



## License Agreement for Service Providers

THIS LICENSE AGREEMENT FOR SERVICE PROVIDERS (“**AGREEMENT**”) IS COMPRISED OF THE END USER LICENSE AGREEMENT REFERENCED IN SECTION II BELOW (“**EULA**”) AND THE ADDITIONAL TERMS AND CONDITIONS APPLICABLE TO SERVICE PROVIDERS SET FORTH IN SECTION I BELOW (“**SERVICE PROVIDER TERMS**”). THIS AGREEMENT IS CREATED FOR SERVICE PROVIDERS AUTHORIZED BY LICENSOR ONLY AND SHALL NOT BE APPLIED TO END USERS. READ THIS AGREEMENT BEFORE INSTALLING OR USING THE PRODUCT TO WHICH THIS AGREEMENT APPLIES. BY ACCEPTING THIS AGREEMENT, COMPLETING THE REGISTRATION PROCESS, AND/OR INSTALLING OR USING THE PRODUCT, YOU AGREE ON BEHALF OF YOURSELF AND YOUR COMPANY (IF APPLICABLE) TO THE TERMS BELOW. IF YOU DO NOT AGREE WITH THESE TERMS, OR DO NOT HAVE THE AUTHORITY TO BIND YOUR COMPANY, DO NOT INSTALL, REGISTER FOR OR USE THE PRODUCT, AND RETURN ALL COPIES OF THE PRODUCT. ONCE YOU HAVE DONE THIS, YOU MAY REQUEST FROM THE POINT OF PURCHASE A FULL REFUND OF THE LICENSE FEES, IF ANY, PAID FOR THE PRODUCT (OR, IF THE PRODUCT IS PROVIDED TO YOU AS A HOSTED SERVICE, A REFUND OF THE PREPAID SERVICE FEES FOR THE REMAINDER OF THE SUBSCRIPTION PERIOD OF THE PRODUCT). FLOWMON NETWORKS A.S. IS THE LICENSOR OF THE PRODUCT. THE LICENSOR MAY BE REFERRED TO HEREIN AS “**Flowmon**”, “**Licensor**”, “**we**”, “**us**”, or “**our**”. IF YOU ARE AGREEING TO THIS AGREEMENT ON BEHALF OF YOURSELF IN YOUR INDIVIDUAL CAPACITY, THEN YOU ARE THE LICENSEE AND YOU MAY BE REFERRED TO HEREIN AS “**Licensee**”, “**you**”, or “**your**”. IF YOU ARE AGREEING TO THIS AGREEMENT ON BEHALF OF YOUR COMPANY, THEN YOUR COMPANY IS THE LICENSEE AND ANY REFERENCES TO “**Licensee**”, “**you**”, or “**your**” WILL MEAN YOUR COMPANY. THE SOFTWARE CONTAINED IN THE PRODUCT IS PROTECTED BY COPYRIGHT LAWS AND INTERNATIONAL COPYRIGHT TREATIES AS WELL AS OTHER INTELLECTUAL PROPERTY LAWS AND TREATIES. THE SOFTWARE CONTAINED IN THE PRODUCT IS LICENSED, NOT SOLD.

### I. ADDITIONAL TERMS APPLICABLE TO SERVICE PROVIDERS

#### a. DEFINITIONS.

Any defined terms referenced but not defined in this Section I will have the meaning given to them in the EULA attached as Exhibit B to this Agreement.

- i. “**Customers**” means a customer of yours that will use the Product in connection with receiving Services from you.
- ii. “**Services**” means the performance of network, application, system and/or e-management services across a network.
- iii. “**Service Provider Data**” means all data, information and other content that you or your Customer upload to, place into, collect from, store in, or process, generate or retrieve through use of, the Product; provided, however, that “**Service Provider Data**” does not include the Product or data, information, or content, irrespective of the form, that is generated automatically upon executing the Product without additional user input.

