

## **PROGRESS DMS TERMS OF USE:**

By clicking the "Agree to Licence" button displayed when accessing the Services or by signing these terms, you agree to the following terms and conditions (the "agreement") governing your use of Progress DMS's online service, including offline components (collectively, the "service"). If you are entering into this agreement on behalf of a company or other legal entity, you represent that you have the authority to bind such entity to these terms and conditions, in which case the terms "you" or "your" shall refer to such entity. If you do not have such authority, or if you do not agree with these terms and conditions, you may not use the service.

### **Welcome**

As part of the Service, Progress DMS will provide you with use of the Service, including a browser interface and data encryption, transmission, access and storage. Your registration for, or use of, the Service shall be deemed to be your agreement to abide by this Agreement including any materials available on the Progress DMS website incorporated by reference herein, including but not limited to Progress DMS's privacy and security policies. For reference, a Definitions section is included at the end of this Agreement.

### **I. Privacy & Security; Disclosure**

Progress DMS's privacy policy may be viewed at [www.progressdms.co.uk](http://www.progressdms.co.uk). Progress DMS reserves the right to modify its privacy policies in its reasonable discretion from time to time. Progress DMS occasionally may need to notify all users of the Service of important announcements regarding the operation of the Service.

### **2. License Grant & Restrictions**

Progress DMS hereby grants you a non-exclusive, non-transferable, worldwide right to use the Service, solely for your own internal business purposes, subject to the terms and conditions of this Agreement. All rights not expressly granted to you are reserved by Progress DMS and its licensors.

You may not access the Service if you are a direct competitor of Progress DMS, except with Progress DMS's prior written consent. In addition, you may not access the Service for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes.

You shall not (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Service or the Content in any way; (ii) modify or make derivative works based upon the Service or the Content; (iii) create Internet "links" to the Service or "frame" or "mirror" any Content on any other server or wireless or Internet-based device; or (iv) reverse engineer or access the Service in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Service, or (c) copy any ideas, features, functions or graphics of the Service. Licenses cannot be shared or used by more than one business.

You may use the Service only for your internal business purposes and shall not: (i) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (ii) send or store infringing, obscene, threatening, libellous, or otherwise unlawful or tortuous material, including material harmful to children or material which third party privacy rights; (iii) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (iv) interfere with or disrupt the integrity or performance of the Service or the data contained therein; or (v) attempt to gain unauthorized access to the Service or its related systems or networks.

### **3. Your Responsibilities**

You are responsible for all activity occurring under your User accounts and shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with your use of the Service, including those related to data privacy, international communications and the transmission of technical or personal data.

You are responsible for appointing an Authorized User to allocate and manage the distribution of authorized access codes and passwords and thereby control access to the Services. The Authorized User will determine the number and names of members of staff allowed access to the Progress System.

Progress DMS will not accept any responsibility or liability for unauthorized or authorized access to the system and for any loss or damage or corruption to the data held within the system caused by unauthorized or authorized access.

You shall: (i) notify Progress DMS immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (ii) report to Progress DMS immediately and use reasonable efforts to stop immediately any copying or distribution of Content that is known or suspected by you or your Users; and (iii) not impersonate another Progress DMS user or provide false identity information to gain access to or use the Service.

#### **4. Account Information and Data**

Progress DMS does not own any data, information or material that you submit to the Service in the course of using the Service ("Customer Data"). You, not Progress DMS, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Data, and Progress DMS shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Customer Data. In the event this Agreement is terminated (other than by reason of your breach), Progress DMS will make available to you a file of the Customer Data within 30 days of termination if you so request at the time of termination. Progress DMS reserves the right to withhold, remove and/or discard Customer Data without notice for any breach, including, without limitation, your non-payment. Upon termination for cause, your right to access or use Customer Data immediately ceases, and Progress DMS shall have no obligation to maintain or forward any Customer Data.

#### **5. Intellectual Property Ownership**

Progress DMS alone (and its licensors, where applicable) shall own all right, title and interest, including all related Intellectual Property Rights, in and to the Progress DMS Technology, the Content and the Service and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by you or any other party relating to the Service. This Agreement is not a sale and does not convey to you any rights of ownership in or related to the Service, the Progress DMS Technology or the Intellectual Property Rights owned by Progress DMS. The Progress DMS name, the Progress DMS logo, and the product names associated with the Service are trademarks of Progress DMS or third parties, and no right or license is granted to use them.

#### **6. Third Party Interactions**

Progress DMS does not endorse any sites on the Internet that are linked through the Service. Progress DMS provides these links to you only as a matter of convenience, and in no event shall Progress DMS or its licensors be responsible for any content, products, or other materials on or available from such sites. Progress DMS provides the Service to you pursuant to the terms and conditions of this Agreement. You recognize, however, that certain third-party providers of ancillary software, hardware or services may require your agreement to additional or different license or other terms prior to your use of or access to such software, hardware or services.

