addition to any other available remedies, PROGRESS may suspend Customer's use of the applicable Cloud Service until payment is made. PROGRESS shall provide Customer with prior written notice before any such suspension. Customer may not withhold, reduce or set-off fees owed.

5.5 **WARRANTIES AND LIABILITY**

5.5.1 Compliance with Law

With reference to the Cloud Service, each party warrants its current and continuing compliance with all laws and regulations applicable to it in connection with:

- (i) in the case of PROGRESS, the operation of PROGRESS's business as it relates to the Cloud Service; and
- (ii) in the case of Customer, the Customer Data and Customer's use of the Cloud Service.
- (iii) PROGRESS warrants that it will provide the Cloud Service with the degree of skill and care reasonably expected from a skilled and experienced supplier of services substantially similar to the nature and complexity of the Cloud Service.

Customer's sole and exclusive remedies and PROGRESS's entire liability for breach of the warranty under Section 5.5 will be:

- (i) correction of the deficient Cloud Service; and
- (ii) if PROGRESS fails to correct the deficient Cloud Service, Customer may terminate its subscription for the Cloud Service. Any termination must occur within ninety (90) days of PROGRESS's failure to correct the deficient Cloud Service.

5.5.2 Warranty Exclusions

5.5.2.1 The warranties in Section 5.5 will not apply if:

- (i) the Cloud Service is not used in accordance with these General Conditions and the statement of work;
- (ii) any non-conformity is caused by Customer, or by any product or service not provided by PROGRESS; or
- (iii) the Cloud Service was provided for no fee.

5.5.3 Disclaimer

Except as expressly provided in the statement of work, neither PROGRESS nor its subcontractors make any representation or warranties, express or implied, statutory or otherwise, regarding any matter, including the merchantability, suitability, originality, or fitness for a particular use or purpose, non-infringement or results to be derived from the use of or integration with any products or services provided under this Agreement, or that the operation of any products or services will be secure, uninterrupted or error free. Customer agrees that it is not relying on delivery of future functionality, public comments or advertising of PROGRESS or product roadmaps in obtaining subscriptions for any Cloud Service.

5.6 THIRD PARTY CLAIMS

5.6.1 Customer will defend PROGRESS against claims brought against PROGRESS and its affiliates and subcontractors by any third party related to Customer Data. Customer will indemnify PROGRESS against all damages finally awarded against PROGRESS, its affiliates and subcontractors (or the amount of any settlement Customer enters into) with respect to these claims.

6 INTELLECTUAL PROPERTY RIGHTS

6.1 The Software, including, without limitation, any and all related source code, object code, materials, designs, plans, techniques, methods, inventions, forms, formulas, and other works of authorship, and any extracts, derivatives, modifications or enhancements to the foregoing, shall remain the sole and exclusive property of Licensor, and Licensor shall own and retain all right, title and interest in and to the foregoing under copyright, trade secret, trademark, patent and other intellectual property laws.

6.2 PROGRESS, its parent or its affiliate companies retains ownership, all rights, title and interest and Intellectual Property Rights to the Software and to anything developed by PROGRESS and delivered to the Customer under these General Conditions resulting from the Services.

6.3 The Customer may not:

- (i) make the programs or materials resulting from the Services available in any manner to any third party for use in the third party's business operations (unless such access is expressly permitted for the specific program license or materials from the services the Customer has acquired);
- (ii) cause or permit reverse engineering (unless required by law for interoperability), disassembly or decompilation of the programs; or
- (iii) disclose results of any program benchmark tests without the suppliers' prior written consent.

6.4 At its own expense, PROGRESS shall, and shall use all reasonable endeavors to procure that any necessary third party shall, promptly execute and deliver any document and perform any act as may be required for the purpose of giving full effect to the Statement of Work, including securing for the Customer all rights assigned to the Customer under these General Conditions.

6.5 Customer may make Modifications to the Software Package only prior written consent from PROGRESS and in that case shall be permitted to Customer to use Modifications with the Software in accordance with these General Conditions.

6.6 PROGRESS shall obtain waivers of any moral rights in the products of the Services (including the Deliverables) to which any

individual is now or may be at any future time entitled under applicable law and regulation.

