

PR

Smlouva o poskytnutí licenci

21-11-2011

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Praha 10, Šrobárova 48
4

Odběratel: Česká republika - Státní ústav pro kontrolu léčiv, organizační složka
IČ: 00023817
Sídlo: Šrobárova 48, 100 41 Praha 10
Bankovní spojení: ČNB, č.ú. 623101/0710

Zastoupený: PharmDr. Martinem Benešem, ředitelem

na straně jedné (dále jen „odběratel“)

a

Dodavatel: GALEOS a.s.
IČ: 29027438
Sídlo: Michelská 300/60, 140 00 Praha 4
DIČ: CZ29027438

Bankovní spojení: Raiffeisenbank a.s.
číslo účtu: 5159196001/5500
Zapsán u: Městského soudu v Praze pod spisovou značkou B15907

Zastoupený: Ing. Pavlem Kaplickým, výkonným ředitelem

na straně druhé (dále jen „dodavatel“)

uzavírají
podle § 409 a násl. Obchodního zákoníku
tuto kupní smlouvu.

ČLÁNEK I. PŘEDMĚT SMLOUVY

1. Touto smlouvou se dodavatel zavazuje dodat za podmínek v ní sjednaných odběrateli licenci Progress Savvion Business Manager Server v 7.6 vč. souvisejících služeb podpory a údržby v režimu 8 x 5 po dobu 12 měsíců od realizace dodávky dle specifikace uvedené v tomto článku a Příloze č. 1 této smlouvy, a na jejich základě odběrateli poskytnout veškerá práva nutná k užití uvedené licence (dále jen „předmět smlouvy“). Odběratel se zavazuje předmět smlouvy převzít a přijmout a zaplatit za něj cenu způsobem a v termínu sjednaném touto smlouvou. Předmět smlouvy zahrnuje dodávku licence včetně podpory výhradně pro procesy cen a úhrad a pro zpracování žádosti o přístup do centrálního úložiště.

2. Předmět smlouvy je dále specifikován v Příloze č. 1 této smlouvy, která tvoří její nedílnou součást.

3. Dodavatel tímto poskytuje licenci dle tohoto článku a Přílohy č. 1 této smlouvy jako licenci nevýhradní, nepřevoditelnou, neomezenou co do času a místa užití a počtu uživatelů a omezenou pouze pro procesy cen a úhrad a pro proces zpracování žádosti o přístup do

STÁTNÍ ÚSTAV PRO KONTROLU LÉČIV



8001385987

Ev. č.: 243123/11

Listy/příl.: 1/0

Došlo: 21.11.2011

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centrálního úložiště v souladu s licenčními podmínkami výrobce, které tvoří Přílohu č. 2 této smlouvy.

ČLÁNEK II. DOBA A MÍSTO PLNĚNÍ

1. Dodavatel se zavazuje dodat odběrateli předmět smlouvy dle čl. I do 5 dnů od podpisu této smlouvy. Dodáním se rozumí nejen vlastní dodání na určené místo, ale také jeho instalace, a to dle dispozic odběratele.

2. Místem dodání dle předchozího odstavce jsou níže uvedená pracoviště odběratele:

- Šrobárova 48, 100 41 Praha 10
- Stará 25, 602 00 Brno

3. O převzetí předmětu smlouvy dle čl. I smluvní strany vyhotoví na místě předávací protokol, kterým bude osvědčeno, že předmět smlouvy byl dodán v rozsahu dle této smlouvy a bez vad. Převzetí bude potvrzeno podpisem zástupce dodavatele a zástupce odběratele dle této smlouvy na předávacím protokolu. U podpisů bude uvedeno datum převzetí. Dodávka zboží je splněná okamžikem převzetí.

4. Zástupcem odběratele pro převzetí předmětu smlouvy dle čl. I je David Štěpán, tel. 272 185 876, e-mail: david.stepan@sukl.cz. Zástupcem dodavatele pro předání předmětu smlouvy je Ing. Jindřich Štumpf, tel. 602 261 974, e-mail: jindrich.stumpf@galeos.cz.

5. Odběratel převezme pouze funkční dodávku předmětu smlouvy splňující podmínky a parametry stanovené touto smlouvou, přílohou č. 1 této smlouvy a zadávací dokumentací zakázky malého rozsahu „SÚKL – Doplnění licencí Savvion“, vč. jejich příloh.

6. Dodavatel je povinen vyzvat odběratele písemně k převzetí dodávky 5 kalendářních dní před termínem dodání.

7. V případě prodloužení s dodávkou zboží je dodavatel povinen uhradit odběrateli smluvní pokutu ve výši 0,05 % z celkové ceny předmětu smlouvy dle čl. III odst. 1 této smlouvy za každý den prodloužení. Uhrazením smluvní pokuty není dotčen nárok odběratele na náhradu škody vzniklé pozdním dodáním předmětu smlouvy.

ČLÁNEK III. CENA

1. Smluvní strany se dohodly, že předmět smlouvy v rozsahu čl. I. odst. 1, 2 a 3 bude dodán za celkovou cenu ve výši 500.000,- Kč, slovy: pětsettisíc korun bez DPH, tj. 600.000,- Kč, slovy: šestsettisíc korun, včetně DPH.

2. Cena byla stanovena dohodou smluvních stran podle zákona č. 526/1990 Sb., ve znění pozdějších předpisů.

3. Cena dle odst. 1 tohoto článku zahrnuje veškeré náklady, vč. nákladů na dopravu a pojištění dodávky předmětu smlouvy.

4. Cena dle odst. 1 tohoto článku je závazná a nejvýše přípustná; může být překročena pouze v souvislosti se změnou daňových předpisů souvisejících s předmětem smlouvy, a to v rozsahu odpovídajícím takovým změnám. Předpokladem takového překročení je uzavření písemného dodatku k této smlouvě.

