

PROVANCE

Provance End User License Agreement (EULA)

ATTENTION: THIS IS A LICENSE, NOT A SALE. THE TECHNOLOGY IS PROVIDED UNDER THE FOLLOWING PROVANCE LICENSE AGREEMENT (“AGREEMENT”) THAT SPECIFIES WHAT YOU MAY DO WITH THE TECHNOLOGY AND CONTAINS LIMITATIONS ON REPRESENTATIONS, WARRANTIES, CONDITIONS, REMEDIES, AND LIABILITIES. “PROVANCE” MEANS PROVANCE TECHNOLOGIES INC. BEFORE DOWNLOADING, INSTALLING, OR USING THE TECHNOLOGY (INCLUDING THE PROGRAM(S)), PLEASE CAREFULLY READ THIS AGREEMENT WHICH CONTAINS THE TERMS AND CONDITIONS UNDER WHICH YOU ARE ACQUIRING A LICENSE TO USE THE TECHNOLOGY. IF YOU DO NOT ACCEPT THE TERMS AND CONDITIONS OF THIS AGREEMENT PLEASE DO NOT DOWNLOAD, INSTALL, OR USE THE TECHNOLOGY (INCLUDING THE PROGRAM(S)) AND PROMPTLY RETURN OR DESTROY ALL COPIES. IF YOU DOWNLOAD, INSTALL, OR USE THE PROGRAM(S), YOU WILL HAVE AGREED TO THIS AGREEMENT AND THESE TERMS AND CONDITIONS. THE TECHNOLOGY (INCLUDING THE PROGRAM(S)) ARE ALSO PROTECTED BY COPYRIGHT LAWS AND INTERNATIONAL COPYRIGHT TREATIES, AS WELL AS OTHER INTELLECTUAL PROPERTY LAWS. IF YOU ARE AN AGENT OR EMPLOYEE OF ANOTHER ENTITY YOU REPRESENT AND WARRANT THAT (I) THE INDIVIDUAL ACCEPTING THIS AGREEMENT IS DULY AUTHORIZED TO ACCEPT THIS AGREEMENT ON SUCH ENTITY’S BEHALF AND TO BIND SUCH ENTITY, AND (II) SUCH ENTITY HAS FULL POWER, CORPORATE OR OTHERWISE, TO ENTER INTO THIS AGREEMENT AND PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT.

1. Definitions. In addition to the other terms defined in this Agreement, the following terms shall have the following meanings:

“**Affiliate**” of a party means any entity that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with such party;

“**Deployment Materials**” means materials made available by Provance to You including templates, models, check lists, instructions, test plans, process documentation, frameworks, best practices and other technical and/or business process information relating to the Program(s), the installation and implementation of the Program(s) and/or IT asset management;

“**Development Environment**” means Your testing or evaluation lab environment, which does not include any hardware, software, networks or other equipment that is used in a business production or commercial mode;

“**Device Management License**” means a right to use an instance of the Program to manage an OSE device;

“**Disaster Recovery Environment**” means Your technical environment designed solely to allow You to respond to an interruption in services due to an event beyond Your control that creates an inability on Your part to use the Production Environment to provide critical business functions for a material period of time;

“**Distributed Products**” means software products distributed by Provance on behalf of third parties;

“**Documentation**” means the user and reference manuals, in whatever form recorded, provided by Provance with the Program(s);

“**Internal Business Purposes**” means use only on Your own local or wide area network for purposes directly related to Your internal business operations, but does not include use on the public Internet or any other network accessible by any person who is not Your employee or contractor;

“**Management License**” means a Device Management License;

“**Organization License**” means a license to install or access and use the Technology within Your Production Environment, conditional upon the number of employees in Your organization not exceeding the number of employees shown in the Quote.