#### b. ORDER OF PRECEDENCE

In the event of any conflict between the terms and conditions of this Section I and the terms and conditions of the EULA referenced in Section II below, the terms and conditions of this Section I will prevail.

c. LICENSE

- i. Notwithstanding anything to the contrary in the EULA, we grant you the right to use the Product in accordance with the terms set forth herein and the terms of the Order (subject to section 1.2.8 of the EULA (Order of Precedence between EULA and Order)) (“**License**”). The License represents a limited, non-exclusive, non-transferable and non-assignable right to use the Product for the benefit of, and sublicense the License to Customers, solely in connection with your delivery of Services to such Customers and in accordance with the terms and conditions hereof.
- ii. Unless a territory limitation is specified in the Order, the License is a worldwide license subject to your compliance with section 1.5.1 of the EULA (Export Compliance).
- iii. You are expressly entitled to sublicense the License to allow use of the Product by your Customers in connection with your delivery of Services to Such Customers, but only within the scope of use set forth in subsection (e) of this Section I and subject to the limitations, restrictions and conditions set out in such subsection (“**Sublicense**”).

d. LICENSE RESTRICTIONS

The license restrictions set forth in section 3.1.1.2(b) of the EULA will not restrict you from using the Products and/or any copyrighted works and/or databases contained therein with any software required to provide Services to your Customers; provided that such software may not be combined with the Products and/or any copyrighted works and/or databases contained therein.

e. SUBLICENSING OF THE LICENSE TO CUSTOMERS

- i. You may Sublicense the License to your Customers only as part of the Services and only if each Customer enters into a subscription services agreement with you that, at a minimum, contains the license terms set forth in **Exhibit A** (Scope of the Sublicense) of this Agreement (“**Subscription Agreement**”).
- ii. You acknowledge that your failure to conclude a Subscription Agreement that satisfies the requirements set forth herein with each Customer shall be deemed a material breach of this Agreement and, without limiting Licensor’s other rights and remedies, Licensor may terminate this Agreement, or suspend or terminate the operation of the Product to the respective Customer as reasonably necessary for the protection of Licensor’s rights. You will be solely liable for any harm resulting from any such termination of the Agreement or suspension or termination of the operation of the Product, including any harm caused to one or more Customers impacted by such suspension or termination.
- iii. You will be liable for any action or inaction by your Customer that is in violation of the terms and limitations of the Subscription Agreement.
- iv. You will provide us with any reasonably required cooperation in pursuing any legal action against your Customers for any violations of the Subscription Agreement.
- v. Without limiting the scope of your indemnification obligations to us pursuant to section 1.10.2 of the EULA, the definition of “Third-Party Claims” as set forth in said section will be expanded to also include any and all third party claims, lawsuits, and proceedings that arise or result from your use or Sublicensing of the Product as part of the Services you provide to Customers.

f. SERVICE PROVIDER DATA

As between you and us, you reserve and retain sole and exclusive ownership of all right, title and interest in and to Service Provider Data. You agree that we may use and exploit the Service Provider Data for statistics, software development and other purposes in accordance with the following sections of the EULA: section 1.12.1 (Data Collection through use of the Product) and section 3.4 (Data Collection and Analytics). You will, at your own expense, obtain all third-party licenses, consents and/or permissions (including licenses, consents and/or permissions from your Customers) that may be necessary or appropriate with respect to Service Provider Data to enable us to exercise our rights as described in this section. You will be liable for any damages arising out of your failure to obtain any such licenses, consents and/or permissions.

g. WARRANTIES

The warranties, if any, set forth in the EULA are made by us solely to you and not Customers or any other party, and are subject the warranty limitations and disclaimers set forth in the EULA.

h. ADDITIONAL TERMINATION PROVISIONS

- i. Any expiration or earlier termination of this Agreement terminates the granted License as well as any Sublicenses granted by you to your Customers.
- ii. Upon the expiration or earlier termination of this Agreement, you shall ensure that your Customers who were granted a Sublicense pursuant to the terms hereof satisfy the requirements of sections 1.15.2 and 3.2 of the EULA.

i. ADDITIONAL OBLIGATIONS

- i. Your training obligations as set forth in subsection (e)(vi) of section 3.3 of the EULA (Additional Obligations) shall include training your Customers.

