

MOVEit Cloud Terms of Service

By checking the acceptance box or accessing or using all or any portion of MOVEit Cloud (the “Service”), you are accepting these Terms of Service (“**Terms**”, “**Agreement**”) in its entirety as published on the Ipswitch products website at www.ipswitch.com (as may be relocated by Progress from time to time) (the “**Site**”) and indexed at <https://www.progress.com/legal>. You agree that this Agreement is enforceable like any written agreement signed by you, or, if you represent a legal entity, the legal entity you represent (collectively, “**you**” or “**User**” or “**Customer**”) and legally binding between you and Progress Software Corporation (“**Progress**”, “**us**”, “**we**”). You and Progress shall collectively be referred to herein as the parties and individually as a party. If you are entering into this agreement on behalf of a legal entity, you represent that you have the legal authority to bind that legal entity to this agreement. If you do not have such authority, or if you do not agree with all of the terms and conditions of this agreement, you are not permitted to access or use the Service.

We reserve the right to modify these Terms. We will post the most current version of these Terms on the Site. It is your responsibility to check this Site regularly for any modifications to these Terms. If we make material changes to these Terms, we will notify you by email to the address associated with your account. If you do not accept the changes, you must stop using the Services and cancel your account by contacting us at <https://www.progress.com/support/moveit-reference-guide>. Your continued use of the Service 30 days after we publish or send a notice about our changes to these Terms means that you are consenting to the updated terms.

1. EVALUATION ACCESS

1.1 If you have subscribed for free, trial or evaluation access to the Service (“**Evaluation Access**”), you may use such access solely for the purpose of evaluating the Service to determine whether to purchase a subscription from us. Evaluation Access is limited to 30 days from the date you activate your Evaluation Access, unless otherwise specified by us in the applicable Order Form or a separate writing from us (“**Evaluation Period**”). You may use Evaluation Access for purposes of monitoring service availability, performance or functionality, or any other benchmarking purposes only with our prior written consent. Unless you purchase a paid subscription for our Service, your right to access and use the Service automatically expires at the end of the Evaluation Period. Evaluation Access will be subject to the terms of this Agreement, provided that (i) Evaluation Access is provided “AS IS” without warranty or support of any kind, express or implied, (ii) Sections 5, 8 and 10.1-10.3 of the Agreement will not apply and (iii) we may terminate your Evaluation Access at any time for any reason and without liability of any kind.

2. SERVICE

2.1 **Service.** Subject to the terms and conditions of this Agreement and your payment of the Service Fees, you subscribe for and we agree to provide you with the Service as set forth on the Progress Quotation forming the basis of an order placed by you and accepted by us (“**Order Form**”).

2.2 **Use of Service.** You may use the Service for your internal use only (meaning use of the Service for the transfer of files to or from you or your organization). You may make the Service available to your employees, consultants, contractors and authorized agents who use the Service for your internal use (“**Authorized Users**”).

2.3 **Service Availability.** We will use commercially reasonable efforts to make the Service available 24 hours a day 7 days a week in accordance with the MOVEit Cloud Service Description (the “**Service Description**”). You can monitor the Service availability and subscribe to related notifications as described in the Service Description.

2.4 **Support.** We will provide basic technical support for the Service, which means using reasonable efforts to correct any errors found in the Service that are directly attributable to our hardware and software infrastructure (the “**Environment**”), within a reasonable time after you report such error to us. Support services will be provided in accordance with the Service Support Policy included in the Service Description. Our Service Support Policy is subject to change at our discretion; however, our policy changes will not result in a material reduction in the level of support services provided for the Service during the period for which you have paid the fees for the Service.

2.5 **Member Account, Password and Security.** We will create the first account for your use. Your Authorized Users may create additional accounts.

2.6 **Security.** We will use commercially reasonable efforts, consistent with generally accepted industry practices, to maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of User Data (as defined in Section 3.3). All User Data is stored at our infrastructure vendor only in encrypted form, all User Data remains in encrypted form while being transferred using the Service, and neither we nor our infrastructure vendor has authorized access to User Data in unencrypted form, and we follow regular procedures to detect unauthorized access.

2.7 **Suspension of Access.** We will have the right to suspend your access to any portion or all of the Service if:

2.7.1 Such suspension is requested or required by any governmental authority or any court of law; or

2.7.2 We reasonably believe you or any Authorized User is using or permitting the use of the Service in a manner not permitted under this Agreement.

2.8 **Effect of Suspension.** If we suspend your access to any portion or all of the Service:

2.8.1 You remain responsible for all fees and charges you incur during the period of suspension; and

2.8.2 You will not be entitled to any Service Credits provided in the Service Description for any period of suspension.

3. YOUR RESPONSIBILITIES

3.1 **Your Account.** You will be responsible for (a) all activity occurring under your account; (b) all Internet, communication and other costs associated with use of the Service; (c) implementing reasonable security and environmental precautions in your facilities and your hardware and software infrastructure; and (d) reporting to us all errors in the Service promptly by opening an online support case.