“**OSE**” or “**Operating System Environment**” means a computing environment on a physical device where an operating system and applications runs;

“**Production Environment**” means the private information technology network(s) operated by or on behalf of You and/or Your Affiliates that are used in a business production or commercial mode for Internal Business Purposes;

“**Program**” means the Provance software identified in a Quote, in object code form only, and any related printed or electronic documentation and except where specified otherwise includes: (i) Distributed Products which are integral to or form part of the functionality of the applicable Program; and (ii) all computer code supplemental to the Provance software such as updates, patches, enhancements provided to You by Provance after the date of this Agreement;

“**Quote**” means the quotation document provided to You by Provance (or by one of its distributors or resellers) for the Program(s);

“**Technology**” means all proprietary Provance technology licensed under this license, including without limitation (i) the Program, (ii) the Documentation, (iii) Deployment Materials, (iv) all know-how, trade secrets, processes, procedures, configurations of third party software products and methods of operation, whether imbedded in the Program or Documentation or not and marked as “Proprietary and Confidential” except such information that (a) is or becomes generally known or available through no fault of You; (b) is known by You prior to the time of receipt and is not subject to restriction, as evidenced by Your written records; (c) is independently developed by You, as evidenced by Your written records; (d) is lawfully obtained by You from a third party, who has the right to make such disclosure without restriction; or (e) is publicly released for publication by Provance in writing;

“**User License**” means a license to install or access and use such Program within Your Production Environment, conditional upon access being restricted to that number of named Users shown in the Quote; and

“**You**” or “**Your**” means the individual or entity, as the case may be, acquiring a Technology license and includes Your Affiliates.

2. Grant of Commercial License. If Your Quote is for a commercial Device Management License for the Technology in that Quote, then subject to the terms and conditions of this Agreement, including payment of the applicable license fees, Provance grants You a non-exclusive, non-transferable, limited and

restricted, internal license for the term of this Agreement to install or access and use such Technology within Your Production Environment to manage the number and types of devices permitted by the Management License(s) purchased by You as specified in the Quote. You require one (1) Device Management License for each OSE device that are being actively managed as an asset within the product. Actively managed means assets which are designated as being in the active life cycle phase as defined in the planning and deployment program guide. If your Quote is for a commercial Organization License, then subject to the terms and conditions of this Agreement, including payment of the applicable license fees, Provance grants You a non-exclusive, non-transferable, limited and restricted, internal license for the term of this Agreement to install or access and use such Technology within Your Production Environment, conditional upon the number of employees in Your organization not exceeding the number of employees shown in the Quote. If the number of employees in Your organization at any future time during the term of the Organization License purchased under the Quote exceeds the number of employees shown in the Quote, you may purchase another Organization License for the remainder of the original license term appropriate for the then current number of employees in Your organization, for the then current license fee less the license fees paid in the Quote. . If your Quote is for a commercial User License, then subject to the terms and conditions of this Agreement, including payment of the license fees for such Program(s), Provance grants You a non-exclusive, non-transferable, limited and restricted, internal license for the term of this Agreement to install or access and use the Technology within Your Production Environment, conditional upon access to the Program being restricted to that number of named employees in Your organization not exceeding the number of employees shown in the Quote. If You wish to increase the number of named employees in Your organization at any future time during the term of the User License purchased under the Quote, you may purchase another User License for the remainder of the original license term to enable access by such additional named employee(s) for the then current license fee less any applicable discounts outlined in the Quote. You are expressly prohibited from operating commercial versions of the Program(s) with evaluation copies of the Microsoft® System Center Service Manager or the Microsoft® Dynamics CRM platform, as the case may be. You may make one (1) additional copy of each Program in machine readable form for archival purposes only. You may also: (a) install and use each Program within Your Development Environment for piloting, testing or other development purposes but in no event shall You use the Programs for production purposes; and (b) Install and use each Program within Your Disaster Recovery Environment. You shall limit Your use of Program(s) within Your Development Environment and Disaster Recovery Environment to the corresponding limits established for Your Production Environment as specified in Your Quote(s). If you have acquired a commercial license(s) to install the Program(s) on Your premises, you may elect to convert such license(s) to enable you to access such Programs online (where such service is available); insofar as online licenses include maintenance and support, an additional annual subscription fee will be payable after such conversion.