5. Cena předmětu smlouvy bude hrazena v korunách českých.

ČLÁNEK IV. PLATEBNÍ PODMÍNKY

1. Cena dle čl. III odst. 1 bude zaplacená odběratelem na základě jediné faktury vystavené dodavatelem po dodání předmětu smlouvy, tj. po podepsání předávacího protokolu dle čl. II odst. 3 této smlouvy oběma smluvními stranami. Faktura je daňovým dokladem a musí mít náležitosti daňového dokladu stanovené § 28 zákona č. 235/2004 Sb., ve znění pozdějších předpisů. Faktura bude splatná do 30 dnů od dne prokazatelného doručení faktury odběrateli. Faktura bude obsahovat specifikaci dodaných produktů podle Přílohy č. 1.

2. V případě prodlení odběratele s úhradou faktury se odběratel zavazuje uhradit dodavateli zákonný úrok z prodlení.

ČLÁNEK V. JAKOST, PROVEDENÍ, OBAL, BALENÍ DODÁVKY A DOKLADY K DODÁVCE

1. Dodavatel prohlašuje, že dodané produkty jsou funkční a bezvadné, odpovídají specifikaci uvedené v Příloze č. 1 této smlouvy, odpovídají též platné dokumentaci a předpisům jejich výrobce a splňují všechny požadavky právních norem platných v České republice pro jejich používání.

2. Dodavatel je povinen dodat produkty kompletní, funkční a v množství a jakosti, jež jsou nutné pro používání licencí pro provoz a řízení procesů cen a úhrad a procesu zpracování žádosti o přístup do centrálního úložiště.

3. Produkty při jejich přepravě musí být řádně zabaleny a opatřeny pro přepravu způsobem stanoveným v § 420 odst. 4 obchodního zákoníku.

4. Dodavatel je povinen při předání produktů předat odběrateli taktéž veškeré doklady, jež jsou nutné k převzetí a užívání produktů.

ČLÁNEK VI. SPOLEČNÁ A ZÁVĚREČNÁ USTANOVENÍ

1. Smluvní strany se dohodly ve smyslu § 262 odst. 1 a odst. 2 obchodního zákoníku na tom, že na jejich vzájemné závazkové vztahy se budou vztahovat příslušná ustanovení Obchodního zákoníku.

2. Obě smluvní strany se zavazují zachovávat mlčenlivost o všech skutečnostech, o kterých se dozvěděli v souvislosti s realizací této smlouvy o dílo a které se týkají druhé smluvní strany.

3. Tato smlouva může být měněna nebo doplňována pouze písemnými, číslovanými a datovanými dodatky potvrzenými podpisy osob oprávněných za smluvní strany jednat.

4. Tato smlouva je vyhotovena ve čtyřech stejnopisech, z nichž obě smluvní strany obdrží po dvou stejnopisech.

5. Tato smlouva nabývá účinnosti a platnosti dnem jejího podpisu oběma smluvními stranami.

6. Smluvní strany dále potvrzují, že tato smlouva byla uzavřena svobodně a vážně, že nebyla ujednána v tísní ani za jinak nevýhodných podmínek.

7. Nedílnou součástí této smlouvy je Příloha č. 1 a č. 2

V Praze dne: 2011. 10. 31.

V Praze dne: 31. 10. 2011

.....
odběratel **Státní ústav pro kontrolu léčiv**
Šrobárova 48
100 41 Praha 10
(100)

.....
dodavatel

Příloha č. 1 - Podrobná specifikace předmětu smlouvy
Příloha č. 2 - Licenční podmínky výrobce software

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Příloha č. 1 - Podrobná specifikace předmětu smlouvy

Předmětem nabízeného plnění je softwarová licence Progress Savvion Business Manager Server v poslední verzi 7.6, která má níže uvedené základní atributy. Tyto základní atributy jsou dále upřesněny v Příloze č. 2 – **Licenční podmínky výrobce software**, která je nedílnou součástí Smlouvy.

Základní atributy:

- Licence je nevýhradní, nepřenositelná, neomezená co do času a místa užití.
- Licence je neomezena počtem koncových uživatelů (pracovníci zadavatele).
- Licence obsahuje roční základní technickou podporu a údržbu v režimu 8 x 5.
- Licence je omezena účelem užití pro **Proces zpracování žádosti o přístup do CÚ**.
 - Licence je platná pro **Testovací a Provozní prostředí**.
 - Licence provozního prostředí je omezena počtem jader určených pro Savvion na celkový počet osm jader / CPU.
- Licence je omezena účelem použití pro **Proces stanovování Cen a Úhrad**.
 - Licence je platná pro **Testovací prostředí**.

Text, tabulky a schémata dále vymezují specifikaci, pro jakou je tato softwarová licence udělena. Změny typu žádosti (např. rozšíření žádostí o typ pacienta, převedení procesu CaÚ do provozního prostředí apod.), změny integračního rozhraní nebo změny procesní mapy u některého z těchto procesů vedoucí ke změnám a rozšíření pak jdou nad rámec těchto licenčních vymezení a je nutné sjednat nové licenční podmínky.