II. END USER LICENSE AGREEMENT

Except as otherwise specified in Section I above, the terms and conditions of the EULA attached hereto as Exhibit B will apply to your use of the Product.

## EXHIBIT A

### Scope of the Sublicense

You (hereunder referred to as the “**Company**”) are obliged to conclude with each Customer a Subscription Agreement, which shall contain at least the following provisions or their modifications that do not change their purpose (the Product is hereunder referred as the “**software**”):

1. The Company grants the Customer a non-exclusive, non-transferable and limited duration sub-license to operate and use the software provided by the Company.
2. The Company or its suppliers, including creators of the software, retain all of its intellectual property rights in the software and no right, title or interest in or to the software is transferred to the Customer.
3. The Customer may not, in any way, reverse engineer, decompile, disassemble and/or decrypt the software or any part thereof. The Customer may not translate, adapt, arrange or otherwise alter the software or any part thereof.
4. The software and any additional provided services by the Company, whether alone or in combination with other software, hardware or services, are provided “as-is,” with no warranty by the Company or its suppliers, including creators of the software, regarding performance, compatibility, fitness for a particular purpose, merchantability, non-infringement, accuracy, errors, security, stability, or freedom from viruses, worms or other malware.
5. Neither the Company, nor its suppliers, including creators of the software, are liable to the Customer for any indirect, consequential, incidental or special damages (including without limitation lost profits, lost or destruction to data, breaches of rights of privacy, breaches of security, or disclosure of confidential data) arising out of the use of the software, regardless of the theory of liability whether arising in contract, tort, or otherwise, including negligence and strict liability. In any case, the Customer’s sole remedy concerning the subscription agreement or the software provided shall be a refund of amounts actually paid to the Company.
6. Upon termination of the respective sub-license, the Customer must:
  - (a) stop using the software,
  - (b) destroy and remove all copies of the software, including backups, from its computers, hard drives, networks, systems and any other storage media;
  - (c) return or remove all other information, documents obtained from the Company relating to the software; and
  - (d) confirm and certify the fulfilment of the aforementioned obligations to the Company in writing without undue delay upon request of the Company or its suppliers.
7. The Customer acknowledges that Flowmon Networks a.s., a company established and existing under the laws of the Czech Republic, having its registered office at Škrobárenská 511/5, Trnitá, 617 00 Brno, Czech Republic, ID No.: 27730450, registered in the Commercial Register maintained by the Regional Court in Brno, section B, insert 4906, the creator of the software, is an intended third party beneficiary of this subscription agreement and it is entitled to all protections, limitations of liabilities, disclaimers of warranties, and other terms for the benefit of the Company and any or all of its suppliers.
8. Any other possible claims against the Company and/or its suppliers which may not be waived by Customer under the applicable laws, may be claimed by Customer only against the Company as the entity solely responsible for the provision of agreed services.

**Exhibit B**

Accompanying this cover page is a copy of the End User License Agreement for the Product(s)

Total number of pages (including this Exhibit B cover page) = 15 pages.



## End User License Agreement

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

This EULA includes the following sections:

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

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### 1. GENERAL TERMS AND CONDITIONS