3. Grant of Deployment Materials License. If Your Quote specifies that you are being granted a commercial license for the Deployment Materials, then subject to the terms and conditions of this Agreement, including payment of the license fees for such Deployment Materials, Provance hereby grants You a non-exclusive, non-transferable, limited and restricted, internal license for the term of this Agreement to use, copy and modify the Deployment Materials solely for the purpose of installing or accessing and implementing copies of the Program(s) for which you have purchased license(s). Notwithstanding the fact that You are granted an internal license for the Deployment Materials, You may provide or make the Deployment materials available to any contractors You have retained to implement or assist You in implementing the Program(s), provided that (i) such contractors are not competitors of Provance; (ii) such contractors shall be subject to the license terms and limitations applicable to the Deployment Materials as set out in this Agreement; and (iii) such contractors shall use the Deployment Materials solely for Your benefit; (iv) such contractors shall not retain any copies of the Deployment Materials after completing their engagement for You; and (v) You shall be fully responsible for any act or omission by any contractor retained by You to the same extent as if such act or omission had been done or not done, as the case may be, by You.

4. Grant of Evaluation License. If You have downloaded or received an evaluation copy of a Program, or accessed a Program in the Provance online demonstration lab, then subject to all of the terms and conditions of this Agreement, Provance grants You a limited, royalty-free, non-exclusive, non-transferable, internal license to use those Program(s) for the time period as imposed by the evaluation license key provided to You by Provance (the "Evaluation Period") solely for the purpose of testing and evaluating the Program(s) to determine if You wish to obtain a commercial license for the Program(s). If you want to convert any evaluation licenses for any Program(s) to commercial licenses for those Program(s), then please contact Provance (or its applicable distributor or reseller) and upon payment of the applicable license fees Provance (or its applicable distributor or reseller) will provide you with a license code to convert Your licenses for such Program(s) to commercial licenses. Program(s) licensed pursuant to an evaluation license contain disabling mechanisms and if the evaluation period expires, then You will lose access to any data You may have stored and You will no longer be able to access Program functionality until a commercial license is purchased. Please note that Provance does not grant evaluation licenses for the Data Management Pack Program and the evaluation versions of other Program(s) may not contain all of the functionality contained in the commercial versions of those Program(s).

5. Restrictions. Licenses for the Technology shall be subject to the conditions set forth in this Section 5. Except as expressly authorized under this Agreement, You are prohibited from doing any of the following things to the fullest extent permitted by law: (a) subleasing, leasing, assigning, selling, reselling, licensing, sub-licensing, distributing, renting, exporting, re-exporting, permitting concurrent use of or granting other rights in the Technology; (b) making any Technology available for use in a computer service business, third-party outsourcing facility, service bureau, time-sharing service, application service provider offering or any other managed service offering; (c) assigning, transferring or otherwise conveying any Technology, this Agreement, or any license to use any Technology; (d) translating, reverse engineering, decompiling, merging, separating or disassembling any part of any Program(s) or Distributed Products, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation, provided that if applicable law permits any of the foregoing activities in respect to a Program or Distributed Product, You may only attempt any such activities after You have requested the necessary information in writing from Provance and Provance has failed to make such information available to You within a reasonable period of time; (e) modifying, adapting, creating derivative works (except to the extent that the documented features of the Program(s) allow customization of the Program capabilities); (f) directly or indirectly using Technology or any information about Technology in the development of any product, software or service that is competitive with the Technology; (g) conducting any competitive analysis of the Technology; or (h) using or operating any of the Distributed Products independently of a Program. If You have been granted an evaluation license for a Program, then in addition to the foregoing restrictions, You are also prohibited from using the Program in a Production Environment. You acknowledge and agree that all Program(s) require the Microsoft® System Center Service Manager or Microsoft® Dynamics CRM program, as the case may be, in order to operate. Provance does not provide a license for or access to the Microsoft® System Center Service Manager or Microsoft® Dynamics CRM programs. All licenses for and access to the Microsoft® System Center Service Manager or Microsoft® Dynamics CRM program and any other third-party software and associated licenses required to operate the Program must be obtained from the applicable software publisher or their authorized reseller.

