

## **Progress Software Corporation**

## End User Product License Agreement ("Agreement")

CAUTION: BY INSTALLING THE SOFTWARE OR ENTERING THE CONTROL CODES YOU ACKNOWLEDGE YOUR UNDERSTANDING AND ACCEPTANCE OF THE FOLLOWING TERMS AND CONDITIONS. PLEASE CAREFULLY READ THESE TERMS AND CONDITIONS BEFORE INSTALLING THE SOFTWARE OR ENTERING THE CONTROL CODES. IF YOU DO NOT AGREE WITH THEM, PROMPTLY RETURN THE SOFTWARE, DOCUMENTATION, AND ALL COPIES THEREOF TO PROGRESS SOFTWARE CORPORATION OR THE SUPPLIER FROM WHICH IT WAS ACQUIRED FOR A FULL REFUND OF THE LICENSE FEES, IF ANY, PAID FOR SAID SOFTWARE.

Subject to the following terms and conditions, Progress Software Corporation ("PSC") grants to you ("User") a non–exclusive license to use the enclosed software product(s) for which User has purchased a valid license and has received the requisite control codes (each such software product referred to individually herein as "Product" or collectively as "Products") and related manuals in written or electronic form ("Documentation"). The media on which the Products are recorded may also contain other software products for which User has not purchased a license. User shall have no right to use those other software products.

## SCOPE OF LICENSE.

This license allows User to install and use the Products solely for internal use subject to the terms and conditions of this Agreement and the licensing use restrictions set forth in the attached Exhibit A, and as set forth in the applicable license addendum, accepted purchase order (subject to Section 9 below), or other PSC documentation. If a Product licensed to User hereunder is a development product, then the following additional restrictions apply: (a) User's license to use the Product shall be limited to use for internal application development and support purposes only, and (b) if the Product includes database or server components, such components are limited to use by the User for development and support purposes only.

Neither the Products nor the Documentation may be transferred, sold, assigned, or otherwise conveyed by User to another party. User may not sell, rent, license, or grant sublicenses, leases, or other rights in the Products or Documentation to others. This Agreement automatically terminates if User transfers possession of any copy of the Products, Product Updates or Documentation to another party. User shall have no right to use the Products to provide time sharing services or act as or operate a service bureau or provide subscription or hosting services for others.

For the purposes of this Agreement a "**Product Update**" shall mean any update, patch, new release and/or new version of a licensed Product delivered to User subject to and in accordance with PSC's then-current maintenance and support policies, fee requirements, and license terms and conditions in effect at the time such update, patch, new release and/or new version is delivered to User. Nothing herein shall be construed as an obligation of PSC to deliver any Product Update to User under this Agreement. A Product Update replaces part or all of a Product or Product Update previously licensed. Use of a Product Update terminates the license to use the Product or that part of the Product which the Product Update replaces, and User shall destroy or return to PSC all copies of any prior Product or Product Update. In the event User obtains a Product Update, then, subject to the provisions above, User's continued use of the Product and/or the Product Update will be subject to the terms and conditions of the license agreement accompanying the Product Update.

FOR PRODUCTS THAT CONTAIN JAVA TECHNOLOGY, THE FOLLOWING PROVISIONS APPLY:

## Java Platform Interface

In the event that User creates any Java-related API and distributes such API to others for applet or application development, User must promptly publish an accurate specification for such API for free use by all developers of Java-based software. User may not modify the Java Platform Interface ("JPI", identified as classes contained within the "java" or "sun" package), by creating additional classes within the JPI or otherwise causing the addition to or modification of the classes in the JPI.

Java software technology is not designed or intended for use in on- line control of aircraft, air traffic, aircraft navigation or aircraft communications, or in the design, construction, operation or maintenance of any nuclear facility. User will not use or, if applicable, redistribute the Java software technology for such purposes. PSC AND ITS LICENSORS EXPRESSLY DISCLAIM ANY LIABILITIES, REPRESENTATIONS OR WARRANTIES (EITHER EXPRESS OR IMPLIED) FOR SUCH USE.

For Products that contain technology of RSA Security, Inc., the following provisions apply:

User agrees not to remove, alter, or destroy any proprietary, trademark or copyright notices placed upon or contained within the RSA software, user manuals or any related materials or documentation. User acquires no rights of any kind



in or to any RSA trademark, trade name, logo or product designation under which the RSA software was or is marketed and shall not make any use of the same for any reason.