#### 1.1. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**1.2.6. Redistribution.** If the Order or section 3 (Product Family Specific Terms) or section 4 (Product Specific Terms) grants you the express right to redistribute or offer access to all or a portion of the Product (“**Redistributables**”), then, in conjunction with any such grant, you must comply with any limitations or requirements specified in the Order, section 3 (Product Family Specific Terms) or section 4 (Product Specific Terms), as applicable, and you must distribute or offer access to the Redistributables subject to a license agreement or terms of use between you and each third party receiving or accessing the Redistributables (“**your customer**”) that: (a) protects our interests consistent with the terms contained in this EULA, (b) prohibits your customer from any further distribution of the Redistributables (unless expressly permitted pursuant to section 3 (Product Family Specific Terms) or section 4 (Product Specific Terms)), (c) includes a limitation of damages clause that, to the maximum extent permitted by applicable law, disclaims on behalf of us, our Affiliates or our or their respective licensors, suppliers or Authorized Resellers, liability for any and all damages, whether direct, special, incidental or consequential damages, (d) contains terms substantially similar to those in subparts (a) through (g) of section 1.2.4 (Restrictions), section 1.5.1 (Export Compliance) and section 1.5.2 (U.S. Government Customers), and (e) includes a notice substantially similar to section 1.2.7 (Third Party Notices).

**1.2.7. Third Party Notices.** The Product may contain or be accompanied by certain third-party components which are subject to additional restrictions. These components, are identified in, and subject to, special license terms and conditions which, in the case of On-Premise Product(s), are set out in the “readme.txt” file, the “notices.txt” file, or the “Third Party Software” file accompanying the Product or portions thereof, and in the case of Hosted Services,



are set out in the third-party license agreement or notices that comes with the third-party component or is otherwise provided on the web page on which such third-party component is made available (“**Special Notices**”). The Special Notices include important licensing and warranty information and disclaimers. Unless otherwise expressly stated for a given third-party component, all such third-party components may be used solely in connection with the use of the Product subject to and in accordance with the terms and conditions of this EULA and the Special Notices. In the event of conflict between the Special Notices and the other portions of this EULA, the Special Notices will take precedence (but solely with respect to the third-party component(s) to which the Special Notice relates).

**1.2.8. Order of Precedence between EULA and Order.** If there is any conflict between the terms and conditions in the Order and the terms and conditions of this EULA, or if the Order changes any of the terms of this EULA, the terms and conditions of the Order will apply, except if the Order is between you and an Authorized Reseller, or the Order is issued/generated by you. In the case where the Order is between you and an Authorized Reseller, the terms of the Order will apply subject to the following: (a) any terms and conditions in the Order imposing obligations on the Authorized Reseller that are in addition to or different from the obligations we have to you pursuant to this EULA will be born solely by the Authorized Reseller and our obligations to you and limits on our liability will be governed solely by the terms and conditions of this EULA and (b) any terms and conditions that conflict with or would otherwise alter any of the following under this EULA will have no effect unless expressly agreed to in a written instrument executed by us: our ownership rights, yours and our confidentiality obligations, your export compliance obligations, limitations on your rights as a U.S. Government customer (if applicable), our audit rights, restrictions on your right to assign or governing law and jurisdiction. In cases where the Order is issued/generated by you, the terms and conditions of Section 1.18.2. of this EULA, governing a purchase order or other document you supply in connection with this EULA, shall apply to such Order.

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

### **1.3. License Types.**

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

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

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

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

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

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

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

1.5.2. **U.S. Government Customers.** If the Product is being acquired by or on behalf of the U.S. Government or by a U.S. Government prime contractor or subcontractor (at any tier), then the U.S. Government’s rights in the Product will be only as set out herein. The Product and Documentation are “commercial items” as that term is defined at 48 C.F.R. 2.101, consisting of “commercial computer software” and “commercial software documentation” as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the Product and such Documentation with only those rights set out herein.

## 1.6. **IP Ownership and Feedback.**

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

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

## 1.7. **Maintenance.**

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

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

services by paying the then-current fee, plus a reinstatement fee for the lapsed maintenance and support period in accordance with our maintenance and support reinstatement policies then in effect.

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

## **1.8. Fees and Taxes.**

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

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

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

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

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

## **1.9. Warranties.**

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

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

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

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

## 1.10. Indemnification.

### 1.10.1. Our Indemnification Obligation.

1.10.1.1. **Intellectual Property Infringement.** We will defend you, and your officers, directors, employees, and agents from and against any and all third party claims, lawsuits, and proceedings alleging that your use of the Product, in accordance with the terms and conditions of this EULA, constitutes a direct infringement or misappropriation of such third party's patent, copyright or trade secret rights (the "IP Claim"), and we will indemnify you for damages finally awarded against you by a court of competent jurisdiction with respect to the IP Claim.