6. Ownership. All Technology is licensed, not sold. All right, title, and interest (including all intellectual property rights) in, to, and under all Technology (including all copies of all of the foregoing) shall remain with Provance and/or its licensors. You acquire no right whatsoever to all or any part of any Technology except the right to use the Technology in accordance with the terms of this Agreement, and Provance and its licensors reserve all rights not expressly granted to You. Physical copies of the Technology remain the property of Provance. You must fully reproduce any copyright or other notice marked on any part of the Technology on all authorized copies and must not alter or remove any such copyright or other notices.

7. Audit. Provance may, at its expense, appoint an independent third party to audit no more than once annually Your use of the Program(s), Distributed Products and Deployment Materials. Any such audit shall be conducted during regular business hours at Your offices and shall not unreasonably interfere with Your business activities. In the event of an audit, the third party will provide thirty (30) days advance notice. If any audit shows that Your use of the Program(s), Distributed Products or Deployment Materials exceeds any limitations imposed by this Agreement or the applicable Quote, then You shall pay the applicable fees for such excess uses (or, in Provance's discretion, also cease such unlicensed uses) within thirty (30) days of invoice or notice, as the case may be. Any underpaid fees will be determined in accordance with Provance's then-current, country-specific, price list. If additional fees charged as a result of an audit are in excess of five percent (5%) of the fees originally paid or payable for the period during which such unauthorized use occurred, then You shall pay such the applicable fees for such excess uses and Provance's reasonable costs of conducting the applicable audit.

8. Limited Warranty. If You have been granted a commercial license for Program(s) identified in a Quote, then for the period ending sixty (60) days from the date You first acquired or accessed the Program(s) (the "Warranty Period"), Provance warrants that: (a) the media, if any, on which Provance supplied the Program(s) is not defective and the Program(s) are properly recorded on it; (b) any user manual(s), whether in electronic or paper format, provided by Provance with the Program(s) are substantially complete; and (c) the Program(s) function substantially as described in the accompanying user manual(s). A Program(s) warranty shall be void if: (i) the Program has been altered in any way; (ii) the media, if any, has been damaged by accident, abuse or misapplication; (iii) the problem arises due to use of the Program other than as intended as set forth in the user manual(s) and permitted by this Agreement; or (iv) the problem arises due to use of the Program in conjunction with software or hardware for which it is not intended to be used as set out in the user manual(s). If You have been granted an evaluation license for any Program(s), then those Program(s) and any related Distributed Products are licensed to You on an 'as is' basis and there are no warranties, representations or conditions, express or implied, written or oral, arising by statute, operation of law, course of dealing, usage of trade or otherwise, regarding such Program(s) and Distributed Products.

EXCEPT FOR THE LIMITED WARRANTY PROVIDED IN SECTION 8, IF ANY, THE TECHNOLOGY IS PROVIDED "AS IS", WITHOUT ANY REPRESENTATIONS, CONDITIONS, AND/OR WARRANTIES OF ANY KIND. WITHOUT LIMITATION, PROVANCE AND ITS AFFILIATES, LICENSORS, SUPPLIERS, SUBCONTRACTORS AND DISTRIBUTORS DISCLAIM ANY EXPRESS OR IMPLIED REPRESENTATIONS, CONDITIONS, OR WARRANTIES OF MERCHANTABILITY, MERCHANTABILITY, NON-INFRINGEMENT, DURABILITY, TITLE, SATISFACTORY QUALITY, OR FITNESS FOR A PARTICULAR PURPOSE WHETHER ARISING BY STATUTE, COURSE OF DEALING, USAGE OF TRADE, OR OTHERWISE. EXCEPT AS OTHERWISE EXPLICITLY PROVIDED IN THIS AGREEMENT THE ENTIRE RISK ASSOCIATED WITH YOUR USE OF THE TECHNOLOGY SHALL BE BORNE BY YOU. NEITHER PROVANCE NOR ANY OF ITS AFFILIATES, LICENSORS, SUPPLIERS, SUBCONTRACTORS AND/OR DISTRIBUTORS MAKE ANY REPRESENTATIONS OR PROVIDE ANY CONDITIONS AND/OR WARRANTIES ABOUT THE SUITABILITY OF THE TECHNOLOGY OR ABOUT ANY INFORMATION AND/OR DATA THAT MAY BE PROCESSED BY OR MADE AVAILABLE USING THE TECHNOLOGY.