7 INDEMNITY AND LIABILITY

7.1 Without prejudice to the provisions of clause 6 above, the Supplier shall indemnify and hold the Customer harmless from all claims and all direct, costs, proceedings, Damages and expenses (including legal and other professional fees and expenses) awarded against, or incurred or paid by the Customer as a result of or in connection with any alleged or actual infringement of any third party's Intellectual Property Rights or other rights arising out of the use or supply of the products of the Services (including the Deliverables).

7.2 Neither Party shall limit or exclude its liability for:

- (i) death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors;
- (ii) fraud or fraudulent misrepresentations;
- (iii) in respect of the Supplier's liability, breach of section 8 (*Confidentiality*);
- (iv) in respect of the Supplier liability, any indemnified claim under clause 7.1; and/or
- (v) any other act or omission, liability for which may not be limited under applicable law.

7.3 Without prejudice to the provisions of the clause above, neither Party shall be, in general, liable to the other Party in connection with this Agreement for loss of profit, loss of production, loss of opportunity, loss of business, loss of goodwill or indirect or consequential loss of any kind.

8 CONFIDENTIALITY

8.1 In connection with these General Conditions each party has disclosed and may continue to disclose to the other party information that relates to the disclosing party's business operations, financial condition, licenses, products, services, product plans, source code or technical knowledge that is identified as confidential or proprietary or reasonably understood to be confidential (collectively, "**Confidential Information**").

8.2 In order to protect the rights of the parties in their respective Confidential Information, the parties agree to take all reasonable steps and the same protective precautions to protect the Confidential Information from disclosure to third parties as with its own Confidential Information. Neither party shall, without the other party's prior written consent, disclose, provide, or make available any of the Confidential Information of the other party in any form to any person, except to its bona fide employees, officers, or directors on a need to know basis and provided such persons are bound by confidentiality obligations.

8.3 The parties will not disclose Confidential Information to any third party without express written authorization from an officer of the other party.

8.4 The parties undertakes that it shall not at any time, including after valid termination pursuant to Section 9, disclose to any person any documents or other data, technical or commercial know-how, specifications, processes or initiatives which are of a confidential nature and have been disclosed by the parties, its employees, agents, consultants or subcontractors, or any other confidential information concerning the parties' business or its products, except as permitted by clause 8.5 hereunder.

- 8.5 This Section 8 (Confidentiality) will not apply to any particular information that either party can demonstrate:
- (i) was, at the time of disclosure to it, in the public domain;
 - (ii) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of receiving party;
 - (iii) was in the possession of the receiving party at the time of disclosure to it and was not subject of a pre-existing confidentiality obligation;
 - (iv) was received after disclosure to it from a third party who had a lawful right to disclose such information to it; or
 - (v) was independently developed by the recipient without use of the disclosing party's Confidential Information.
- 8.6 In addition, disclosure of Confidential Information will not be precluded if that disclosure is in response to a valid order of a court of competent jurisdiction or other governmental body or is otherwise required to be disclosed by law provided that the non-disclosing party will first give written notice to the disclosing party so that the disclosing party may seek an appropriate protective order.

9 TERMINATION

9.1 SOFTWARE LICENSE

- 9.1.1 Software License shall continue in force and effect beginning on the Commencement Date and lasting for so long as:
- (i) Customer has a valid License for the Software under these General Conditions unless terminated pursuant to the provisions herein;
 - (ii) The Customer may terminate this Agreement upon sixty (60) calendar days prior written notice for any reason.
 - (iii) Either party may terminate this Agreement on sixty(60) calendar days prior written notice if the other party has breached a material provision of this Agreement and such breach is not cured within the sixty (60) day period, or a mutually agreed upon extension thereto.

9.2 CONSULTANCY SERVICES

- 9.2.1 Subject to clause 9.2.3 hereunder, Consultancy services shall terminate on:
- (i) the expiration of the Service provided under the Statement of Work; or
 - (ii) if the Supplier is still providing Services to the Customer under a Statement of Work upon expiration, after such Services have been delivered and accepted by Customer, whichever is later.

- 9.2.2 The Customer may terminate Consultancy Services set forth in Section 2 of these General Conditions upon five (5) Business Days prior written notice for any reason before a milestone/gate specified in the Statement of Work is completed.