If one or more of the Products contain any files including a notice stating that the contents of such files are subject to the terms and conditions of the POSSENET Public License, such files, to the extent that they are supplied as part of the Products, will be subject to the terms and conditions of this Agreement which will supersede the POSSENET Public License. The above-referenced files are also available, apart from the Products, on the POSSENET.org web site at <a href="http://www.possenet.org">http://www.possenet.org</a>. If User obtains the above-referenced files other than as part of the Products, then User's use of such files will be subject to the terms and conditions of the POSSENET Public License, a copy of which can be obtained at <a href="http://www.possenet.org/license.html">http://www.possenet.org/license.html</a>.

**PROGRESS SOFTWARE'S RIGHTS**. The Products and Documentation are proprietary products of PSC, or its licensors, and are protected by copyright law. By virtue of this Agreement, User acquires only the non–exclusive right to use the Products and does not acquire any rights of ownership in the Products or the media upon which they are embodied. PSC, or its licensors, shall at all times retain all right, title, and interest in the Products and the media.

NON-DISCLOSURE; COPIES; ALTERATIONS. User acknowledges that the Products are the valuable proprietary and trade secret information of PSC or its licensors. User shall (i) limit use and disclosure of the Products to its employees and to its consultants who agree to be bound by the terms of this Agreement; (ii) not provide or disclose any of the Products to another party; and (iii) take all reasonable precautions to maintain the confidentiality of the Products. User agrees not to cause or permit the reverse engineering, disassembly, copying, or decompilation of the Products, except to reproduce machine-readable object code portions for backup purposes and installation of new releases, under penalty of license termination but not exclusive of any other remedies. If the Products are licensed to User for use in a country which is a member of the European Community, User may reverse engineer and/or decompile the Products to the extent that sufficient information is not available for the purpose of creating an interoperable software program (but only Rev 5/16/03 (V9.1c&d) for such purposes and to the extent that sufficient information is not provided by PSC upon written request). Furthermore, User is not restricted in a country which is a member of the European Community from observing, studying, or testing the functioning of the Products solely in order to understand the ideas and principles which underly any element of the Products. User may copy the Products for installation, backup, or other purposes as described in the Documentation. User may not copy nor allow others to copy the Products or any Product Update for any other purpose. User agrees not to remove any product identification, copyright notices, or other notices or proprietary restrictions from the Products. User agrees not to disclose any benchmark results relating to its use of the Products without the prior written consent of PSC.

LIMITED WARRANTY. PSC warrants that the materials of both the Product media and Documentation are not defective, and that the software is properly recorded on the media. If either the media (such as the diskettes, cartridges, CD-ROMs, and magnetic tapes) or the Documentation is physically defective, PSC will replace it free of charge during the ninety (90) day warranty period. User's remedy is limited to return of the media and/or Documentation to the supplier or to PSC for replacement. This Limited Warranty is in effect for claims made within ninety (90) days from User's purchase of a Product. PSC warrants that it has the right to license the Products. PSC will defend and indemnify User against a claim based on an allegation that an unmodified Product infringes a third party's U.S. patent or copyright ("Claim"). PSC will pay all costs, damages and reasonable attorney's fees finally awarded resulting from such Claim, provided that User notifies PSC in writing of any such Claim in sufficient time to enable PSC to effectively defend any such Claim, PSC has sole control of the defense and all related settlement negotiations, and User fully cooperates with Progress in the defense and all related settlement negotiations. In the event that it is reasonably determined by a court of competent jurisdiction that use of the Product by User is restricted or prohibited by reason of such an infringement. PSC, at its option, may: (a) obtain for User the right to continue using the Product; or (b) modify the Product such that the Product (as modified) becomes non infringing; or (c) refund to User the unamortized portion (on a five year schedule) of any fee paid for the Product at issue, and PSC will thereupon have no further obligations to User. Notwithstanding the foregoing, PSC shall not be liable to User for any claim arising from or based upon the alteration or modification of any of the Products. THE LIMITED WARRANTY SPECIFIED IN THIS SECTION 4 SETS FORTH THE ENTIRE WARRANTIES AND REPRESENTATIONS PROVIDED BY PSC TO USER WITH RESPECT TO THE PRODUCTS. SUCH LIMITED WARRANTY IS PROVIDED SOLELY BY PSC AND NOT PSC'S LICENSORS. EXCEPT FOR THE LIMITED WARRANTY PROVIDED SOLELY BY PSC TO USER PURSUANT TO THIS SECTION 4, NEITHER PSC NOR ITS LICENSORS, NOR ANY OF THEIR RESPECTIVE SUPPLIERS, MAKE ANY EXPRESS WARRANTIES OR REPRESENTATIONS RELATING TO THE PRODUCTS OR ANY SERVICES RELATED THERETO, AND FURTHER, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, DISCLAIM ALL IMPLIED WARRANTIES AND REPRESENTATIONS INCLUDING BUT NOT LIMITED TO ALL IMPLIED WARRANTIES AND REPRESENTATIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, WITH RESPECT TO THE PRODUCTS AND ANY SERVICES RELATED THERETO. For example, PSC does not warrant that there are no discrepancies between the Products and the Documentation, nor that errors cannot arise during the use of the Products. Without limiting the foregoing warranty disclaimers, User acknowledges that if the Product or Products licensed to User hereunder contain IBM's XML Parser for C++, then such IBM technology is licensed to User "AS IS" without warranty of any kind, whether express or implied. Neither PSC nor IBM assume any liability for any claim that