Vymezení Procesu zpracování žádostí o přístup do CÚ

Proces zpracovává tyto typy žádostí:

- Žádost lékaře
- Žádost lékaře a provozovatele zdravotnického zařízení
- Žádost stomatologa
- Žádost stomatologa a provozovatele zdravotnického zařízení
- Žádost zdravotnického zařízení
- Žádost lékárníka

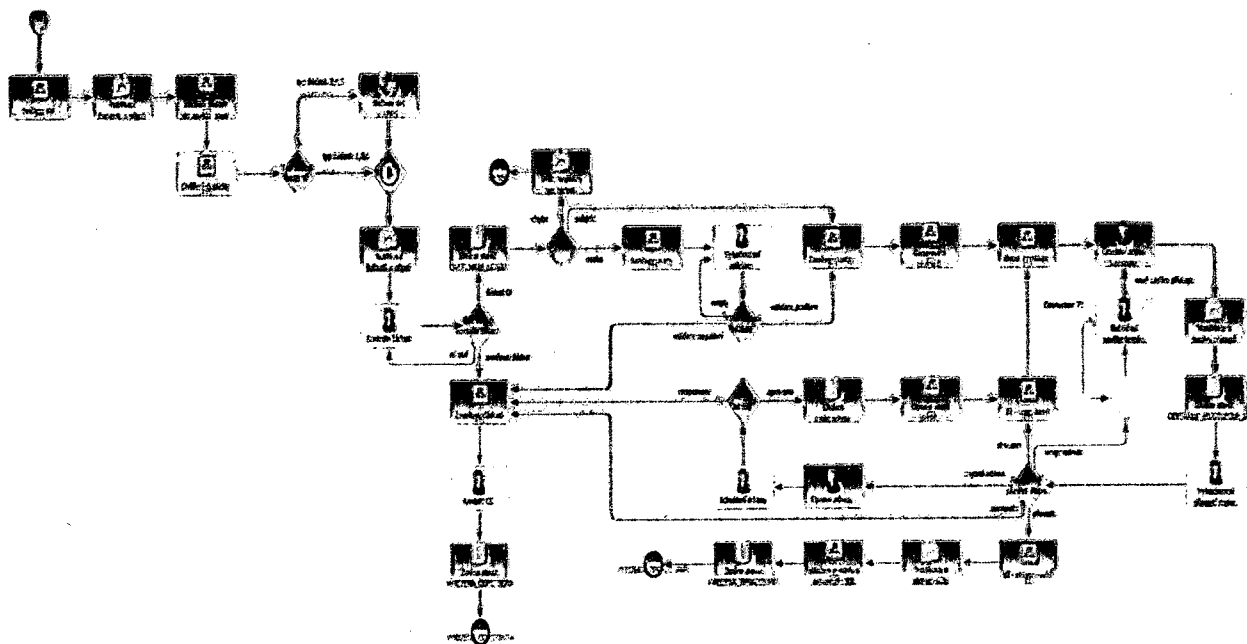
Proces využívá integrace na následující systémy/služby:

- DB žádostí
- DB externích identit
- SSL Athéna
- IPVZ (v budoucnu)
- služba pro vytváření PDF souborů (Adobe LiveCycle)
- SMTP server
- portál ARES (v současnosti řešeno odkazem) *
- Sonic

Definované role:

- Pracovník DAT
- Pracovník CC (Call Centra)
- Management

Nástin mapy procesu



Zakládání identit a přiřazování služeb u jednotlivých typů žádostí:

Žádost	Zakládání identit	Zakládání služeb
Lékaře	Osoba	PORTAL, LEKARI
Stomatologa	Osoba	PORTAL, STOMATOLOGOVE
Lékárníka	Osoba	PORTAL, LEKARNICI
Lékaře a provozovatele ZZ	Osoba	PORTAL, LEKARI
	subjekt/pracoviště	PORTAL, AMBULANCE, PRIPOJENI
Stomatologa a provozovatele ZZ	Osoba	PORTAL, STOMATOLOGOVE
	subjekt/pracoviště	PORTAL, AMBULANCE, PRIPOJENI
Zdravotnického zařízení	Osoba	Bez služeb
	subjekt/pracoviště	PORTAL, AMBULANCE, PRIPOJENI