- 9.2.3 Either party may terminate Consultancy Services set forth in Section 2 of these General Conditions upon sixty (60) calendar days prior written notice if the other party has breached a material provision of these General Conditions and such breach is not cured within the sixty (60) day period, or a mutually agreed upon extension thereto.

- 9.2.4 Termination or expiration of Consultancy Services only does not affect other Services agreed between the parties under this Agreement.

9.3 MAINTENANCE SERVICES

- 9.3.1 Termination or expiration of Maintenance Services only does not affect other Services agreed between the parties under this Agreement.

- 9.3.2 Maintenance Services for Software Package related to a Perpetual License shall renew at the beginning of each calendar year for the subsequent one year period ("**Extended Term(s)**"). Customer may cancel Maintenance Services for convenience by providing written notice to the Licensor at least sixty (60) days before the end of the current term.

- 9.3.3 Maintenance Services for Software Package related to a Subscription shall terminate upon expiration of the Subscription.

- 9.3.4 In addition, Licensor may terminate Maintenance Services after sixty (60) days written notice of Customer's failure to pay Maintenance Services Fees or Consultancy Services. The suspended Maintenance Services can be reactivated at any time.

9.4 CLOUD SERVICE

- 9.4.1 Termination or expiration of Cloud Service only does not affect other Services agreed between the parties under this Agreement.

- 9.4.2 Either party may terminate the Cloud Service set forth in Section 5 of these General Conditions upon sixty (60) calendar days prior written notice if the other party has breached a material provision of these General Conditions and such breach is not cured within the sixty (60) day period.

- 9.4.3 In case of termination of the Cloud Service only, Customer will be entitled to a pro-rata refund in the amount of the unused portion of prepaid fees (if any) for the terminated subscription calculated as of the effective date of termination.

- 9.5 A party may terminate immediately any agreement, the Statement of Work and/or the Order Form if the other party files for bankruptcy, becomes insolvent, or makes an assignment for the benefit of creditors.

9.6 EFFECTS OF LICENSE TERMINATION

- 9.6.1 Upon termination of any License(s) granted herein arising from the Customer's default, Customer's right to use and possess the Software and Documentation shall immediately cease, become void, lapse and of no further force and effect.
- 9.6.2 Customer shall promptly return all copies to Licensor, except that Licensor may otherwise direct Customer to delete all installed copies of any and all storage media in the control of Customer.
- 9.6.3 Customer shall provide Licensor with written certification signed by an officer of Customer that all copies of the Software and Documentation have been returned or destroyed and that Customer has retained no copies.
- 9.6.4 Termination of this Agreement due to Customer's default shall not relieve Customer of its obligation to pay for all Software delivered and for all License Fees and Maintenance Services Fees due through the date of termination.
- 9.6.5 The parties expressly acknowledge and agree that License Fees and prepaid Maintenance Services Fees are non-refundable, unless otherwise set forth herein.
- 9.6.6 Upon termination of the Agreement by Licensor or by Customer arising from the Licensor's default, Customer shall have the right to continue using the Software and Documentation on the terms set forth herein at no additional cost.

9.7 CONSEQUENCES OF TERMINATION

- 9.7.1 On termination or expiry, PROGRESS shall promptly deliver to the Customer:
- (i) all copies of documents, information and data (in any form) provided by the Customer to the Supplier for the purposes of this Agreement. The Supplier shall certify to the Customer that it has not retained any copies of such documents, information or data, except for one copy which the Supplier may use for audit purposes and to enable the Supplier to maintain a professional record of its involvement subject to the confidentiality obligations in Section 8; and
 - (ii) all specifications, programs and other documentation comprised in the Deliverables and existing at the date of such termination, whether or not then complete.
- 9.7.2 The provisions of clause 3.1 (*Source Code*), paragraph 3.2 (*Price and Payment*), paragraph 3.5 (*Limitations of Liability*), section 8 (*Confidential Information*), section 7 (*Indemnity and Liability*), clause 9.5 (*Effects of Termination*), section 14 (*Governing Law*) and section 15 (*Dispute Resolution*) shall survive after termination.
- 9.7.3 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry, including the right to claim Damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry and the payment of Fees properly due and payable up to the date of termination.