may arise regarding the use of such IBM technology. THE LIMITED WARRANTY SPECIFIED IN THIS SECTION 4 GIVES THE USER SPECIFIC LEGAL RIGHTS, AND MAY ALSO IMPLY OTHER RIGHTS WHICH VARY FROM STATE TO STATE. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF IMPLIED WARRANTIES, AND DO NOT ALLOW A LIMITATION ON HOW LONG ANY IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATIONS MAY NOT APPLY. No PSC employee, supplier, or agent is authorized to make any modification or addition to this warranty.

LIMITATION OF LIABILITY. EXCEPT FOR PSC'S INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 4 HEREOF, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE LIABILITY OF PSC, IF ANY, FOR DAMAGES RELATING TO ANY PRODUCT AND/OR SERVICE SHALL BE LIMITED TO THE ACTUAL AMOUNTS PAID BY USER FOR SUCH PRODUCT AND/OR SERVICE. PSC'S LICENSORS AND THEIR SUPPLIERS SHALL HAVE NO LIABILITY TO USER FOR ANY DAMAGES SUFFERED BY USER OR ANY THIRD PARTY AS A RESULT OF USING THE PRODUCTS OR DISTRIBUTING ANY PORTION THEREOF, OR AS A RESULT OF ANY SERVICES RELATING THERETO. NOTWITHSTANDING THE FOREGOING, EXCEPT FOR PSC'S INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 4 HEREOF IN NO EVENT SHALL PSC, 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 PRODUCTS, OR ANY PORTION THEREOF, OR ANY SERVICES, EVEN IF PSC, ITS LICENSORS AND/OR ANY OF THEIR RESPECTIVE SUPPLIERS HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. SOME STATES DO NOT ALLOW THE EXCLUSION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS MAY NOT APPLY.

**EXPORT ADMINISTRATION**. User agrees to comply fully with all relevant regulations of the United States Department of Commerce and with the United States Export Administration Act to assure that the Products and Documentation are not exported or re–exported in violation of United States law. Further, User shall not directly or indirectly export or reexport any Product, Documentation, or the direct product thereof without first obtaining PSC's written approval.

THE RSA SOFTWARE AND TECHNOLOGIES LICENSED UNDER THIS AGREEMENT ARE SUBJECT TO UNITED STATES EXPORT CONTROL LAWS AND REGULATIONS WHICH RESTRICT EXPORTS, REEXPORTS AND DISCLOSURES TO FOREIGN PERSONS OF CRYPTOGRAPHIC ITEMS AND ARE ALSO SUBJECT TO CERTAIN FOREIGN LAWS WHICH MAY RESTRICT THE EXPORT, REEXPORT, IMPORT AND/OR USE OF SUCH ITEMS. PERFORMANCE OF THIS AGREEMENT IS EXPRESSLY MADE SUBJECT TO ANY EXPORT LAWS, REGULATIONS, ORDERS OR OTHER RESTRICTIONS IMPOSED BY THE UNITED STATES OF AMERICA, OR BY ANY OTHER COUNTRY OR GOVERNMENTAL ENTITY ON THE RSA SOFTWARE, PRE-RELEASE SOFTWARE OR OF INFORMATION RELATING TO EITHER. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT TO THE CONTRARY, LICENSEE SHALL NOT IMPORT, EXPORT, OR REEXPORT, DIRECTLY OR INDIRECTLY, ANY RSA SOFTWARE OR PRE-RELEASE SOFTWARE OR INFORMATION PERTAINING THERETO TO ANY COUNTRY OR FOREIGN PERSON TO WHICH SUCH IMPORT, EXPORT, OR REEXPORT IS RESTRICTED OR PROHIBITED, OR AS TO WHICH SUCH COUNTRY, GOVERNMENT OR ANY AGENCY THEREOF REQUIRES AN EXPORT LICENSE OR OTHER GOVERNMENTAL APPROVAL AT THE TIME OF IMPORT, EXPORT, OR REEXPORT WITHOUT FIRST OBTAINING SUCH LICENSE OR APPROVAL. LICENSEE UNCONDITIONALLY ACCEPTS FULL RESPONSIBILITY FOR LICENSEE'S COMPLIANCE WITH THESE REQUIREMENTS.