3.2 **Authorized Users.** You will be responsible for (a) your Authorized Users’ use of the Service and compliance with this Agreement; (b) choosing a password and a user name; and (c) maintaining the confidentiality of your Authorized Users’ password and accounts. We will not be liable for any loss that you may incur as a result of someone else using your Authorized Users’ password or account, either with or without your knowledge, except to the extent arising out of our gross negligence or willful misconduct.

3.3 User Data.

3.3.1 You will have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all electronic data

or information submitted to the Service by you or your Authorized Users in the course of using the Service (“**User Data**”). We will not be responsible or liable for the deletion, corruption, destruction, damage, loss or failure to store any of User Data, subject to our obligations under Section 2.6.

3.3.2 You represent and warrant that you have all necessary rights and have obtained all necessary consents to collect and use the User Data and to submit the User Data to the Service, including without limitation any User Data that comprises personal information or personal data.

3.3.3 If you are located in the European Union, and 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 the Service, you may submit a written request at 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 Agreement and such Data Processing Addendum, the Data Processing Addendum will prevail with respect to our handling and processing of your Personal Data.

3.3.4 We will require written permission before we act as an Admin within your organization (ORG), as described in the Service Description.

3.4 **Notification of Unauthorized Use.** You will promptly notify us of any unauthorized use of your account or of any other breach of security.

3.5 **Primary Contact.** You will designate a primary contact person who is responsible for the administering your account, including such person’s name, position, phone, email and postal address.

3.6 **Restrictions on Use.** You will not, and will not permit your Authorized Users to:

3.6.1 Use the Service for any purpose that is unlawful or prohibited by this Agreement;

3.6.2 Use the Service to provide services to third parties, including without limitation, managed file transfer or network management services that are provided through commercial timesharing, rental or sharing arrangements, “service bureau” based services, “application service provider” based services or software as a service (SaaS) based services, or any other use of the Service for the benefit of any third party;

3.6.3 Modify, create derivative works from or reverse engineer the Service or any portion of the Service;

3.6.4 Use the Service in any manner that is intended or would reasonably be expected to damage, disable, overburden, or impair the Environment, or interfere with or disrupt the integrity or performance of the Service or third-party data or information contained therein or any other party’s use of the Service;

3.6.5 Attempt to gain unauthorized access to the Environment, the Service, the accounts of our other customers, computer systems or networks connected to our servers or to the Service;

3.6.6 Attempt to obtain information from the Service through any means that are not intentionally made available to you by us, or otherwise collect information about others;

3.6.7 Use the Service to store or transmit infringing, libellous, or otherwise

unlawful or tortuous material, or to store or transmit material in violation of third-party privacy or other rights;

3.6.8 Upload files that contain viruses, Trojan horses, worms, time bombs, corrupted files, or take other actions which purpose or effect is to (a) disrupt, disable, harm, or otherwise impede in any manner or impair the operation of the Environment or the Service; (b) permit unauthorized access to the Environment or the Service; (c) cause the Environment or the Service to cease functioning or to damage or corrupt data, storage media, programs, equipment or communications, or otherwise interfere with, or upload software or programs that may damage, the operation of another computer or property of another;

3.6.9 Customize, brand or modify the Service in any manner that infringes a patent, copyright, trade secret, or other proprietary right of a third party; or

3.6.10 Create a false identity for the purpose of misleading others; or

3.6.11 Except as set forth in Section 1, access the Service for purposes of monitoring service availability, performance or functionality, or for any other benchmarking or competitive purposes.

4. TERM AND TERMINATION

4.1 **Term.** This Agreement will be effective as of the effective date set forth in the Order Form and, unless sooner terminated as provided in Section 4.2, will remain in effect for the initial term specified on the applicable Order Form (“**Initial Term**”). At the expiration of the Initial Term, this Agreement will automatically renew for successive one-year terms (each, a “**Renewal Term**” and together with the Initial Term, the “**Term**”), unless either party notifies the other in writing of its desire not to renew this Agreement not later than 30 days prior to the expiration of the then current Initial Term or Renewal Term, as applicable. We will notify of any increase in fees for a Renewal Term not later than 60 days prior to the expiration of the then current Initial Term or Renewal Term, as applicable.

4.2 **Termination.** This Agreement may be terminated by either party in the event that the other party commits a material breach of this Agreement if, in the case of a breach which is capable of remedy, such breach is not remedied within 30 days after notice from the non-breaching party, or, in the case of a breach which is incapable of complete remedy, the breaching party has not remedied such breach to the greatest extent reasonably practicable within 30 days after notice from the non-breaching party and used reasonable efforts to ensure that such breach does not reoccur. In addition, you may terminate this Agreement the circumstances described in the Service Description.

4.3 **Effect of Termination.** Upon the expiration or any termination of this Agreement, (a) you will immediately cease accessing and using the Service and will have no further right to access or use the Service and (b) we will retain User Data for a period of 30 days, after which it will be destroyed.