Přehled integrace systémů spisová služba Athéna a Externí identity

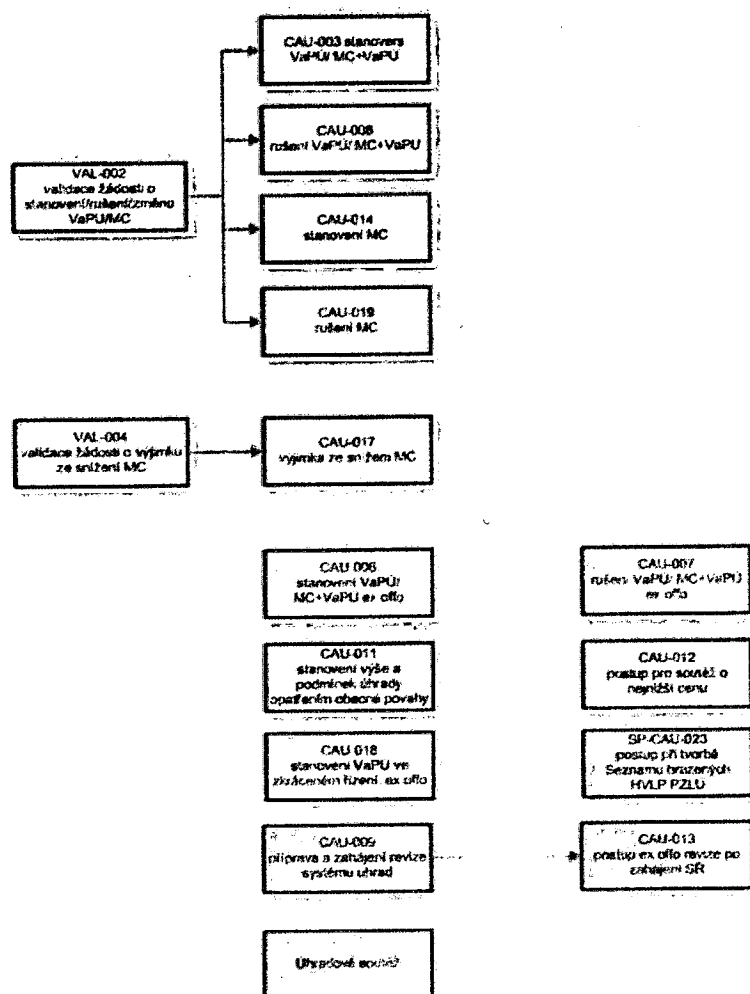
Směr	Komunikace	Forma	Způsob	Athéna	ZEP
IN	Žádost	XML	web formulář	Ano	Ano
OUT	Notifikace Žadatele o přijetí žádosti	e-mail	e-mail	Ne	Ano
OUT	Dotaz na ČLK/ČSK/ČLnK	PDF dokument	datová schránka	Ano	Ano
IN	Odpověď z ČLK/ČSK/ČLnK	PDF dokument	datová schránka	Ano	Ano
OUT	Dopis s přístupy	listinná zásilka do vlastních rukou	Česká pošta	Ano	N/A
IN	Dodejka	listinný doklad	Česká pošta	Ano	N/A
OUT	Notifikace Žadatele o zaslání dopisu s přístupy	e-mail	e-mail	Ne	Ano
OUT	Notifikace Žadatele o aktivaci úctů	e-mail	e-mail	Ano	Ano
OUT	Certifikát (bude odeslán společně s Notifikací Žadatele o aktivaci účtů)	PDF dokument	e-mail	Ano	Ne
OUT	Zamítnutí žádosti	e-mail	e-mail	Ano	Ano

Vymezení Procesu stanovování cen a úhrad

Proces stanovování cen a úhrad se pro účely této Smlouvy skládá z níže uvedených činností:

1. VAL-002 Validace žádosti o stanovení/rušení/změnu VaPÚ/MC
2. VAL-004 Validace žádosti o výjimku ze snížení MC
3. CAU-003 Stanovení VaPÚ/MC+VaPÚ
4. CAU-008 rušení VaPÚ/MC+VaPÚ
5. CAU-014 stanovení MC
6. CAU-014 rušení MC
7. CAU-017 výjimka ze snížení MC
8. CAU-006 Stanovení VaPÚ/MC+VaPÚ ex offo
9. CAU-011 Stanovení výše a podmínek úhrady opatřením obecné povahy
10. CAU-018 Stanovení VaPÚ ve zkráceném řízení, ex offo
11. CAU-009 Příprava a zahájení revize systému úhrad
12. CAU-007 Rušení VaPÚ/MC+VaPÚ ex offo
13. CAU-012 Postup pro soutěž o nejnižší cenu
14. CAU-023 Postup při tvorbě Seznamu hrazených HVLP PZLÚ
15. CAU-013 Postup ex offo revize po zahájení SŘ
16. Úhradová soutěž

Nástin procesní mapy Procesu stanovování cen a úhrad



Příloha č. 2 – Licenční podmínky výrobce software (9 stran)

PROGRESS SOFTWARE CORPORATION

End User Product License Agreement

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1.3 The term of the license is set forth in Exhibit A, unless otherwise terminated in accordance with the terms of this Agreement.

1.4 Licensee agrees to pay the applicable fees as set forth in the Order. Licensee further agrees to pay any applicable transportation charges, value-added taxes or other applicable taxes, tariffs or withholding taxes which the relevant authorities require to pay. All fees are exclusive of any such taxes or tariffs unless expressly stated in the Order.

1.5 Shipping terms for Product(s) shipped on physical media is FOB shipping point. For Product(s) shipped via electronic delivery, delivery is deemed complete, FOB shipping point, when the Product(s) is/are made available

at the electronic software download ("ESD") site specified by Progress and Licensee as e-mailed or otherwise issued a password to access and download the Product(s)

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2.2 The license model for the Product is set forth in the Order and described in Exhibit A. Third party rights and any additional licensing restrictions are set forth or referenced in Exhibit A.

2.3 If Licensee receives the Product in conjunction with a software application provided by a third party, the Product may only be used with or as part of such software application.

2.4 Licensee shall not copy (except as provided in Section 5.2 hereof), disassemble, reverse engineer, decompile, modify or create derivative works of the Product and the Documentation to the extent that such restriction is not prohibited by applicable mandatory law.

2.5 Licensee may not sublicense, sell, rent, encumber, outsource, lease or grant any other rights in the Product and/or the Documentation to others or otherwise allow the Product to be accessed, used or possessed by another party. For these purposes, the term "use" shall 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.

2.6 Licensee shall have no right to use the Product to provide time sharing, 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.