THE DISCLAIMER OF REPRESENTATIONS, WARRANTIES AND CONDITIONS AND LIMITATION OF LIABILITY CONSTITUTE AN ESSENTIAL PART OF THIS AGREEMENT. YOU ACKNOWLEDGE AND AGREE THAT BUT FOR THE DISCLAIMER OF REPRESENTATIONS, WARRANTIES AND CONDITIONS AND LIMITATION OF LIABILITY, NEITHER PROVANCE NOR ANY OF ITS LICENSORS OR SUPPLIERS WOULD GRANT THE RIGHTS GRANTED IN THIS AGREEMENT.

9. IP Indemnification By Provance. If You have been granted a commercial license for Program(s) and/or Deployment Materials identified in a Quote, Provance agrees to defend and/or handle at its own cost and expense any action against You and Your respective officers, directors, employees, representatives, and agents to the extent based on an action by a third party claiming that the Program(s) and/or Deployment Materials infringe on any existing patent (as of the Effective Date), copyright, trademark, trade secret, or any other intellectual property right of such third party (an "IP Claim ") and Provance agrees to indemnify and hold You harmless from and against any and all settlement amounts agreed by Provance in respect to an IP Claim and/or any losses, damages, costs and expenses (including reasonable outside attorneys' fees) awarded to such third party against You by a court of competent jurisdiction in such IP Claim. Provance's obligations under this section are subject to You: (i) giving prompt written notice to Provance of any IP Claim; (ii) giving Provance the sole right to control and conduct the defense of any IP Claim and all negotiations for its settlement or compromise (provided, however, that (a) no settlement or compromise affecting the financial or legal obligations of You shall be entered into or agreed to without Your prior approval and (b) You have the right to participate, at Your own expense, in the defense and/or settlement of any IP Claim in order to protect Your own interests); (iii) providing reasonable cooperation to Provance for the defense of any IP Claim, at Provance's expense; and (iv) not entering into any settlement or compromise of any IP Claim without Provance's prior written approval. Provance's defense and indemnification obligations do not extend to (1) any IP Claim related to or in connection with infringement or alleged infringement of any patent, trademark, copyright or other intellectual property right by the combination of the Program(s) and/or Deployment Materials with other products, software or services not provided by Provance; (2) any IP Claim related to or in connection with any modification of the Program(s) and/or Deployment Materials by anyone other than Provance; (3) any IP Claim related to or in connection with an earlier version of the Program(s) and/or Deployment Materials after a subsequent version of the Program(s) and/or Deployment Materials has been recommended by Provance to avoid any alleged IP Claim if such subsequent version has been provided to You free of charge or pursuant to any support services arrangement You may have with Provance; (4) an IP Claim related to or in connection with any use, distribution, or exercise of any other right outside the scope of the licenses granted in this Agreement; or (v) any Program(s) or Deployment materials while under and evaluation license. If You have been granted a commercial license for Program(s) and/or Deployment Materials identified in a Quote, then if (a) Provance becomes aware of an actual or potential IP Claim, or (b) You provide Provance with notice of an actual or potential IP Claim, Provance may (or in the case of an injunction against You, shall), at Provance's sole option and determination: (I) procure for You the right to continue to use the Program(s) and/or Deployment Materials; or (II) replace or modify the Program(s) and/or Deployment Materials with equivalent or better software or materials so that Your use is no longer infringing; or (III) if (I) or (II) are not commercially reasonably available, take return of the affected Program(s) and/or Deployment Materials and terminate the licenses granted in respect to such Program(s) and/or Deployment Materials, as the case may be, and pay to You the depreciated capital cost of the affected Program(s) and/or Deployment Materials, as the case may be, as calculated by applying a three (3) year straight-line depreciation schedule commencing from the date of delivery, less any outstanding moneys owed on such affected Program(s) and/or Deployment Materials, as the case may be.