4.4 **Survival.** The following provisions will survive the expiration or any termination of this Agreement: 4.3, 5, 6, 7, 8.2 and 9-11.

5. PAYMENTS

5.1 **Payments.** You will pay the fees specified in the Order Form in the manner specified in the Order. All payments will be made in full in the currency specified in the Order Form within 30 days of invoice.

5.2 **Taxes.** All amounts payable hereunder do not include VAT, sales tax, use tax, withholding tax (if applicable in your jurisdiction), foreign export duties or other similar taxes,

duties, levies and charges, all of which (other than income tax attributable to our income in the USA) will be paid by you.

5.3 **Late Charges.** If any payment due from you under this Agreement becomes past due, we may charge you a late payment charge equal to the lower of (i) one and one-half percent per month, compounded monthly; or (ii) the maximum rate permitted under applicable law on the past due balance. You also will reimburse us for all of our reasonable costs and expenses incident to the collection of overdue amounts hereunder, including but not limited to reasonable attorneys' fees.

6. CONFIDENTIALITY.

6.1 **"Confidential Information"** will include information pertaining to the business, software programs, financials, trade secrets, intellectual property, technical data, marketing, methodologies, customer information, and business information of each party and such other information, the nature of which is such that a reasonable person should know that such information is proprietary or confidential to the other party. Each party agrees to hold as confidential all Confidential Information received by such party ("**Recipient**") from the other party ("**Disclosing Party**"). All Confidential Information will remain the property of Disclosing Party. Confidential Information will be returned to Disclosing Party at the termination of this Agreement.

6.2 Recipient will use the same care and discretion to avoid disclosure of Confidential Information as it uses with its own similar information that it does not wish disclosed, but in no event less than a reasonable standard of care for the industry and materials in question. Recipient may use Confidential Information only in the furtherance of the purposes of this Agreement. Recipient may disclose Confidential Information to (i) its employees and employees of its affiliates who have a need to know; and (ii) any other party with Disclosing Party's written consent, provided that the Recipient ensures that such employees or other party comply with Sections 6.1 and 6.2 as if they were a party to this Agreement. Recipient may disclose Confidential Information to the extent required by law. However, Recipient agrees to give Disclosing Party prompt notice and make a reasonable effort to obtain a protective order.

6.3 Confidential Information does not include any information that (i) Recipient already possesses without obligation of confidentiality; (ii) Recipient develops independently without reference to any Confidential Information; (iii) Recipient rightfully receives without obligation of confidentiality from a third party; or (iv) is, or becomes, publicly available without breach of this Agreement or any other action by Recipient.

7. PROPRIETARY RIGHTS

7.1 **Service.** You acknowledge that the Service (including any and all updates, modifications, enhancements, or customizations thereof) consists of proprietary services and products of Progress or its third party suppliers, and the proprietary rights that protect such property may include, but are not limited to, U.S. and international copyrights, trademarks, patents and trade secret laws of general applicability. All right, title and interest in and to the Service are and will remain with us or our third party suppliers, as applicable. This Agreement does not convey to you any interest in or title to the Service, but only a limited right of use revocable in accordance with its terms.

7.2 **User Data.** You will have and retain all rights in User Data.

8. WARRANTIES

8.1 **Service Warranty.** We represent and warrant to you that the Service will perform substantially in accordance with the Service Description. This Section 8.1 will not apply to the extent any failure arises out of or is caused by: (a) your failure to use Service in accordance with

its documentation or (b) the combination of Service with any service or products not provided by us.

8.2 **Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH IN SECTION 8.1, (A) THE SERVICE AND ANY OTHER PRODUCTS OR SERVICES RELATED THERETO, ARE PROVIDED AS IS AND AS AVAILABLE AND (B) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE DISCLAIM ANY AND ALL WARRANTIES, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.

9. LIMITATION OF LIABILITY

9.1 EXCEPT FOR A PARTY'S INDEMNIFICATION OBLIGATIONS SET OUT IN THIS AGREEMENT OR A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS PURSUANT TO SECTION 6 (CONFIDENTIALITY), OR YOUR MATERIAL VIOLATION OF OUR INTELLECTUAL PROPERTY RIGHTS OR OF THE LICENSE RESTRICTIONS SET OUT IN THIS AGREEMENT, 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 AGREEMENT 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 AGREEMENT, INCLUDING, WITHOUT LIMITATION, DAMAGES IN CONNECTION WITH THE PERFORMANCE OR OPERATION OF OUR PRODUCTS OR OUR PERFORMANCE OF SERVICES.

9.2 EXCEPT FOR A PARTY'S INDEMNIFICATION OBLIGATIONS SET OUT IN THIS AGREEMENT OR YOUR MATERIAL VIOLATION OF OUR INTELLECTUAL PROPERTY RIGHTS OR THE LICENSE RESTRICTIONS SET OUT IN THIS AGREEMENT, 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 AGREEMENT OR EITHER PARTY'S PERFORMANCE UNDER THIS AGREEMENT OR THE PERFORMANCE OF OUR PRODUCTS OR SERVICES, 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.