2.7 The Product, including technical data, are subject to U.S. export control laws, including, without limitation, the U.S. Export Administration Act and its associated regulations, and may be subject to export or import regulations in other countries. Licensee shall not directly or indirectly export or re-export the Product, or any direct product thereof, without first obtaining Progress's written approval. Licensee agrees to comply strictly with all regulations and acknowledges that it has the responsibility to obtain licenses to export, re-export or import the Product. The Product may not be downloaded, or otherwise exported or re-exported (i) into, or to a national or resident of any country to which the U.S. has embargoed goods; or (ii) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals, the U.S. Commerce Department's Table of Denial Orders as amended from time to time, or any other list distributed by the United States government setting forth individuals or entities to which distribution of the Product would be prohibited by United States law.

2.8 Licensee shall be solely responsible for identifying and complying with all laws of any jurisdiction outside of the United States regarding the use of the Product and any technical data supplied by Progress. Licensee agrees to obtain all licenses, permits or approvals required by any government at Licensee's sole cost and expense. Licensee's obligations under this Section 2.8 shall survive termination for any reason whatsoever.

2.9 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 forth herein. The Product and related Documentation is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer 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 forth herein. Contract Manufacturer is Progress Software Corporation, 14 Oak Park, Bedford, MA 01730.

2.10 This Agreement is personal to Licensee and Licensee may not transfer, assign or otherwise convey, novate or encumber this Agreement or the Product, in whole or in part, by operation of law, merger or otherwise, to any other party, including any parent, subsidiary or affiliated entity. A Change of Control of Licensee shall constitute an assignment hereunder. A "Change of Control" shall include, but not be limited to, any merger, consolidation, amalgamation, reorganization or sale, transfer or exchange of the capital stock or equity interests of Licensee in a transaction or series of transactions which results in the holders of Licensee's capital stock or equity interests holding less than 50% of the outstanding capital stock or equity interests immediately following such transaction(s).

3. Limited Warranty.

3.1 Progress warrants that, for a period of ninety (90) days from either the date of the initial shipment or availability for download from a Progress website of the Product, whichever occurs first (the "Warranty Period"), (i) the Product will conform in all material respects to the Documentation and (ii) the media, if any, on which the Product is recorded will be free from defects in materials and that the Product is properly recorded on the media. As the sole and exclusive remedy for physically defective media (such as the diskettes, cartridges, CD-ROMs, DVDs or magnetic tapes), Progress will replace it free of charge if claimed during the Warranty Period. As the sole and exclusive remedy for any failure of the Product to materially conform to the Documentation, Progress shall repair or replace the Product if such failure is reported during the Warranty Period or, if Progress, at its discretion, reasonably determines that such remedy is not economically or technically feasible, this Agreement and the licenses granted hereunder will terminate and Progress or its supplier (as applicable) shall provide a full refund of the license fee paid with respect to the particular Product. The above warranties do not cover Updates, generic non-configured solution packs, any Product provided on an evaluation basis, or defects to the Product due to accident, abuse, service, alteration, modification or improper installation or configuration by Licensee, its personnel or any third party.

3.2 Progress does not warrant that the functions of the Product will meet Licensee's requirements or that operation of the Product will be uninterrupted or error free. Licensee assumes responsibility for selecting the Product to achieve its intended results and for the use and results obtained from the Product.

3.3 THE LIMITED WARRANTY SPECIFIED IN SECTION 3.1 SETS FORTH ALL WARRANTIES AND REPRESENTATIONS PROVIDED TO LICENSEE WITH RESPECT TO THE PRODUCT AND ANY SERVICES AND UPDATES PROVIDED HEREUNDER, AND SUCH LIMITED WARRANTY IS PROVIDED SOLELY BY PROGRESS AND NOT ITS LICENSORS. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, PROGRESS, ITS LICENSORS AND THEIR RESPECTIVE SUPPLIERS MAKE NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, RELATING TO THE PRODUCT, OR ANY SERVICES OR UPDATES PROVIDED UNDER THIS AGREEMENT. ANY UPDATES OR SERVICES DELIVERED HEREUNDER ARE DELIVERED "AS IS" WITHOUT ANY WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ALL OTHER IMPLIED WARRANTIES AND REPRESENTATIONS INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT WITH RESPECT TO THE PRODUCT, OR ANY SERVICES AND UPDATES PROVIDED UNDER THIS AGREEMENT ARE DISCLAIMED. Further, the Product is not fault tolerant and is not designed, manufactured or intended for use in hazardous environments requiring fail-safe performance (including, without limitation, the design, construction, operation or maintenance of any nuclear facility; direct life support machines; weapon systems; or control of aircraft, air traffic, aircraft navigation or aircraft communications), in which the failure of the Product could lead directly or indirectly to death, personal injury or severe physical or environmental damage. Without limiting the scope of the disclaimers set forth herein, Progress for itself and on behalf of its licensors and their respective suppliers, disclaims any express or implied warranty of fitness for any such high risk uses.

4. Indemnity.

4.1 Progress will defend, indemnify and hold Licensee harmless against any and all costs and reasonable expenses finally awarded by a court or agreed to in settlement which directly result from any third party claim based on an allegation that a Product infringes either a valid (a) United States patent or (b) copyright of a country that is a party to the Agreement for Trade Related Aspects of Intellectual Property Rights ("TRIPS") but only if Progress is notified promptly in writing of such claim and given sole control of the defense of any such claim and all negotiations for its settlement or compromise. Licensee agrees to reasonably cooperate with Progress in the defense, settlement or compromise of any such claim. In the event that a final injunction is obtained against Licensee's use of the Product, if Progress reasonably believes that Licensee's use of the Products could be so enjoined, or if in Progress's opinion the Product is likely to become the subject of a successful claim of such infringement, Progress shall, at its option and expense, (i) procure for Licensee the right to continue using the Product as provided in this Agreement, (ii) modify or require replacement of the Product that Licensee is then currently using so that the Product becomes non-infringing (so long as the functionality of the Products is substantially similar) or, in the event neither of the previous two options are commercially reasonable for Progress, (iii) terminate this Agreement and the rights granted hereunder and refund to Licensee the amount paid to Progress for the Product less an amount for depreciation determined on a straight-line five-year depreciation basis with a commencement date as of the respective shipment date of the applicable copies of the Product. Notwithstanding the foregoing, Progress shall have no liability for a claim to the extent based on (A) the use by Licensee of the Product more than thirty (30) days after Progress has notified Licensee of (i), (ii) or (iii) above or (B) the version of the Product used by Licensee is not the current release version of the Product.