**U.S. GOVERNMENT RESTRICTED RIGHTS**. This product is a "commercial component," as that term is defined in 48 C.F.R. 2.101 (Oct. 2000), consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212 (Sept. 1995). Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4 (June 1995), all U.S. Government entities acquire this product only with those rights set forth in the license agreement accompanying this product.

**RECORDS INSPECTION**. User shall maintain books and records in connection with User's actions under this Agreement. Such records shall include at a minimum the number of licenses purchased and being used by User. PSC may, at its expense, audit the records of User to ensure compliance with the terms of this Agreement. Any such audit shall be conducted during regular business hours at User's offices and shall not interfere unreasonably with User's activities. If any audit reveals that User has underpaid license and/or maintenance fees to PSC, User shall be invoiced for such underpaid fees based on PSC's list price in effect at the time the audit is conducted. If the underpaid fees are in excess of five percent (5%) of the license fees paid by User, then User shall pay PSC's reasonable costs of conducting the audit.

MISCELLANEOUS. THIS AGREEMENT IS THE COMPLETE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE PRODUCTS AND SUPERCEDES ANY OTHER COMMUNICATION OR ADVERTISING WITH RESPECT TO THE PRODUCTS. If User has signed a license agreement with PSC or one of PSC's subsidiary corporations, and if there is a conflict between the terms and conditions of the signed license agreement and this



Agreement, the terms and conditions of such signed license agreement shall govern with respect to such conflict. To the extent there are any terms and conditions contained in User's purchase order or other documentation supplied by User ("User Documents") that are in conflict with or in addition to those terms and conditions specified in this Agreement, the terms and conditions contained in the User Documents shall be deemed to be stricken and the terms and conditions of this Agreement shall govern. Except as otherwise expressly set forth herein, this Agreement is governed by the laws of the State of Delaware, excluding conflict of laws provisions.

SPECIAL CANADIAN PROVISIONS. FOR USERS LOCATED IN CANADA. UNLESS EXPRESSLY STATED OTHERWISE. THE FOLLOWING SPECIAL TERMS AND CONDITIONS SHALL APPLY IN LIEU OF ANY CORRESPONDING PROVISION IN THE END USER PRODUCT LICENSE AGREEMENT. ALL OTHER PROVISIONS OF THE END USER PRODUCT LICENSE AGREEMENT SHALL APPLY IN ALL RESPECTS. PSC will defend User against any claim based on an allegation that a Product infringes a Canadian patent or copyright, but only if PSC is notified promptly in writing of such claim and is given sole control of the defense thereof and all related settlement negotiations relating thereto. However, except as specifically stated above, PSC MAKES NO WARRANTY, CONDITION, OR REPRESENTATION, EITHER EXPRESSED OR IMPLIED, INCLUDING WARRANTIES OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THIS PRODUCT AND DOCUMENTATION. User agrees to comply fully with all relevant laws and regulations of Canada and with the Governor in Council to assure that the Product and Documentation are not exported or re-exported in violation of Canadian law. The terms and conditions specified in the immediately preceding sentence are in addition to, and do not supersede, User's obligations to comply with the United States Export Control laws and regulations pursuant to Section 6 above. The parties have required that this Agreement and all documents relating thereto be drawn up in English. Les parties ont demand e que cette convention ainsi que tous les documents qui s'y rattachent soient rediges en anglais. This Agreement shall be governed by the laws of the Province of Ontario and the laws of Canada therein.