#### **7. Charges and Payment of Fees**

You shall pay all fees or charges to your account in accordance with the fees, charges, and billing terms in effect at the time a fee or charge is due and payable. The initial charges will be equal to the current number of total licenses requested times the license fee currently in effect for that Service. Payments must be made annually in advance unless otherwise mutually agreed upon in an Order Confirmation. All payment obligations are non cancellable and all amounts paid are non-refundable. You are responsible for paying for all licenses ordered for the entire License Term, whether or not such licenses are actively used. You must provide Progress DMS with approved purchase order information as a condition to signing up for the Service. An authorized user may add licenses for additional Services by executing an additional Order Confirmation. Added licenses will be subject to the following: (i) added licenses will be coterminous with the pre-existing License Term (either Initial Term or renewal term); (ii) the license fee for the added licenses will be the then current, generally applicable license fee; and (iii) licenses added in the middle of a billing month will be charged in full for that billing month. Progress DMS reserves the right to modify its fees and charges and to introduce new charges at any time, upon at least 30 days prior notice to you, which notice may be provided by e-mail. All pricing terms are confidential, and you agree not to disclose them to any third party.

#### **8. Billing and Renewal**

Progress DMS charges and collects in advance for use of the Services. Progress DMS will automatically renew and invoice to you each year on the subsequent anniversary of the installation date or as otherwise mutually agreed upon. The renewal charge will be equal to the license fee in effect during the prior term, unless Progress DMS has given you at least 30 days prior written notice of a fee increase, which shall be effective upon renewal and thereafter. Fees for other services will be charged on an as-quoted basis. Progress DMS's fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and you shall be responsible for payment of all such taxes, levies, or duties.

You agree to provide Progress DMS with complete and accurate billing and contact information. This information includes your legal company name, street address, e-mail address, and name and telephone number of an authorized billing contact and License Administrator. You agree to update this information within 30 days of any change to it. If the contact information you have provided is false or fraudulent, Progress DMS reserves the right to terminate your access to the Service in addition to any other legal remedies.

Unless Progress DMS in its discretion determines otherwise you will be billed in Pounds Sterling and subject to UK 30 days payment terms. Payment must be made by: Cheque; Bankers Standing Order, Direct Debit, electronic telegraphic transfer, or BACS Transfer direct into Progress DMS's nominated bank account

If you believe your bill is incorrect, you must contact us in writing within 30 days of the invoice date of the invoice containing the amount in question to be eligible to receive an adjustment or credit.

#### **9. Non-Payment and Suspension**

In addition to any other rights granted to Progress DMS herein, Progress DMS reserves the right to suspend or terminate this Agreement and your access to the Service if your account becomes delinquent (falls into arrears). Delinquent invoices (accounts in arrears) are subject to interest of 1.0% per month on any outstanding balance, or the maximum permitted by law, whichever is less, plus all expenses of collection. You will continue to be charged for Licenses during any period of suspension. If you or Progress DMS initiates termination of this Agreement, you will be obligated to pay the balance due on your account computed in accordance with the Charges and Payment of Fees section above. You agree that Progress DMS may charge such unpaid fees.

Progress DMS reserves the right to impose a reconnection fee in the event you are suspended and thereafter request access to the Service. You agree and acknowledge that Progress DMS has no obligation to retain Customer Data and that such Customer Data may be irretrievably deleted if your account is 30 days or more delinquent.

#### **10. Termination upon Expiration**

This Agreement commences on the Effective Date. The Initial Term will be one year or as otherwise mutually agreed in writing, commencing on the installation date. If you cancel the Agreement within the initial minimum period, you indemnify Progress DMS for any outstanding payments that would have been made to the end of the initial term. Upon the expiration of the Initial Term, this Agreement will automatically renew for successive renewal terms of one year at Progress DMS's then current fees. Either party may terminate this Agreement upon 3 months notice after the initial one year term by notifying the other party in writing. Progress DMS will make available to you a file of the Customer Data within 30 days of termination if you so request at the time of termination. You agree and acknowledge that Progress DMS has no obligation to retain the Customer Data, and may delete such Customer Data, more than 30 days after termination.

#### **11. Termination for Cause**

Any breach of your payment obligations or unauthorized use of the Progress DMS Technology or Service will be deemed a material breach of this Agreement. Progress DMS, in its sole discretion, may terminate your password, account or use of the Service if you breach or otherwise fail to comply with this Agreement. In addition, Progress DMS may terminate a free account at any time in its sole discretion. You agree and acknowledge that Progress DMS has no obligation to retain the Customer Data, and may delete such Customer Data, if you have materially breached this Agreement, including but not limited to failure to pay outstanding fees, and such breach has not been cured within 30 days of notice of such breach.