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

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

### 1.10.2. Your Indemnification Obligation.

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

collectively “**Third-Party Claims**”) and you will indemnify for damages finally awarded by a court of competent jurisdiction with respect to any Third-Party Claim.

**1.10.3. Control of the Defense or Settlement.** For any indemnification obligation covered in section 1.10.1, “**Indemnifying Party**” means us, “**Indemnified Party**” means you, and “**Claim**” means an IP Claim. For any indemnification obligation covered in section 1.10.2, “**Indemnifying Party**” means you, “**Indemnified Party**” means us, and “**Claim**” means a Third-Party Claim. The Indemnified Party must provide the Indemnifying Party with prompt written notice of a Claim; however, the Indemnified Party’s failure to provide or delay in providing such notice will not relieve the Indemnifying Party of its obligations under this section except to the extent the Indemnifying Party is prejudiced by the Indemnified Party’s failure or delay. The Indemnified Party will give the Indemnifying Party full control of the defense and settlement of the Claim as long as such settlement does not include a financial obligation on or admission of liability by the Indemnified Party. If the Indemnified Party does not do so, then the Indemnified Party waives the Indemnifying Party’s indemnification obligations under section 1.10.1 or 1.10.2, as applicable. The Indemnified Party will reasonably cooperate in the defense of the Claim and may appear, at its own expense, through counsel reasonably acceptable to the Indemnifying Party.

## **1.11. Confidentiality.**

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

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

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

## **1.12. Data Collection and Personal Data.**

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

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

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

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

**1.13.1. Limitation of Liability.** EXCEPT FOR A PARTY'S INDEMNIFICATION OBLIGATIONS SET OUT IN THIS EULA OR A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS PURSUANT TO SECTION 1.11 (CONFIDENTIALITY), OR YOUR MATERIAL VIOLATION OF OUR INTELLECTUAL PROPERTY RIGHTS OR OF THE LICENSE RESTRICTIONS SET OUT IN THIS EULA, TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL EITHER PARTY'S LIABILITY FOR ALL COSTS, DAMAGES, AND EXPENSES ARISING OUT OF OR RELATED TO THIS EULA WHETHER BASED UPON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE AT LAW EXCEED, IN THE AGGREGATE, THE FEES PAID TO US FOR THE PRODUCT AND/OR SERVICE THAT IS THE SUBJECT OF THE CLAIM, PROVIDED, HOWEVER, THAT IF THE FEES PAID FOR SUCH PRODUCT AND/OR SERVICE ARE PAID ON A RECURRING BASIS, THEN THE NOT TO EXCEED LIMIT WILL BE THE FEES PAID TO US FOR THE PRODUCT AND/OR SERVICE DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE THE CLAIM AROSE. OUR AFFILIATES AND LICENSORS, AND THE SUPPLIERS TO US, OUR AFFILIATES OR LICENSORS, WILL, TO THE EXTENT PERMITTED BY APPLICABLE LAW, HAVE NO LIABILITY TO YOU OR TO ANY OTHER PERSON OR ENTITY FOR DAMAGES, DIRECT OR OTHERWISE, ARISING OUT OF THIS EULA, INCLUDING, WITHOUT LIMITATION, DAMAGES IN CONNECTION WITH THE PERFORMANCE OR OPERATION OF OUR PRODUCTS OR OUR PERFORMANCE OF SERVICES.