10. LIMITATION OF LIABILITY. TO THE GREATEST EXTENT PERMISSIBLE BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, TORT (INCLUDING STRICT LIABILITY AND NEGLIGENCE), CONTRACT OR OTHERWISE, SHALL PROVANCE, ITS AFFILIATES, AGENTS, REPRESENTATIVES, DISTRIBUTORS OR LICENSORS BE LIABLE TO YOU OR ANY OTHER PERSON OR ENTITY FOR ANY LOSS OF USE, REVENUE OR PROFIT, LOST OR DAMAGED DATA, OR OTHER COMMERCIAL OR ECONOMIC LOSS OR FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHATSOEVER, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH

DAMAGES ARE FORESEEABLE. IF YOU HAVE BEEN LICENSED TO USE A PROGRAM OR DISTRIBUTED PRODUCT PURSUANT TO AN EVALUATION LICENSE, THEN IN ADDITION TO THE EXCLUSIONS SET FORTH IN THE PRECEDING SENTENCE, AND TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, PROVANCE (INCLUDING ITS AFFILIATES, AGENTS, REPRESENTATIVES, DISTRIBUTORS OR LICENSORS) ALSO EXCLUDES ANY AND ALL LIABILITY TO YOU OR ANY OTHER PERSON FOR ANY DIRECT DAMAGES. TO THE GREATEST EXTENT PERMISSIBLE BY APPLICABLE LAW, THE MAXIMUM AGGREGATE LIABILITY OF PROVANCE AND ITS AFFILIATES, AGENTS, REPRESENTATIVES, DISTRIBUTORS AND LICENSORS IN ANY CONNECTION WITH THIS AGREEMENT OR THE TECHNOLOGY, WHETHER IN TORT (INCLUDING STRICT LIABILITY AND NEGLIGENCE), CONTRACT OR OTHERWISE SHALL NOT EXCEED THE LICENSE FEES PAID BY YOU UNDER THIS AGREEMENT. THIS LIMITATION SHALL APPLY EVEN IN THE EVENT OF A FUNDAMENTAL BREACH OR A BREACH OF THE FUNDAMENTAL TERMS OF THIS AGREEMENT.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, SO THESE LIMITATIONS MAY NOT APPLY TO YOU.

11. High-Risk Activities. The Program(s), Distributed Products and Deployment Materials are not fault-tolerant and are not designed, manufactured or intended for use in or in conjunction with on-line control equipment in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or control systems, or direct life support machines. Provance, its Affiliates, licensors, suppliers, subcontractors and distributors specifically disclaim any express or implied representations, warranties and/or conditions for such uses.

12. Term. The term of this Agreement will commence for each applicable Program upon delivery of the Program to You, upon download of the Program by You or the online access of the Program by You and shall continue (i) in the case of an evaluation license for the Evaluation Period specified in the Section 4 unless earlier terminated as provided for in this Agreement, or (ii) in the case of a commercial license for the license term specified in the applicable Quote unless earlier terminated as provided for in this Agreement. The license term for the Technology shall be for the period of time during which you have any active commercial licenses for any of the Program(s). Either party may terminate this Agreement if (a) the other party fails to remedy a breach of any material obligation under this Agreement or any Quote within fifteen (15) days of receiving written notice from the other party detailing such breach, or (b) immediately and without notice if You become insolvent, file for bankruptcy, are the subject of involuntary bankruptcy or have a receiver appointed. In the case of an evaluation license, Provance may terminate this Agreement in respect to the applicable Program(s) (including the related Distributed Products) and/or the Deployment Materials immediately for any breach by You; or (ii) at any time without cause by providing five (5) days written notice to You. In addition to this Section, the Sections entitled Definitions, Ownership, Audit, Limited Warranty, Limitation of Liability, High-Risk Activities, Fees and Taxes, Governing Law, Assignment, Export/Import Restrictions, Confidentiality, and General shall continue in force even after any termination of this Agreement. No termination of this Agreement will entitle You to a refund of any amounts paid by You in respect to any Program(s), the Distributed Products and/or the Deployment Materials or affect any obligations You may have to pay any outstanding amounts owing in respect to any Program(s), Distributed Products and/or the Deployment Materials. Upon termination by You or Provance, You shall promptly purge all copies of any Technology from all computer systems on which they were stored, return to Provance all physical copies of the Technology and any other Provance Confidential Information, and make immediate payment of any outstanding fees owed in respect to the Program(s), Distributed Products and the Deployment Materials.