4.2 Notwithstanding the foregoing, Progress shall have no liability to Licensee under this Section 4 to the extent that any infringement or claim thereof is based upon (i) the combination, operation or use of a Product in combination with equipment or software not supplied by Progress hereunder where the Product would itself not be infringing, (ii) Licensee's non-compliance with designs, specifications or instructions provided by Progress to Licensee, (iii) use of a Product in an application or environment for which it was not designed or not contemplated under this Agreement, (iv) modifications of a Product by anyone other than Progress where the unmodified version of the Product would not be infringing, or (v) use by users or affiliated parties of Licensee not permitted by this Agreement.

4.3 THE FOREGOING INDEMNIFICATION PROVISIONS STATE THE ENTIRE LIABILITY OF PROGRESS AND THE SOLE AND EXCLUSIVE REMEDY OF LICENSEE WITH RESPECT TO ANY INFRINGEMENT OR ALLEGED INFRINGEMENT BY PROGRESS OF ANY INTELLECTUAL PROPERTY RIGHTS OR PROPRIETARY RIGHTS IN RESPECT OF THE PRODUCT OR ITS USE.

4.4 If any affiliated party of Licensee is specifically authorized in writing and as a term of this Agreement to use the Product pursuant to Section 2.1 hereof and Exhibit A, Licensee shall defend, indemnify and hold Progress harmless for all acts and omissions of such affiliated party.

5. Confidentiality Notices.

5.1 Licensee acknowledges that the Products, including all source and/or object code and all parts and aspects thereof, and any Updates, modifications, translations, localizations, or other derivative works thereof, in whatever form, whether or not marked as confidential, the Documentation and any other documentation or materials provided with or related to the Product (collectively, the "Confidential Information"), are the valuable proprietary and trade secret information of Progress and/or its licensors and suppliers. Licensee shall (i) limit use and disclosure of the Confidential Information to its employees and its consultants who are authorized pursuant to this Agreement to use the Products and who agree to be bound by the terms of this Agreement or are otherwise bound to a confidentiality agreement containing substantially similar terms; (ii) not provide or disclose any of the Confidential Information to another party; and (iii) treat the Confidential Information with the same degree of care to avoid disclosure to any third party as is used with respect to Licensee's information of like importance which is to be kept secret, but with no less than reasonable care. The foregoing obligations shall be in addition to any obligations set forth in any separate confidentiality agreement between Progress and Licensee.

5.2 Licensee agrees, under penalty of license termination but not exclusive of any other remedies, not to cause or permit the copying of the Product for any purpose other than expressly set forth herein. Licensee may copy the Product only for archival and off-line backup purposes, but not for disaster recovery purposes unless Licensee has purchased the appropriate disaster recovery or replication license. Licensee may copy the Documentation solely for the purpose of facilitating Licensee's use of the Product in accordance with, and subject to, the terms and conditions of this Agreement. Licensee agrees not to remove any product identification, copyright notices, or other notices or proprietary restrictions from the Product.

5.3 Benchmark results for the Product may not be disclosed or published without the written consent of Progress.

5.4 Licensee acknowledges that in the event of a breach or threat of breach of this Section 5, money damages will not be adequate. Therefore, in addition to any other legal or equitable remedies, Progress shall be entitled to seek injunctive or similar equitable relief against such breach or threat of breach.

5.5 All notices and requests in connection with this Agreement to be sent to Progress shall be given in writing and shall be sent by hand delivery, overnight courier or certified mail with proof of delivery to the following address: 14 Oak Park Drive, Bedford, MA 01730, Attention: General Counsel. All notices and requests in connection with this Agreement to be sent to Licensee shall be given in writing and shall be sent by hand delivery, overnight courier or certified mail with proof of delivery to the address first set forth in the Order. Either party may change its address for receipt of notices upon written notice to the other party, and notices shall be deemed given on the day of receipt or the date evidenced on the proof of delivery, whichever is earlier.

6. Limitation of Liability.

6.1 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE LIABILITY OF PROGRESS, IF ANY, FOR DAMAGES RELATING TO ANY PRODUCT, UPDATE AND/OR SERVICES SHALL BE LIMITED TO THE ACTUAL AMOUNTS PAID BY LICENSEE FOR SUCH PRODUCT, UPDATE AND/OR SERVICES. PROGRESS'S LICENSORS AND THEIR SUPPLIERS SHALL HAVE NO LIABILITY TO LICENSEE FOR ANY DAMAGES SUFFERED BY LICENSEE OR ANY THIRD PARTY AS A RESULT OF USING THE PRODUCT, ANY UPDATE, OR ANY PORTION THEREOF, OR AS A RESULT OF ANY SERVICES RELATING THERETO. NOTWITHSTANDING THE FOREGOING, IN NO EVENT SHALL PROGRESS, ITS LICENSORS, OR ANY OF THEIR RESPECTIVE SUPPLIERS BE LIABLE FOR ANY LOST REVENUE, PROFIT OR DATA, OR FOR INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER, INCLUDING, WITHOUT LIMITATION, ANY COMMERCIAL DAMAGES OR LOSSES, HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY, ARISING OUT OF THE USE OR INABILITY TO USE THE PRODUCT, ANY UPDATE, OR ANY PORTION THEREOF, OR ANY SERVICES, EVEN IF PROGRESS, ITS LICENSORS AND/OR ANY OF THEIR RESPECTIVE SUPPLIERS HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. EACH EXCLUSION OR LIMITATION IS INTENDED TO BE A SEPARATE AND THEREFORE SEVERABLE EXCLUSION.