**1.13.2 Disclaimer of Certain Types of Damages.** EXCEPT FOR A PARTY'S INDEMNIFICATION OBLIGATIONS SET OUT IN THIS EULA OR YOUR MATERIAL VIOLATION OF OUR INTELLECTUAL PROPERTY RIGHTS OR THE LICENSE RESTRICTIONS SET OUT IN THIS EULA, TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL EITHER PARTY, ITS AFFILIATES OR ITS LICENSORS OR THEIR RESPECTIVE SUPPLIERS BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR TORT DAMAGES ARISING IN CONNECTION WITH THIS EULA OR EITHER PARTY'S PERFORMANCE UNDER THIS EULA OR THE PERFORMANCE OF OUR PRODUCTS, OR FOR ANY DAMAGES RESULTING FROM LOSS OF USE, LOSS OF OPPORTUNITY, LOSS OF DATA, LOSS OF REVENUE, LOSS OF PROFITS, OR LOSS OF BUSINESS, EVEN IF THE PARTY, ITS AFFILIATES, ITS LICENSORS, OR ANY OF THEIR RESPECTIVE SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES.

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

by us during the audit as confidential information pursuant to section 1.11 (Confidentiality) for use by us only as necessary to ensure compliance with and enforcement of the terms of this EULA. If any audit reveals that you have underpaid license, maintenance and support or subscription fees, you will be invoiced for all such underpaid fees based on our list price in effect at the time the audit is completed. If the underpaid fees exceed five percent (5%) of the fees previously paid by you, then you will also pay our reasonable costs of conducting the audit and enforcement of this EULA.

#### **1.15. Termination.**

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

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

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

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

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

#### **1.18. Miscellaneous.**

**1.18.1. Notices.** Notices of termination, material breach, your insolvency or an indemnifiable claim (“**Legal Notices**”) must be clearly identified as Legal Notices and sent via overnight courier or certified mail with proof of delivery to the following addresses: For us: 15 Wayside Rd, Suite 400, Burlington, MA 01803, Attention: General Counsel. For you: your address set out in the Order. Legal Notices sent in accordance with the above will be effective upon the second business day after mailing. Either party may change its address for receipt of notices upon written notice to the other party.

**1.18.2. Entire Agreement.** This EULA, and any terms expressly incorporated herein by reference, will constitute the entire agreement between you and us with respect to the subject matter of this EULA and supersedes all prior and contemporaneous communications, oral or written, signed or unsigned, regarding such subject matter. Use of

any purchase order or other document you supply in connection with this EULA will be for administrative convenience only and all terms and conditions stated therein will be void and of no effect. Except as otherwise expressly contemplated in this EULA, this EULA may not be modified or amended other than in writing signed by you and us.

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

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

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

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

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

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## 2.A. TERMS FOR ON-PREMISE PRODUCTS

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

2.A.2. **Updates.** Each Update to an On-Premise Product replaces part or all of the On-Premise Product (or earlier Update) previously licensed to you ("**Replaced Product**") and will terminate such previously licensed Replaced Product to the extent replaced by the Update; provided, however, that you may continue to operate the Replaced Product for up to ninety (90) days from delivery of the Update to allow you to complete your implementation of the Update. You must cease all use of the Replaced Product at the end of the ninety (90) day period. Each Update will be subject to the terms and conditions of this EULA, except that (i) to the extent the Update contains new or updated Special Notices, your use of any third party components shall be subject to section 1.2.7 of this EULA and the Special Notices accompanying the Update; and, (ii) to the extent section(s) 3 and/or 4 of the license agreement accompanying the Update contain(s) additional or conflicting terms and conditions related to new Products, components, features and/or functionality contained in the Update, or related to additions or modifications to the license definitions, license model or use restrictions, then your use of the Update will be subject to this EULA, as altered by such additional or conflicting terms and conditions of section(s) 3 and/or 4 of the license agreement accompanying the Update which must be accepted by you at the time you download or install the Update. If you do not agree to such additional or conflicting terms and conditions, do not download or install the Update.