10. INDEMNIFICATION

10.1 We will defend you from and against any and all third party claims, lawsuits, and proceedings alleging that your use of the Service, in accordance with the terms and conditions of this Agreement, 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.

10.2 We will not indemnify you to the extent that the alleged infringement or misappropriation results from (a) use of the Service in combination with any other software or item not supplied by us; (b) failure to promptly implement an update provided by us pursuant to 10.3 (Our Options); (c) modification of the Service not made or provided by us; or (d) use of the Service in a manner not permitted by this Agreement. We also will not indemnify you if we notify you of our decision to terminate this Agreement, and the license to the Service granted hereunder, in accordance with section 10.3 (Our Options) and you have not ceased all use of the Service within thirty (30) days of such notification.

10.3 Our Options. If a final injunction is, or we reasonably believe that it could be, obtained against your use of the Service, or if in our opinion the Service is likely to become the subject of a successful claim of infringement, we may, at our option and expense, (a) replace or modify the Service so that it becomes non-infringing (provided that the functionality is substantially equivalent), (b) obtain for you a license to continue to use the Service, or (c) if neither (a) nor (b) are reasonably practicable, terminate this Agreement on thirty (30) days' notice and refund to you the unused portion of the fees paid in advance to us for the then-current subscription period for the Service. THE INDEMNIFICATION PROVISIONS SET OUT IN SECTIONS 10.1-10.3 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 SERVICE OR ITS USE.

10.4 You will defend us and hold us harmless against any claim or action arising out of or relating to (a) your User Data or (c) your use of the Service in any manner prohibited by Section 3.6, and you will pay resulting costs, damages, losses and reasonable attorney fees incurred.

10.5 A party seeking indemnification will: (i) notify the indemnifying party in writing within 30 days after learning that the claim or action has been brought or might be asserted (provided that the failure to provide notification will only relieve the indemnifying party of its obligations to the extent it is actually prejudiced by such failure); (ii) allow the indemnifying party sole control of the defense and all related settlement negotiations (provided that the indemnifying party may not settle any claim or action without the indemnified party's written consent if such settlement imposes an unreimbursed monetary or continuing non-monetary obligation on any indemnified party or does not include an unconditional release of any indemnified party); and (iii) provide the indemnifying party with the information, authority and all assistance reasonably requested by the indemnifying party to provide the aforementioned defense. The indemnified party will have the right to be represented in any such claim or action by its own counsel, at its own expense.

11. GENERAL

11.1 **Entire Agreement.** This Agreement constitutes the complete and exclusive statement of the agreement between the parties on the subject matter hereof unless amended or superseded by a written agreement executed by duly authorized representatives of each party.

11.2 **Relationship.** The parties expressly agree they are acting as independent contractors and under no circumstances will any of the employees of one party be deemed the employees of the other for any purpose. This Agreement will not be construed as authority for either party to act for the other party in any agency or other capacity, or to make commitments of any kind for the account of or on behalf of the other except as expressly authorized herein.

11.3 **Section Headings.** The section headings used herein are inserted only as a matter of convenience and for reference and will not affect the construction or interpretation of this Agreement.

11.4 **No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.

11.5 **Assignment.** You may not assign or subcontract any of your rights or obligations under this Agreement in whole or in part without the prior written consent of Progress.

11.6 **Force Majeure.** Except with respect to payment of Service fees or other charges hereunder, neither party will be in default of its obligations to the extent its performance is delayed or prevented by causes beyond its reasonable control, including but not limited to acts of God, earthquake, flood, embargo, riots, sabotage, utility or transmission failures, fire or labor disturbances, explosion, vandalism, cable cut, computer viruses, storm or other similar occurrence, any law, order, regulation, direction, action or request of any government, or any body of authority thereof, or by national emergency, insurrection, riot, war, general strike, lockout, or work stoppage, or other labor difficulties, shortage, breach, or delay on the part of a party's supplier.

11.7 **Export Compliance.** You will comply with the export laws and regulations of the United States and other applicable jurisdictions in using the Service.

11.8 **Notice.** Any notice required or permitted to be given hereunder will be given in writing (a) if by Progress (i) by internationally recognized delivery service ("**Courier**") or US mail to the contact mailing address provided by you or (ii) by electronic mail to the electronic mail address provided by you and (b) if by you by submission at <https://www.progress.com/support/moveit-reference-guide> ("**Support Page**") with copy to: legal@progress.com. All such notices will be effective (a) immediately upon delivery by electronic mail or submission at the Support Page and (b) 2 business days after being deposited in the mail or with a Courier.

11.9 **Severability.** If any provision of this Agreement is held to be unenforceable or invalid, the other provisions will continue in full force and effect.

11.10 **Waiver.** No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.