10 NON-SOLICITATION

- 10.1.1 Each Party agrees not to solicit, recruit, hire or directly or indirectly engage or retain any employees or members of other Party (or an affiliate of the other Party) providing Services under the Agreement effective from the date of this Agreement and continuing for a period of one year subsequent to the termination of this engagement. This clause shall not prohibit a Party or any of its affiliates, from: (i) soliciting or hiring any such employees after the termination of such employee's employment or (ii) placing public advertisements or conducting any other form of the general solicitation that is not specifically targeted towards such employees, including the use of an independent employment agency or search firm whose efforts are not specifically directed at the employees.

11 FORCE MAJEURE

- 11.1.1 Neither Party shall be liable to the other for any cost or otherwise, for any delay and/or failure in the execution of their respective obligations as provided in the Agreement if such cost, delay or failure is due to "Force Majeure" which for the purpose of the Agreement shall mean:
- (i) war (whether declared or not), hostilities, invasion, act of foreign enemies;
 - (ii) insurrection, revolution, rebellion, military or usurped power, civil war, terrorism, piracy on the high seas;
 - (iii) natural catastrophe including but not limited to earthquakes, epidemic and/or pandemic, flood, subterranean spontaneous combustion or any operation of the forces of nature against which an experienced contractor could not reasonably have been expected to take precautions;
 - (iv) nuclear explosion, radioactive or chemical contamination or radiation (unless caused by the negligence act, omissions, or default of the contractor, its agents or personnel);
 - (v) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds; and
 - (vi) riot, commotion or disorder but not one which is caused by or originating from the Supplier's employees or confined to the Supplier's own workforce or confined to the Site.
- 11.1.2 If either Party is prevented or delayed in the performance of any obligations under the Agreement by circumstances of Force Majeure, the affected party shall give immediate written notice to the other within seven (7) days of the occurrence of the event, specifying the details constituting Force Majeure and necessary evidence that a contractual obligation is thereby prevented or delayed from being performed and the anticipated period estimated during which such prevention, interruption or delay may continue.
- 11.1.3 The affected party shall diligently mitigate or remove the effect of the Force Majeure. Upon receipt of the notice of Force Majeure, the Party receiving the notice shall confer promptly with the other and agree upon a course of action to remove or alleviate such effect, and shall seek reasonable methods of resuming full performance of the obligations and achieving objectives under the Agreement.

12 ASSIGNMENT

- 12.1 The Parties shall not, without the prior written consent of the other Party, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under these General Conditions.

13 BUSINESS RELATIONSHIP

- 13.1.1 The parties agree that Licensor may use Customer's name and reference the existence of a business relationship (without referenced detailed terms and pricing) in promotional and marketing materials, including its website.
- 13.1.2 Nothing in these General Conditions is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute any Party the agent of another Party, or authorise any Party to make or enter into any commitments for or on behalf of the other Party.
- 13.1.3 Each Party confirms it is acting on its own behalf and not for the benefit of any other person. No one other than a party to this Agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.

14 GOVERNING LAW

- 14.1 The present General Conditions and each subsequent contract concluded by PROGRESS and the Customer in connection with these or its subject matter (including non-contractual disputes or claims) are governed and exclusively subject to Italian Law.

15 DISPUTE RESOLUTION

- 15.1 If at any time any dispute or difference shall arise between the Customer and PROGRESS upon or in relation to or in connection with any matter under these General Condition or any part thereof, either Party may give to the other a notice in writing to require such dispute or disagreement to be first resolved by mutual discussion between the representatives of the Parties, with a view to amicably resolve such dispute or difference within twenty-one (21) Business Days of the said notice.
- 15.2 As sole exception to the principle set forth in clause 15.1 above, any dispute arising out of or related to the interpretation, validity or performance of these General Conditions and of each subsequent contract concluded by PROGRESS and the Customer shall be settled by Arbitration under the Rules of the Milan Chamber of Arbitration (the "Rules") by a panel of three (3) arbitrators appointed in accordance with the Rules. The law applicable to the merits of the dispute is Italian Law. The seat of the Arbitration is Milan. The language of the Arbitration is English.

16 DATA PROTECTION

- 16.1 Pursuant to art. 13 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 by signing these General Conditions, the Customer consents, pursuant to and for the purposes of art. 7 sqq. of Regulation (EU) 2016/679, to the processing of personal data in the manner and within the limits set out in the information notice for the processing of personal data published and available on PROGRESS homepage.