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



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

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### 3. PRODUCT FAMILY SPECIFIC TERMS

This section specifies terms and conditions that are applicable to the following On-Premise Products, as made generally available by us to our customers: all Flowmon software Products. For the avoidance of doubt, this EULA shall not apply to any physical hardware, whether or not obtained from Licensor or an Authorized Reseller, on/with which such Products may be preinstalled/delivered. The specific Products and, if applicable Product features, to which you are granted a license hereunder shall be only those identified in the Order.

The Licensor with respect to the license rights granted to the foregoing Products is Flowmon Networks a.s., a company established and existing under the laws of the Czech Republic, having its registered office at Škrobářenská 5, 617 00, Czech Republic, ID No.: 27730450, registered in the Commercial Register maintained by the Regional Court in Brno, section B, insert 4906 ("Flowmon"). All references in the EULA to "Licensor", "we", "us", or "our" shall mean Flowmon.

With respect to Flowmon Products, the EULA and all matters relating to it shall be governed by, and construed in accordance with the laws of the Czech Republic, and with respect to Flowmon Products, all disputes arising out of or in connection with this EULA, including any question regarding its existence, validity or termination, shall be settled finally by the court of the Czech Republic that is the proper venue for the location where Flowmon maintains its registered office and has subject-matter jurisdiction over the matter, and the parties hereto irrevocably submit to the jurisdiction of such court in any action or proceeding.

THE WARRANTIES SET FORTH IN SECTION 1.9 OF THE EULA SHALL NOT APPLY TO ANY FLOWMON PRODUCTS PROVIDED TO YOU BY LICENSOR ON PHYSICAL HARDWARE (OR ANY UPDATES THERETO). IF YOU HAVE OBTAINED PHYSICAL HARDWARE FROM LICENSOR, WARRANTIES MUST BE OBTAINED SEPARATELY FOR SUCH HARDWARE AND ANY FLOWMON PRODUCTS INSTALLED THEREON, AND SHALL BE SUBJECT TO THE FLOWMON NETWORKS LIMITED HARDWARE WARRANTY AVAILABLE AT: <https://www.flowmon.com/en/limited-hw-warranty-en> .

Default License Type for the above-referenced On-Premise Products: Subscription

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

#### 3.1. License.

##### 3.1.1. General License Terms.

3.1.1.1. **General License Grant.** Subject to the terms and conditions contained in this EULA and the Order (subject to section 1.2.8.) Licensor grants you a non-exclusive, worldwide (subject to section 1.5.1. Export Compliance), non-transferable license to use, and permit your Authorized Users to use, the Product in object code form in accordance with the Documentation for your own personal or internal commercial use, but retains all property rights in the Product and all copies thereof. All other rights are expressly reserved by Licensor. If the Product is provided under the Order as hardware with preinstalled software you may use the Product solely as provided (for the avoidance of doubt, you may not install the software on any other hardware or virtual devices). If the Product is provided as software on a standalone basis under the Order, Licensor grants you the right to install and use one (1) copy of the Product on one (1) hardware device or into one (1) virtual environment per one (1) license purchased. The number of licenses purchased will be set out in the Order. You may not make any installations of the Product in contradiction with this section. You may make a reasonable number of copies of the Product as is necessary for backup and archival purposes only. Such backup copies must be stored securely with access allowed only to your Authorized Users. You shall prevent any unauthorized access to such backup copies.

3.1.1.2. **License Restrictions.** In addition to the restrictions set forth in section 1.2.4.:

a) you acknowledge and agree that the foregoing license extends only to your use of the features and functionality of the Product as described in the Documentation accompanying the version of the Product downloaded or obtained by you (the "Documentation"), and you agree not to reconfigure or modify the Product in order to enable features or functionality different than those described in such Documentation or available in other Products;

b) you shall not combine or use the Products and/or any copyrighted works and/or databases contained therein together with any other works, parts, materials, products or any other object of intellectual property, or include the Products and/or any copyrighted works and/or databases contained therein in any other collective work, with the exception of other software that may be interconnected or integrated with the Product via the Product's API (application programming interface) and other software as is necessary to use the Product in accordance with the Order and the Documentation, in such a case the Product may be used with such software, but may not be combined with it.