11.11 **Governing Law and Jurisdiction.** This Agreement will be governed by the laws of The Commonwealth of Massachusetts, USA, without regard to its conflicts of law principles. The Uniform Computer Information Transactions Act and the United Nations Convention for the International Sale of Goods do not apply to this Agreement. All litigation arising from or relating to this Agreement will be filed and prosecuted in any court of competent subject matter jurisdiction in Boston, Massachusetts, USA. The parties stipulate to the convenience and efficiency of proceeding in such forum, and waive and covenant not to assert any objections to proceeding in such forum based on grounds other than a lack of subject matter jurisdiction.

11.12 **Language.** All communications and notices made or given pursuant to this Agreement must be in the English language. If we provide a translation of the English language version of this Agreement, the English language version of the Agreement will control if there is any conflict.

Last updated on January 20, 2021

MOVEIT CLOUD SERVICE DESCRIPTION

1. Service Description

1.1 We agree to provide you with use of a MOVEit Cloud Service (“**Service**”) fully operated by us, subject to the Terms of Service (“Terms” or “Agreement”) published on the Ipswitch products website at www.ipswitch.com (as may be relocated by Progress from time to time). Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Agreement.

1.2 Your Service will include one dedicated MOVEit Cloud Organization.

1.3 **Unless you subscribe to the PCI Compliance Toolkit, you may not use the Service for storage or transfer of Cardholder Data (CHD).**

1.4 **Unless you subscribe to the HIPAA Compliance Toolkit, you may not use the Service for storage or transfer of Protected Health Information (PHI).**

2. Service Availability. Our Cloud Operations team performs proactive maintenance and monitors the Service 24x7x365. Assuming incidents and events are within our reasonable control, we will use commercially reasonable efforts to make the Service available 99.9% of the time (the “**Uptime Performance Target**”).

2.1 **Service Credit**. In the event that the actual Uptime Percentage (as defined in Section 2.2) is less than this Uptime Performance Target (as defined in Section 2.3) in any given month during the term of this Agreement, you can request (as described in Section 2.3) a “**Service Credit**”. A Service Credit will represent the right to extend the Agreement at no cost to you for the length of time shown in the table in Section 2.3 below. In the event that the actual Uptime Percentage is less than 95% in any two consecutive months or any three months during any 12 month period, you may elect to terminate the Agreement upon 15 days written notice, in which event you will receive a pro-rata refund for the number of prepaid months remaining in the then-current term of the Agreement. The Service Credit and the early termination provided for in Agreement will be your sole remedies in the event that we fail to meet the Service Levels described herein.

2.2 **Uptime Percentage** is calculated by us as total minutes the Service is available in a given month divided by the total minutes in such month less exclusions. The following events are excluded from the Uptime Percentage calculation:

2.2.1 Acts or omissions of you or your employees, agents, contractors or representatives,

2.2.2 Use or failure of any equipment you own or provide;

2.2.3 Your failure to follow instructions or procedures issued by us;

2.2.4 Scheduled maintenance as described in Section 2.7 below;

2.2.5 Emergency maintenance as described in Section 2.8 below; or

2.2.6 Failure or unavailability of any third party or external facilities, software or services, failure or unavailability of any electronic or mechanical equipment, failure or unavailability of any third party or external communication lines, or telecommunications or telephone facilities or other interconnect problems, unauthorized access, or other events that are not within our reasonable control.

2.3 Uptime Performance Targets and Service Credits

Monthly Uptime Performance Target	Service Credit
99.0 to 99.9%	three (3) days
95.0 to 98.9%	ten (10) days
Less than 95.00%	thirty (30) days

2.4 **Service Credit Request Procedure.** To receive a Service Credit, you must submit a claim by opening a case with Progress Support. To be eligible, the credit request must be received by us no later than 30 days following the end of the month when the incident occurred and must include:

- 2.4.1 The words “MOVEit Cloud SLO Credit Request” in the subject line;
- 2.4.2 The dates and times of each downtime incident that you are claiming;
- 2.4.3 The affected MOVEit Cloud URL; and
- 2.4.4 Your request logs that document the errors and corroborate your claimed outage (any confidential or sensitive information in these logs should be removed or replaced with asterisks).
- 2.4.5 If the Monthly Uptime percentage of such request is confirmed by us and is less than the Uptime Performance Target, then we will notify you of confirmation of the Service Credit in the month following the month in which your request is confirmed by us. Your failure to provide the request and other information as required above will disqualify you from receiving a Service Credit.

2.5 **Recovery Point Objective (RPO).** In case of unforeseen Service degradation we will strive to restore the level of Service within 15 minutes.

2.6 **Response Time Objective (RTO).** In case of unforeseen Service degradation we will contact you with acknowledgement and status update within two hours.

2.7 **Scheduled Maintenance.** We perform regular scheduled Service upgrades, enhancements and general maintenance on Sundays between the hours of 4:00 pm and 7:00 pm EST. During this time the Service may have limited availability or not available at all. We will provide a minimum of 30 days’ notice on the Status Site (as defined in Section 2.9 below) for every Scheduled Maintenance.