7. Audit Rights. Progress may install, enable and utilize automated license tracking, management and/or enforcement solutions with the Products, which Licensee may not disrupt or alter. Licensee shall maintain books and records in connection with this Agreement and the use of the Products and any Updates and/or services provided hereunder. Such books and records shall include at a minimum the number of licenses purchased and being used by Licensee. At its expense and with reasonable written notice to Licensee, Progress or a third party appointed by Progress may audit the books, records, and if necessary, the systems on which the Product or any Update is installed for the sole purpose of ensuring compliance with the terms of this Agreement. Progress shall have the right to conduct follow-up audits as necessary. All audits shall be conducted during regular business hours at Licensee's offices and shall not interfere unreasonably with Licensee's activities. Progress shall treat all such records and books as confidential information. If any audit reveals that Licensee has underpaid license or support fees, Licensee shall be invoiced for all such underpaid fees based on Progress list price in effect at the time the audit is completed. If the underpaid fees are in excess of five percent (5%) of the fees previously paid by Licensee, then Licensee shall also pay Progress's reasonable costs of conducting the audit and enforcement of this Agreement.

8. Termination.

8.1 Progress may terminate this Agreement by written notice at any time if Licensee defaults in the performance of any provision of this Agreement and fails to cure such default to the satisfaction of Progress within thirty (30) days after such notice. This remedy shall not be exclusive and shall be in addition to any other remedies which Progress may have under this Agreement or otherwise.

8.2 Any purported transfer or assignment of this Agreement or the licenses granted hereunder by Licensee or other action by Licensee in contravention of Section 2.10 above or any purported transfer or assignment of this Agreement or the licenses granted hereunder as a result of Licensee's bankruptcy, insolvency, or liquidation or as a result of an assignment of Licensee's assets for the benefit of creditors shall be void and this Agreement and the licenses granted hereunder shall thereupon automatically terminate without further notice or action by Progress.

8.3 Within ten (10) days of the date of expiration or termination of this Agreement and/or any of the licenses granted hereunder, Licensee shall return all copies of the Products, including all Updates, and related Documentation to Progress or, if requested by Progress, destroy such Products, Updates and Documentation and certify in writing to such return or destruction.

9. Miscellaneous.

9.1 If Progress offers support for the Product, and if Licensee orders and pays for such support, such support shall be provided in accordance with Progress' then current and applicable support policies.

9.2 THIS AGREEMENT, INCLUDING ANY EXHIBITS AND ANY LICENSE ADDENDUM(S), CONSTITUTES THE COMPLETE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE PRODUCT AND SUPERCEDES ANY OTHER AGREEMENT, PROPOSAL, COMMUNICATION OR ADVERTISING, ORAL OR WRITTEN, SIGNED OR UNSIGNED, WITH RESPECT TO THE PRODUCT. To the extent there are any terms and conditions contained in Licensee's purchase order or other documentation supplied by Licensee such terms and conditions shall be deemed to be stricken and the terms and conditions of this Agreement shall govern. In the event any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement will remain in full force and effect.

9.3 For administrative convenience, Progress invoices may be issued by a local affiliate of Progress.

9.4 This Agreement 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.

9.5 Except as otherwise expressly set forth herein, this Agreement is governed by the laws of the Commonwealth of Massachusetts, without regard to its choice of law principles, and without regard to the provisions of any state Uniform Computer Information Transactions Act or similar federal, state, local or foreign laws, regulations or conventions.

9.6 This Agreement may not be modified or amended except in a writing executed by both Progress and Licensee.

9.7 Failure or delay on the part of Progress to exercise any right, power, privilege or remedy hereunder shall not constitute a waiver thereof. A waiver of default shall not operate as a waiver of any other default or of the same type of default on future occasions.

9.8 The parties expressly disclaim the application of the United Nations Convention on Contracts for the International Sale of Goods.

9.9 If the Product is acquired outside the United States local law may apply.

EXHIBIT A

TERM OF LICENSE:

Perpetual

AFFILIATE USE, IF ANY:

None

ADDITIONAL TERMS, IF ANY:

None

LICENSE MODELS AND DEFINITIONS:

The product name and applicable license model for the Product(s) purchased is set forth in the Order. The description of the license model is set forth below.

For purposes of this Exhibit A, the following terms shall have the following definitions:

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

"CPU" means a computer processing unit, also known as a processor or microprocessor. It can contain multiple cores in both virtualized and/or non-virtualized environment.

"Client Device": A Client Device is any input technology that allows the Licensee to access the Product, including but not limited to a workstation, a personal computer, a PDA device, a cellular phone, a laptop or other device that is operated by an individual.

"Disaster": Any unplanned event or condition that renders Licensee unable to use an application or database for its intended computer processing and related purposes.