13. Fees and Taxes. You shall pay Provance, or its distributor or reseller (if applicable), the charges and fee(s) specified in your Quote(s) within the time specified in your Quote(s). All charges and fees specified in your Quote(s) are exclusive of and do not include any taxes, duties or similar charges imposed by any government ("Taxes"). You agree to pay or reimburse Provance, or its distributor or reseller (if applicable), for all such Taxes (other than taxes on the net income of Provance or its reseller or distributor, as the case may be). If You are outside of Canada, the amounts You remit to Provance, or its distributor or reseller (if applicable), shall be the actual amounts due without withholding taxes or other assessments that may be imposed by authorities in the jurisdiction within which You are located, which withholding taxes or assessments shall be paid by You. Upon request, You shall promptly furnish Provance with certificates evidencing payment of any withholding taxes or other assessments You may be required to pay in connection with Your payment of the amounts owing under this Agreement and any Quote(s). If it is subsequently determined that Taxes should have been paid in respect to any of Provance's fees under this Agreement, then You shall be liable for any such amounts together with any interest and penalties due thereon and/or (in Provance's discretion) shall pay Provance the equivalent amount that Provance is required to pay to the applicable tax/revenue/enforcement authorities. You shall pay a service charge on overdue accounts equal to the lesser of 1.5% per month (19.57% annually) or the maximum legal interest rate.

14. Support and Updates. (a) On-Premises Use of Programs, etc. For any Program(s), Distributed Products and/or the Deployment Materials installed or downloaded by You, this Agreement does not grant You the right to any updates or enhancements or the right to receive any technical support in respect to any Program(s), Distributed Products and/or the Deployment Materials. Updates and other technical support services, if available, may be purchased separately from Provance in accordance with the Provance technical support program. Provance reserves the right at any time not to release or to discontinue release of any software or other materials and to alter prices, features, specifications, capabilities, functions, licensing terms, release dates, general availability or other characteristics of any Program(s). The purchase of support and the receipt of updates and enhancements shall not increase the number of authorized copies or instances of any Program(s), Distributed Products or the number or type of Management, Organization or User License(s). **(b) Online Services.** Programs, Distributed Products and Deployment Materials accessed online by You under a subscription license include the right to receive updates, enhancements and technical support as described in the then-current Provance Support Guide.

15. Export/Import Restrictions. The Technology and related information are subject to export and import restrictions. You shall comply with the export laws and regulations of Canada and the United States that are applicable to the Technology and related information and You shall comply with any local laws and/or regulations in Your jurisdiction that may impact Your right to export, import, or use the Technology or related information. The Technology and related information shall not be used for any purposes prohibited by export laws and/or regulations, including, without limitation, nuclear, chemical, or biological weapons proliferation. You shall be responsible for procuring all required permissions for any subsequent export, import, or use of the Technology or related information.

16. Governing Law. This Agreement shall be governed by the laws of the Province of Ontario, Canada. No choice of laws rules of any jurisdiction shall apply to this Agreement. You consent and agree that the courts of the Province of Ontario, in Ottawa, Canada, shall have jurisdiction over any legal action or proceeding You bring arising out of or relating to this Agreement and You consent to the jurisdiction of such courts for any such action or proceeding. You waive all rights You may have or that may hereafter arise to contest such jurisdiction of such courts. The parties waive any right to a jury trial with respect to any action brought in connection with this Agreement. The application of the United Nations Convention on Contracts for the International Sale of Goods to this Agreement is expressly excluded. The Uniform Computer Information Act does not apply to this Agreement.