2.8 **Emergency Maintenance.** In the event of severe service degradation or risk of security breach, the Service may become temporarily unavailable. As we work to restore the Service, we will communicate our progress on the Status Site and refer to this Service unavailability as Emergency Maintenance.

2.9 **Service Status.** You can monitor the availability of the Service at any time by visiting <http://status.moveitcloud.com> (“**Status Site**”). We use the Status Site to make announcements about all Service availability-impacting work we perform, including Scheduled Maintenance and Emergency Maintenance as defined below. Whenever possible we include details about the nature of the work being performed and offer guidance on the expected maintenance completion. We recommend you sign up for proactive alerts available from this Status Site.

3. **Service Utilization.** We will measure your Service utilization based on the number of user accounts as well as storage and bandwidth use as follows:
- 3.1 **Users.** Total number of end users and Group Admins. We take daily snapshot of total end users and then average the daily totals over the month.
- 3.2 **Bandwidth.** Total cumulative size of all files uploads and downloads recorded in the MOVEit Transfer audit logs. Calculation is based on files sizes and resets at the start of each calendar month. If you have a cloud test environment provisioned for you any usage there will be included in the total monthly bandwidth usage.
- 3.3 **Storage.** Total sizes of all files stored on MOVEit Transfer. We take daily snapshot of disk space usage and then average the daily totals over the month. If you have a cloud test environment provisioned for you any usage there will be included in the total monthly storage usage.
4. **Overages** We will invoice you for any overages in bandwidth utilization, storage utilization and/or user accounts as set forth below in the next quarterly billing following the month during which the overage occurred. Such invoices will be payable by you, Net 30 days. We may waive billing for overages in our sole discretion.

The Following Sections (4.1, 4.2, 4.3) apply to all User-Based Pricing Customers

4.1 **Bandwidth**

4.1.1 If you subscribe and pay us for a combined total of fewer than 400 users per month, we agree to provide each of your licensed users with up to 5 gigabytes (“**Per User Allowed Bandwidth**”) of bandwidth utilization to/from the Service per month.

4.1.2 If you subscribe and pay us for a combined total of 400 or more users per month, we agree to provide you with up to 2,048 gigabytes (“**Total Allowed Bandwidth**”) of bandwidth utilization to/from the Service per month, for all your users combined.

4.1.3 You agree to pay us for bandwidth utilization (as measured by us) in excess of Per User Allowed Storage or Total Allowed Bandwidth (as specified above) at the rate of \$2.00 per gigabyte, per month.

4.2 **Storage**

4.2.1 If you subscribe and pay us for a combined total of fewer than 400 users per month, we agree to provide each of your licensed users with up to 5 gigabytes (“**Per User Allowed Storage**”) of storage utilization for the Service per month.

4.2.2 If you subscribe and pay us for a combined total of 400 or more users per month, we agree to provide you with up to 2,048 gigabytes (“**Total Allowed Storage**”) of storage utilization for the Service per month, for all your users combined.

4.2.3 You agree to pay us for storage utilization (as measured by us) in excess of the Per User Allowed Storage or Total Allowed Storage (as specified above) at the rate of \$3.00 per gigabyte, per month.

4.3 **Users Accounts**

4.3.1 You may create up to the pre-purchased quantity of unique end user accounts (“**Allowed User Count**”) for the Service.

4.3.2 You agree to pay us for additional end user accounts in excess of Allowed

User Count at then current rate for our new contracts, as defined by us, plus \$3.00, per end user account, per month.

The Following Section (4.4) applies to all Block Pricing Customers

4.4 Usage Limits

4.4.1 You may create an unlimited number of end user accounts for this Service.

4.4.2 We agree to provide you with the level of bandwidth utilization to/from the Service (combined for all your users) up to the number of prepaid by you storage and bandwidth blocks (“**Blocks**”) measured in terabytes (TB). Bandwidth is defined as the file upload and download transfer volume by any of your users, including any test environments, measured in gigabytes (GB), where 1,024 gigabytes is equivalent to 1 terabyte (1TB).

4.4.3 We agree to provide you with the level of storage utilization for the Service (combined for all your users) up to the number of prepaid by you Blocks. Storage is any file stored in all the organizations, including any test environments, created and maintained for you by us, including files in folders, ad hoc package attachments and archived logs or packages measured in gigabytes (GB), where 1,024 gigabytes is equivalent to 1 terabyte (1TB).

4.4.4 In the event that your consumption exceeds then-current bandwidth and/or storage limits (as measured by us) you agree that you will purchase pro rata the additional Block(s) required to accommodate measured consumption for the remainder of the term of this Agreement. For billing purposes, we aggregate the bandwidth utilization over the course of the month, and we average the file storage over an entire calendar month.