"Non-Human Operated Device": A Non-Human Operated Device is 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.

"Platform": A Platform is the specific combination of the hardware and the operating system, a change to either would constitute a platform change.

"Process": A Process is 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.

"Site": A site is defined as a single building or campus of building.

CPU License: License fees are based on the number of CPUs running the Product(s) in production. Multi-core chips are counted to determine the total number of CPU licenses required. CPU licensing may be run on a virtualized or non-virtualized environment under this price structure. The CPU license is dependent upon the cores running on a CPU.

Core License: A Product licensed on a "Core" basis grants Licensee the right to run the Product on a single Core on a single server. The total number of Cores on the machine may not exceed the total number licensed to Licensee. Additional Core License(s) are required for each Core of the server on which the Product runs, including, without limitation, servers configured for disaster recovery, load balancing, clustering, development, testing and reporting.

Named User/Seat License: A Named User License grants Licensee the right to designate a specific user (a "Named User") to access and use the Product or access and use an application which can access the Product. Licensee must be able to identify and count each Named User. A Named User can be an individual, a Non-Human Operated Device or a Process. A Named User License is a multi-server license 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 license right designation may be transferred from one user to another provided that the original user no longer requires and is no longer permitted access to the Product. All Named Users must be bound to the terms and conditions of this Agreement.

Server/Machine License: A Server or Machine License grants Licensee the right to install and use a Product on a single server.

and on a single Platform. Additional Server/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.

Application Specific: If the Order lists a specific application authorized for use with the Product, or if Licensee obtained a Product in conjunction with a software application provided by a third party, the Product is licensed for use only with such application. Use with any other application product is strictly prohibited.

Disaster Recovery License: A Disaster Recovery License shall only be used by Licensee 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, the DR Product may be made operational for a period not to exceed ninety (90) days ("DS DR Product Deployment Usage Period"). Licensee shall notify Progress in writing within five (5) business days of the commencement of the DS DR Product Deployment Usage Period. Licensee shall be further subject to the license terms of the appropriate license model for the Product set forth in the Order. A Disaster Recovery License may be transferred from one server or CPU to another with prior notice to Progress 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 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 shall not affect the assignment prohibition set forth in Section 2.11 of this Agreement.

Non-Production Development, Support, Testing and Staging License: If Licensee ordered or obtained the Product for development, support, quality assurance, testing and/or staging or other non-production purposes, then the Product shall only be used by Licensee for such purposes and may not be deployed in a production environment. Licensee shall be further subject to the license terms of the appropriate license model for the Product set forth in the Order.

Evaluation Edition: The Product is licensed on a per machine basis. The Evaluation Edition is subject to the additional restriction that it be used by Licensee solely for evaluation of software applications, and not in conjunction with the development or deployment of such software applications. An Evaluation Edition license may not be transferred. Evaluation includes the use of the Product in performance benchmarking. Progress updates the Product regularly and benchmarking data for the Product is subject to change. Benchmark tests on prior versions of the Product may yield results that are not reflective of the performance of the current version of the Product. The most current version of the Product is available at www.progress.com. LICENSEE UNDERSTANDS AND ACKNOWLEDGES THAT THE EVALUATION EDITION CONTAINS A DISABLING DEVICE THAT WILL AUTOMATICALLY DISABLE THE EVALUATION EDITION THIRTY (30) DAYS FROM INSTALLATION. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN SECTION 3 ABOVE, THE EVALUATION EDITION IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. PROGRESS MAKES NO WARRANTIES WITH RESPECT TO THE EVALUATION EDITION, EXPRESS, IMPLIED, OR ARISING BY CUSTOM OR TRADE USAGE, AND SPECIFICALLY MAKES NO WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR ANY PARTICULAR PURPOSE OR NONINFRINGEMENT.

THIRD PARTY TERMS AND RESTRICTIONS: The Product may contain or be accompanied by certain non-proprietary components which are subject to additional restrictions. These components, if any, are identified in, and subject to, special license terms and conditions set forth in either the "[readme.txt]" file or the "[notices.txt]" file accompanying the Product ("Special Notices"). The Special Notices include important licensing and warranty information and disclaimers. In the event of conflict between the Special Notices and the other portions of this Agreement, the Special Notices will take precedence (but solely with respect to the non-proprietary third party component(s) to which the Special Notice relates).

Additional Terms Applicable to Users of the Product with Progress OpenEdge software: If the Product is used with Progress OpenEdge software, the following applies:

Additional License Models: The following license models are added to the license models in this Exhibit A above:

Registered Device License (formerly known as "Registered Client License"): A Registered Device License grants Licensee 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. Licensee 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 but the Product must be used on a single Platform and may not be used concurrently on different computer, or device, 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 device to another provided that the original device is no longer permitted access to the Product. The foregoing transfer right shall not affect the assignment prohibition set forth in Section 2.10 of the Agreement.

Access Agent License As: Access Agent License grant: Licensee the right to install and use the Product or access and use an application which can access the Product by a user (or Non-Human Operated Device) so long as that user (or Non-Human Operated Device) (i) cannot be uniquely identified and or (ii) the user can only access the Product or the application for less than two hours a week. This Access Agent License should always be purchased in combination with a Concurrent, 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 access the Product or the application for two or more hours per week.

Additional License Terms: Additional terms set forth in applicable order documentation for the Product (including, but not limited to invoices, order confirmations, or other documentation confirming a Product order) that further define the scope of the license grant are hereby incorporated into this Agreement.

PROGRESS MAINTENANCE PLAN (IF ANY):

As indicated in the applicable Order.