17. Assignment. Provance may assign and/or transfer all or part of its rights and obligations under this Agreement to any third party at any time without notice. You may not transfer or assign this Agreement without the prior written consent of Provance. Your successors or assignees by merger, consolidation or purchase of all or substantially all Your shares or assets shall be entitled to the rights and shall be subject to the obligations of its predecessor in interest under this Agreement, provided that such entity executes a prior acknowledgement confirming such entity's agreement to be bound by the terms of this Agreement and Provance receives such written acknowledgement prior to the transfer, and further provided that any organization-wide licenses shall not extend to any such acquiring or resulting entity unless You (or Your applicable successor or assignee) and Provance agree on incremental license fees to take into account the rights to be utilized by such acquiring or resulting entity.

18. U.S. Government End Users. The Program(s), Distributed Products and the Deployment Materials and documentation are each a "commercial item" as that term is defined at FAR 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are defined in FAR 12.212, and are provided to the U.S. Government only as commercial end items. Government end users acquire the rights set out in this Agreement for the Program(s), Distributed Products and the Deployment Materials and documentation consistent with: (i) for acquisition by or on behalf of civilian agencies, the terms set forth in FAR12.212; or (ii) for acquisition by or on behalf of units of the Department of Defense, the terms set forth in DFARS 227.7202. Use of the Program(s), Distributed Products and the Deployment Materials and documentation is further restricted by the terms and conditions of this Agreement. For the purposes of any applicable government use, the Program(s), Distributed Products and/or the Deployment Materials and documentation were developed exclusively at private expense, and are trade secrets of Provance Technologies Inc. or its licensors for the purpose of any Freedom of Information legislation or any other disclosure statute, regulation or provision.

19. Confidentiality. The parties acknowledge that they may receive confidential and/or proprietary information relating to the business of the other party or its licensors, including without limitation trade secrets, customer lists, computer code (including the Technology), computer programming techniques, algorithms, processes, technical and marketing information, which is identified as confidential and/or proprietary at the time of disclosure or that a reasonable person would consider, from the nature of the information, as confidential and/or proprietary (the "Confidential Information"). The parties will only use such Confidential Information as authorized in this Agreement, and will not disclose any such Confidential Information to any other person unless such disclosure is authorized by the other party in writing. Each party will use and maintain reasonable security measures (which measures shall be at least those used by the receiving party to protect its own Confidential Information) to protect the other party's Confidential Information. The foregoing obligation of confidentiality does not apply to information that: (a) is or becomes generally known or available through no fault of the receiving party; (b) is known by the receiving party prior to the time of disclosure and is not subject to restriction, as evidenced by receiving party's written records; (c) is independently developed by the receiving party, as evidenced by receiving party's written records; (d) is lawfully obtained from a third party, who has the right to make such disclosure without restriction; (e) is released for publication by the disclosing party in writing; or (f) is required to be disclosed by law.

20. General. This Agreement and the Quotes (to the extent hereinafter provided) constitutes the entire agreement between the parties with respect to its subject matter and supersedes and replaces all prior oral or written agreements, representations, negotiations or understandings between the parties relating to such subject matter. No change or modification to this Agreement shall be valid unless it is in writing and signed by representatives of each party. Except for the purpose of specifying the applicable Program(s) being licensed to You and the number and type of Management, Organization and/or User License(s) procured by You and except for any additional terms added to a Quote by Provance (or by a distributor or reseller of Provance with Provance's written approval) prior to such Quote being issued to You, no provisions in any Quote(s) or in any other documentation employed by or on behalf of either party in connection with this Agreement, regardless of the date of such Quote(s) or documentation, will affect the terms of this Agreement, even if such Quote(s) or documents are accepted by the receiving party. Neither party shall be responsible for delays or failure of performance resulting from acts beyond the reasonable control of such party. If any provision of this Agreement is found to be void or unenforceable by a court of competent jurisdiction, then such provision, or part thereof, shall be deemed severed, and the remainder of this Agreement shall remain in full force and effect. No party will be deemed to have waived any right under this Agreement unless such waiver is made in writing. Failure or delay by either party to exercise any of its rights, powers or remedies under this Agreement shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy. You acknowledge and agree that Provance's licensors of Distributed Products are third party beneficiaries of this Agreement, with the right to enforce the obligations set forth in this Agreement.