4.4.5 You have 45 days to purchase additional Block(s) following receipt of invoice from us. Failure to purchase additional block(s) required to accommodate measured consumption after 45 days will constitute a breach, for which we may terminate the Agreement.

5. Support

We may update this Service Support Policy (the "Policy") at any time, in our sole discretion, however such updates will not result in a material reduction in the level of Technical Support for the Service (the “Support”) provided for which the applicable Service Subscription fees have been paid.

5.1 You are only eligible to receive Support if you have an active support agreement, remain current on all Service Subscription fees due and payable to us, and are otherwise compliant with your applicable contractual obligations to us. At our sole discretion, we may make other fee-based tiers of support or Service Subscription offerings available that provide specific, customized, and/or more comprehensive forms of enhanced support terms.

5.2 Support consists of infrastructure and application support, provided by us in our sole judgment, in order that the Service provided under the Agreement and the applicable Order Form may operate satisfactorily. Support will be provided in a timely and professional manner by qualified support engineers in accordance with this Policy.

5.3 Technical Support.

5.3.1 Depending on the nature of your issue, you may be assisted by our Technical Support or Customer Service as described on Progress Support Online at <https://www.progress.com/support/moveit-reference-guide> (“**Support Site**”).

5.3.2 **Business Hours.** Our normal business hours for Technical Support and Customer Service are published on the Support Site. Please refer to the time zone corresponding to where you consume our Service. For example, if you consume our Service in North or South America – EST time zone applies. If you consume our Service in Europe, Middle East and Africa (“**EMEA**”) – GMT time zone applies.

5.3.3 Technical Support includes:

- The ability to open and manage support Incidents via the Support Site or, in the case of Severity (Priority) 1 Incidents, by telephone.
 - Severity 2-3 Incidents during Business Hours
 - Extended Support after hours for Severity 1 Incidents
- Interactive remote diagnostic support allowing Progress Support engineers to troubleshoot securely through a real-time browser-based remote control feature.
- Access to Service documentation, Progress Communities, knowledgebase articles, FAQs, webcast recordings and demos as such are made available by us.

5.4 Service Level Objectives: Response Times

5.4.1 We will use reasonable efforts to meet the Service Level Objectives stated in the table published at: <https://www.progress.com/support/manage-your-support-case-cloud> (the “**Service Level Objectives Table**”) and will provide continuous efforts to resolve Severity 1 service Incidents. For Severity 1 Incidents, we will work 24x7x365 until the Incident can be downgraded to a lower severity. For Severity 1 Incidents, your Support Contact(s) must be available at all times via telephone and online to provide us with relevant and requested information, data gathering and testing necessary to resolve the Incident. Severity 2-3 calls can be logged with us on a 24 hours per day, 7 days per week, 365 days per year basis and will be responded to during published business hours as per the Service Level Objectives Table.

5.5 Customer Responsibilities

5.5.1 You must designate one primary and up to four backup named individuals (“**Support Contacts**”) to serve as liaisons with Progress Support for each active Service from us. Support Contacts should be fully trained in the use and application of the Available Functionality. At our sole discretion, we may agree to additional Support Contacts in order to help you meet specific business requirements. You must notify us whenever the list of Support Contacts changes by logging an issue on Progress Support Online.

5.5.2 In order to receive maintenance, support requests must contain all pertinent information, in English, including but not limited to, Customer or site identification name,

Incident severity, Service name, area of Service (Production or Non-Production identified by URL), Incident description, and a technical contact familiar with your environment or the problem to be solved. You must make reasonable efforts to communicate with Progress Support in order to verify the existence of the problem and provide information about the conditions under which the problem could be duplicated.

5.5.3 As set forth above, for Severity 1 Incidents, your Support Contact(s) must be available at all times via telephone and online to provide us with relevant and requested information, data gathering and testing necessary to bring the Incident to resolution.

6. Admin Access

6.1 Activities for which Progress Cloud Operations may request permission to act as a Admin include:

6.1.1 initial ORG setup (evaluation or production);

6.1.2 transition ORG from an evaluation to production environment;

6.1.3 Admin password change, when no other Admins exist;

6.1.4 removing IP Lockouts, if an Admin isn't able to log in;

6.1.5 modifying default access rules, if an Admin isn't able to login; or

6.1.6 troubleshooting Org specific issues/questions like setup questions, permission issues, or upload/download issues.

6.2 Our SysAdmin account cannot upload or download files, read a user's files, or send/receive messages in any organization other than the System organization.

6.3 To authorize Admin access to your System organization you will need to do one of the following:

6.3.1 Contact Progress Technical Support requesting a web meeting, and provide Admin access to a Progress Technical Support Engineer to troubleshoot and resolve the issue, while you observe the steps being performed.

6.3.2 Provide written permission (logged as electronic permission in a Salesforce case is acceptable) for Admin access to MOVEit Cloud Operations before the MOVEit Cloud Operations team will act as a Admin within your ORG.

6.4 Delay in providing authorization in a timely manner will affect our ability to meet the response and resolution times in Section 5.4 above.