#### **12. Representations & Warranties**

Each party represents and warrants that it has the legal power and authority to enter into this Agreement. Progress DMS represents and warrants that it will provide the Service in a manner consistent with general industry standards reasonably applicable to the provision thereof and that the Service will perform substantially under normal use and circumstances. You represent and warrant that you have not falsely identified yourself nor provided any false information to gain access to the Service and that your billing information is correct.

#### **13. Mutual Indemnification**

You shall indemnify and hold Progress DMS, its licensors and each such party's parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with: (i) a claim alleging that use of the Customer Data infringes the rights of, or has caused harm to, a third party; (ii) a claim, which if true, would constitute a violation by you of your representations and warranties; or (iii) a claim arising from the breach by you or your Users of this Agreement, provided in any such case that Progress DMS (a) gives written notice of the claim promptly to you; (b) gives you sole control of the defence and settlement of the claim (provided that you may not settle or defend any claim unless you unconditionally release Progress DMS of all liability and such settlement does not affect Progress DMS's business or Service); (c) provides to you all available information and assistance; and (d) has not compromised or settled such claim.

Progress DMS shall indemnify and hold you and your parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with: (i) a claim alleging that the Service directly infringes a copyright or a trademark of a third party; (ii) a claim, which if true, would constitute a violation by Progress DMS of its representations or warranties; or (iii) a claim arising from breach of this Agreement by Progress DMS; provided that you (a) promptly give written notice of the claim to Progress DMS; (b) give Progress DMS sole control of the defence and settlement of the claim (provided that Progress DMS may not settle or defend any claim unless it unconditionally releases you of all liability); (c) provide to Progress DMS all available information and assistance; and (d) have not compromised or settled such claim. Progress DMS shall have no indemnification obligation, and you shall indemnify Progress DMS pursuant to this Agreement, for claims arising from any infringement arising from the combination of the Service with any of your products, service, hardware or business process(s).

#### **14. Disclaimer of Warranties**

Progress DMS and its licensors make no representation, warranty, or guaranty as to the reliability, timeliness, quality, suitability, truth, availability, accuracy or completeness of the service or any content. Progress DMS and its licensors do not represent or warrant that (a) the use of the service will be secure, timely, uninterrupted or error-free or operate in combination with any other hardware, software,

system or data, (b) the service will meet your requirements or expectations, (c) any stored data will be accurate or reliable, (d) the quality of any products, services, information, or other material purchased or obtained by you through the service will meet your requirements or expectations, (e) errors or defects will be corrected, or (f) the service or the server(s) that make the service available are free of viruses or other harmful components. The service and all content is provided to you strictly on an "as is" basis. All conditions, representations and warranties, whether express, implied, statutory or otherwise, including, without limitation, any implied warranty of merchantability, fitness for a particular purpose, or non-infringement of third party rights, are hereby disclaimed to the maximum extent permitted by applicable law by Progress DMS and its licensors.

#### **15. Internet Delays**

Progress DMS's services may be subject to limitations, delays, and other problems inherent in the use of the internet and electronic communications. Progress DMS is not responsible for any delays, delivery failures, or other damage resulting from such problems.

#### **16. Limitation of Liability**

In no event shall either party's aggregate liability exceed the amounts actually paid by and/or due from you in the twelve (12) month period immediately preceding the event giving rise to such claim. In no event shall either party and/or its licensors be liable to anyone for any indirect, punitive, special, exemplary, incidental, consequential or other damages of any type or kind (including loss of data, revenue, profits, use or other economic advantage) arising out of, or in any way connected with this service, including but not limited to the use or inability to use the service, or for any content obtained from or through the service, any interruption, inaccuracy, error or omission, regardless of cause in the content, even if the party from which damages are being sought or such party's licensors have been previously advised of the possibility of such damages.

#### **17. Local Laws and Export Control**

This site provides services and uses software and technology that may be subject to export controls administered by the United Kingdom. The user of this site ("User") acknowledges and agrees that the site shall not be used, and none of the underlying information, software, or technology may be transferred or otherwise exported or re-exported to countries as to which the United Kingdom maintains an embargo.

Progress DMS and its licensors make no representation that the Service is appropriate or available for use in other locations. If you use the Service from outside the United Kingdom you are solely responsible for compliance with all applicable laws, including without limitation export and import regulations of other countries. Any diversion of the Content contrary to United Kingdom law is prohibited.

#### **18. Notice**

Progress DMS may give notice by means of a general notice on the Service, electronic mail to your e-mail address on record in Progress DMS's account information, or by written communication sent by first class mail or pre-paid post to your address on record in Progress DMS's account information. Such notice shall be deemed to have been given upon the expiration of 48 hours after mailing or posting (if sent by first class mail or pre-paid post) or 12 hours after sending (if sent by email). You may give notice to Progress DMS (such notice shall be deemed given when received by Progress DMS) at any time by letter delivered by nationally recognized overnight delivery service or first class postage prepaid mail to Progress DMS at the following address: Unit 5, Kingfisher Court, Hambridge Road, Newbury, RG14 5SJ, UK.