3.2. **Additional Termination Provisions.** In addition to the requirements of section 1.15.2., upon the expiration or earlier termination of your license, you shall immediately return or destroy all copies of the Documentation and any other information or documents obtained from Flowmon relating to the Product.

3.3. **Additional Obligations.** In addition to the provisions and disclaimers set forth in section 1.9. you acknowledge and accept the following obligations. You shall:

- a) ensure that all computer programs and hardware used in conjunction with the Product are free from any defects that may have a negative effect on the functionality or operation of the Product;
- b) implement your own disaster recovery plans including necessary measures to replace the Product in your infrastructure (including data backups, security of data traffic, data protection and a redundancy of critical systems) ;
- c) promptly inform Flowmon of any infringement of Flowmon's rights in relation to the Product, and provide Flowmon with necessary assistance in establishing Flowmon's claim regarding the infringement of the rights to the Product;
- d) refrain from making public and promptly inform Flowmon of any discovered vulnerabilities of the Product and of any errors or faults incurred or discovered while using the Product, and provide Flowmon with any necessary cooperation in order to address and fix such vulnerabilities, errors or faults, in particular allow Flowmon without undue delay full access to the hardware on which the Product was used and to any other software with which the Product was used;
- e) implement any/all reasonable measures to prevent the occurrence of any material or non-material damage, including but not limited to:
  - i. using the Product solely with compatible software and hardware at all times;
  - ii. maintaining appropriate licenses for all other software installed on the device ("Other Software") on which the Product is used;
  - iii. ensuring the Product and all the Other Software is properly updated with the latest available updates and patches;
  - iv. verifying with Flowmon compatibility of the Product with the Other Software;
  - v. regularly at appropriate intervals, especially before performing any updates, backing-up all configuration settings located on the hardware or virtual environment on which the Product is used; and
  - vi. properly training all persons working with the Product and ensuring refresher training for all persons using the current version of the Product is conducted at regular and appropriate intervals.

3.4. **Data Collection and Analytics.** In addition to data collection described in section 1.12, in an effort to improve the Product and develop Updates, the Product contains features that allow Flowmon to remotely and automatically identify, track and analyze certain aspects of use and performance of Product and/or the systems on which it is installed, as well as the operator and operating environment (including problems and issues that arise in connection therewith). Flowmon collects solely non-personally identifiable data about the appliance configuration

including usage statistics, enabled features and general configuration. You may disable this feature of the Product at any time, otherwise you hereby agree that Flowmon and its Affiliates may use any data and information it collects for the purposes described in this EULA (including this Section 3.4. and Section 1.12.) and our Privacy Policy.

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#### **4. PRODUCT SPECIFIC TERMS**

This section specifies specific terms and conditions that are applicable to maintenance and support for the Products. Any defined term used in this section 4 (Product-Specific Terms) but not defined herein will have the meaning ascribed to it in section 1 (General Terms and Conditions), section 2 (Terms for On-Premise Products) or section 3 (Product Family Specific Terms).

##### **4.1. Support.**

4.1.1. Unless otherwise agreed in the Order, you acknowledge and agree that you are not entitled to any maintenance or support services (“Support Services”).

4.1.2. If Support Services are included in the Order, such Support Services shall be provided by Flowmon or its authorised partners in accordance with the terms and conditions of this EULA (including section 1.7) and the Order (subject to section 1.2.8.). Any supplemental software code provided to you as part of the agreed Support Services shall be considered as part of the Product and subject to the terms and conditions of this EULA.

4.1.3. Should you require Support Services, in which Flowmon may access and/or process confidential data and/or personal data of data subjects on behalf of you while providing such Support Services, you shall, prior to the commencement of the provision of the requested Support Services: (i) inform Flowmon about the potential for accessing and/or processing of such confidential and/or personal data; and, (ii) submit a written request for the mutual execution of a Data Processing Addendum in accordance with section 1.12.3 of this EULA.

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