The following section only applies to customers who subscribe to PCI Compliance Toolkit

Exhibit A to MOVEit Cloud Service Description
PCI Compliance Toolkit

1. Services

- 1.1. We agree to provide you with our PCI Compliance Toolkit consisting of the following tools to demonstrate compliance interfacing with, and using the Service to support cardholder information holding, processing, or exchange:
 - 1.1.1. Executive Summary of Report on Ipswitch PCI Compliance
 - 1.1.2. Responsibility Matrix of Controls
 - 1.1.3. MOVEit PCI Cloud Compliance Report Template
 - 1.1.4. Support in working with your Qualified Security Assessor (QSA)(up to four (4) hours per year and subject to availability)
 - 1.1.5. PCI Attestation of Compliance (AOC) document
- 1.2. PCI Compliance Toolkit is an ancillary service to the Service and, except as expressly set forth in this Exhibit, is provided in accordance with the Terms for the Service. PCI Compliance Toolkit must be co-termed with the Service, with relevant fee paid in full per annual assessment period. Assessment periods of less than a full year shall require complete payment of annual fee, due to the same annual assessment support requirements dictated by PCI.
- 1.3. PCI Compliance Toolkit is subject to the following:
 - 1.3.1. PCI Compliance Toolkit does not provide certification of PCI DSS compliance. Certification can only be provided by a third party QSA.
 - 1.3.2. Because certification of PCI DSS compliance depends on many factors beyond our control, we can not guarantee that use of PCI Compliance Toolkit will result in certification.
 - 1.3.3. Execution of a non-disclosure agreement is required.

2. Fees

- 2.1. Fees as specified by us for the PCI Compliance Toolkit Service (provided such fees shall not be less than the fees for the PCI Compliance Toolkit Service as of the effective date of this quotation), a one-time set-up fee, and other fees (if applicable) as described in the quotation. Services are invoiced annually in advance.

3. Notifications

- 3.1. We will notify you if we discover that a data breach has taken place. Data breaches are defined as unauthorized disclosure, modification or destruction of you data. We are only responsible to notify you of data breaches originated by our staff and subcontractors or unauthorized outside parties that successfully subvert access control mechanisms or other data protection controls. Monitoring for data breaches by client-managed users involving normal access control mechanisms are your sole responsibility.

The following section only applies to customers who subscribe to HIPAA Compliance Toolkit

Exhibit B to MOVEit Cloud Service Description
HIPAA Compliance Toolkit

1. Services

1.1 We agree to provide you with our HIPAA Compliance Toolkit consisting of the following tools to demonstrate compliance interfacing with, and using the Service to support protected health information (PHI) holding, processing, or exchange:

1.1.1 Executive Summary of Report on Ipswitch HIPAA Compliance

1.1.2 Responsibility Matrix of Controls

1.1.3 MOVEit HIPAA Cloud Compliance Report Template

1.1.4 Support in working with your 3rd Party Auditor to demonstrate HIPAA compliance (up to four (4) hours per year and subject to availability)

1.1.5 Advice for storing and transmitted ePHI with MOVEit Cloud

1.2 HIPAA Compliance Toolkit is an ancillary service to the Service and, except as expressly set forth in this Exhibit, is provided in accordance with the Terms for the Service. HIPAA Compliance Toolkit must be co-termed with the Service, with relevant fee paid in full per annual assessment period. Assessment periods of less than a full year shall require complete payment of annual fee, due to the same annual assessment support requirements recommended by HIPAA.

1.3 HIPAA Compliance Toolkit is subject to the following:

1.3.1 HIPAA Compliance Toolkit does not imply your compliance with HIPAA requirements. Compliance can only be determined by a third party auditor.

1.3.2 Because compliance with HIPAA requirements depends on many factors beyond our control, we cannot guarantee that use of HIPAA Compliance Toolkit will result in compliance.

1.3.3 Execution of a non-disclosure agreement is required.

2. Fees

2.1 Fees as specified by us for the HIPAA Compliance Toolkit Service (provided such fees shall not be less than the fees for the HIPAA Compliance Toolkit Service as of the effective date of this quotation), a one-time set-up fee, and other fees (if applicable) as described in this quotation number. Services are invoiced annually in advance.

3. Business Associate Agreement

- 3.1 We do not meet the definition of business associate as that term is defined by 45 C.F.R. Section 160.103. We do not create, receive, maintain, have access to, use, disclose or transmit protected health information (as that term is defined by 45 C.F.R. Section 160.103) to perform any service for you or on your behalf. If any arrangement between us and you results in our meeting the definition of business associate, and such arrangement does not fit within an exception to the requirement for a business associate agreement under the HIPAA regulations (45 CFR Parts 160 and 164), we will notify you in writing and execute our standard Business Associate Agreement prior to creating, receiving, maintaining, having access to, using, disclosing or transmitting protected health information pursuant to such arrangement.

Last updated on January 20, 2021