#### **19. Modification to Terms**

Progress DMS reserves the right to modify the terms and conditions of this Agreement or its policies relating to the Service at any time, effective upon posting of an updated version of this Agreement on the Service. You are responsible for regularly reviewing this Agreement. Continued use of the Service after any such changes shall constitute your consent to such changes.

#### **20. Service Changes**

Progress DMS reserves the right to make changes to the Services from time to time. No charge will be made to you for changes or upgrades to the Services which are made by Progress DMS at their own discretion. Any changes to the Progress System requested by you may be charged for by Progress DMS at a rate as may be agreed in writing in advance between Progress DMS and you at the time.

Any data alterations or corrections or amendments or any additional work undertaken by Progress DMS as a result of errors or corruption of data caused by the Customer or their Users or any unauthorized access to the system will be charged for by Progress DMS at a such a rate as may be agreed in writing in advance between Progress DMS and the Customer at the time.

#### **21. General**

This Agreement shall be governed by United Kingdom law without regard to the choice or conflicts of law provisions of any jurisdiction, and any disputes, actions, claims or causes of action arising out of or in connection with this Agreement or the Service shall be subject to the exclusive jurisdiction of the courts located in United Kingdom.

No text or information set forth on any other purchase order, pre-printed form or document (other than an Order Confirmation, if applicable) shall add to or vary the terms and conditions of this Agreement. The parties agree that each sub-clause of this agreement are separate terms and are intended to be severable. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect. No joint venture, partnership, employment, or agency relationship exists between you and Progress DMS as a result of this agreement or use of the Service. The failure of Progress DMS to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by Progress DMS in writing. This Agreement, together with any applicable Order Confirmation, comprises the entire agreement between you and Progress DMS and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding the subject matter contained herein.

## 22. Definitions

As used in this Agreement and in any Order Confirmations now or hereafter associated herewith: "Agreement" means these online terms of use, any Order Confirmations, whether written, emailed, submitted online, and any materials available on the Progress DMS website specifically incorporated by reference herein, as such materials, including the terms of this Agreement, may be updated by Progress DMS from time to time in its sole discretion; "Installation Date" means the date on which you were granted access to the Service; "Content" means the audio and visual information, documents, software, products and services contained or made available to you in the course of using the Service; "Customer Data" means any data, information or material provided or submitted by you to the Service in the course of using the Service; "Effective Date" means the earlier of either the date this Agreement is accepted by selecting the "Agree to Licence" option presented on the screen after this Agreement is displayed or the date you begin using the Service; "Initial Term" means the initial one year period during which you are obligated to pay for the Service; "Intellectual Property Rights" means unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain name rights, mask work rights, know-how and other trade secret rights, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world; "Licence" means the access granted to each service for each Business; "License Term(s)" means the period(s) during which a business is licensed to use the Service pursuant to the Order Confirmation; "(Your) Business" means the physical location of the company premises to which access to the Service is granted to be used and is denoted by a unique Site Code. "Site Code" means a unique numerical number which is designated to Your Business; "Order Confirmation" means your confirmation of order of the initial subscription for the Service and any subsequent order confirmations submitted online, via email or in written form, confirming your acceptance of, among other things, the number of licenses and other services contracted for, the applicable fees, the billing period, and other charges as agreed to between the parties, each such Order Confirmation to be incorporated into and to become a part of this Agreement (in the event of any conflict between the terms of this Agreement and the terms of any such Order Confirmation, the terms of this Agreement shall prevail; "Progress DMS" means collectively Progress DMS Ltd, UK Registered limited liability company (Company Registration No. 4868176), having its principal place of business and registered office at Unit 5, Kingfisher Court, Hambridge Road, Newbury, RG14 5SJ, UK; "Progress DMS Technology" means all of Progress DMS's proprietary technology (including software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs and other tangible or intangible technical material or information) made available to you by Progress DMS in providing the Service; "Service(s)" means the provision of Progress DMS's online systems, namely Insight, Membership, Login, Constructor, Communicator, CRM and Support or any, ancillary online or offline products and services provided to you, developed, operated, and maintained by Progress DMS, accessible via [www.progressdms.co.uk](http://www.progressdms.co.uk) or another designated web site or IP address to which you are being granted access under this Agreement including the Progress DMS Technology and the Content; "User(s)" means your employees, representatives, consultants, contractors or agents who are authorized to use the Service and have been supplied user identifications and passwords by you (or by Progress DMS at your request).

Agreed on behalf of the Customer:

*Print Name and Sign:*

*Dated:*

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*Customer Name & Address:*

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