17 MISCELLANEOUS

- 17.1 Where possible, each provision of these General Conditions and of each subsequent contract must be interpreted so as to make it valid and effective; however, should a provision be considered invalid or ineffective this shall not make the rest of the provisions invalid.
- 17.2 In the event of conflict between the provisions contained in these General Conditions and any other provisions agreed in writing between the parties in a statement of work, the latter shall prevail pursuant to Article 1342 of the Italian Civil Code.
- 17.3 If there is any conflict or ambiguity between the clauses of these General Conditions, the conflict shall be resolved in accordance with the following order of precedence:
- (i) the Statement of Work;
 - (ii) the Order Form;
 - (iii) the clauses of these General Conditions, in the following order:
 - I. Section 2. of these General Conditions (Consultancy Services);
 - II. Section 4. of these General Conditions (Maintenance Services);
 - III. Section 3. of these General Conditions (Software License);
 - IV. Section 5. of these General Conditions (Cloud Services).
- 17.4 As far as not expressly provided for in these General Conditions, in the Statement of Work and/or the Order Form, reference is made to the Italian Civil Code.
- 17.5 These General Conditions and the executed statement of work constitute the entire and exclusive agreement between the Parties with respect to the subject matter hereof and (i) supersede all prior and contemporaneous communications, whether written or oral; (ii) extinguish all previous agreements, promises, assurances, warranties, representations and understandings between the Parties, whether written or oral, relating to its subject matter.
- 17.6 The provisions set forth in these General Conditions and in any statement of work may be modified or amended only by the mutual written agreement of the Parties
- 17.7 Any communication, notice or report which are required or may be given pursuant to these General Conditions or to subsequent contract shall be in writing and shall be deemed duly given and valid when delivered to the respective executive offices of PROGRESS and Customer at the addresses set forth in the statement of work.
- 17.8 Waiver of any provision hereof in one instance shall not preclude enforcement thereof on future occasions.
- 17.9 These General Condition and related documents are written in the English language. The English version is the only authentic text hereof and, in case of translation, the English version shall take precedence and prevail.
- 17.10 The rights and remedies provided under these General Conditions are in addition to, and not exclusive of, any rights or remedies provided by applicable law.
- 17.11 The Customer, having read the information on the processing of personal data mentioned in clause 8.6 above, gives consent to the processing of their personal data, including the transfer and communication, for the purpose of proper execution of the services and related legal obligations.

18 EXPLICIT ACCEPTANCE

- 18.1 Pursuant to Article 1341, paragraph 2 and Article 1342 of the Civil Code, the Customer declares to have carefully examined and accepts expressly the following clauses of these General Conditions: paragraph 3.3 (*Warranties, remedies & disclaimer of warranties*); clause 3.4.2 (*Limitations on Indemnity Obligations*); paragraph 3.5 (*Limitations of Liability*); paragraph 5.5 (*Warranties and Liability*); section 6 (*Intellectual property rights*); section 7 (*Indemnity and Liability*); section 8 (*Confidentiality*); section 9 (*Termination*); section 10 (*Consequences of Termination*); section 14 (*Governing law*); section 15 (*Dispute resolution*).

19 APPENDIX**19.1 APPENDIX 1 - SERVICE LEVELS**

- 19.1.1 PRIORITY: VERY HIGH (1) Critical restrictions in day-to-day operations are encountered. Critical tasks, especially time-critical jobs, cannot be performed due to total system shutdown or a malfunction in a main function of the production Software system.

Example: Production system down, cannot ship product, cannot invoice Customers, etc.

- 19.1.2 PRIORITY: HIGH (2) Serious restrictions in day-to-day operations are encountered. Necessary tasks cannot be performed. This is due to a malfunction or failed function in the Software system that is urgently required in the current situation.

Example: Cannot run MRP, cannot generate business critical reports, pricing is incorrect but manual price override is available, etc.

- 19.1.3 PRIORITY: MEDIUM (3) Restrictions in day-to-day operations are encountered. This is caused by a malfunction or failed functionality in the system.

- 19.1.4 PRIORITY: LOW (4) Day-to-day operations are affected in a minor fashion. This is caused by a malfunction or failed functionality in the system that is not used daily or is only used rarely