



## Provance Support Agreement

THE PROVISIONS OF THIS PROVANCE SUPPORT AGREEMENT (“AGREEMENT”) GOVERN THE PURCHASE OF SUPPORT FROM PROVANCE FOR THE PROGRAM(S). “PROVANCE” SHALL MEAN PROVANCE TECHNOLOGIES INC. 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;

“**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);

“**Error**” means a material failure of a Program to conform to its functional specifications as described in its Documentation;

“**Error Correction**” means any bug fixes, modifications, or additions to a Program that are intended to correct the practical adverse effect of an Error;

“**Incident**” means a reported problem or issue that is unique from any other opened problem or issue reported by Customer in respect to a Program;

“**Initial Term**” has the meaning ascribed to that term in Section 7;

“**Maintenance**” means the right to receive minor and major upgrades for the Program(s) and/or Distributed Products, as described in more detail in Section 4 and the Provance Support Guide;

“**Management License**” has the meaning ascribed to that term in the Provance End User License Agreement between Customer and Provance;

“**Organization License**” has the meaning ascribed to that term in the Provance End User License Agreement between Customer and Provance;

“**Program**” means the Provance software licensed by You pursuant to a separate Provance End User License Agreement;

“**Provance End User License Agreement**” means that certain or those certain license agreement(s) entered into between Provance (or any of its Affiliates) and Customer (or any of its Affiliates), including all amendments and addendums to such agreement(s) and all orders thereunder;

“**Provance Support Guide**” means Provance’s then-current support guide that describes certain additional Support policies and certain variable aspects of the Support services, such guide may be amended from time to time by Provance in its discretion;

“**Provance Web Support**” means a website, or specific portion thereof, maintained by Provance that may be accessed by You which provides various self support resources;

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

“**Renewal Term**” has the meaning ascribed to that term in Section 7;

“**Support**” means the Support Services and Maintenance;

“**Support Services**” means Incident support for the Program(s) and Provance Web Support set forth in Section 3 of this Agreement and the Provance Support Guide. Support Services consist of optional and included services as specified in more detail in the Provance Support Guide;

“**Support Contact**” means an information technology specialist employed by Customer who has been suitably trained in respect to the operation of the Program(s) and who is knowledgeable about the Customer’s IT environment and through whom Support-related communications with Provance (whether by phone, email or web) will be channeled;

“**Support Anniversary Date**” means the annual anniversary of the date on which the Initial Term ends;

“**Support Start Date**” means the date of first delivery of the Program(s);

“**You**”, “**Your**” or “**Customer**” means the individual or entity, as the case may be, to whom the Quote was issued. In the case of an entity, “**You**”, “**Your**” or “**Customer**” includes any Affiliate of such entity; and

“**Workaround**” means a temporary solution that can be implemented in respect to an Incident as an alternate method of providing temporary or partial process functionality that allows the affected system(s) and/or process(es) to deliver to Customer a reasonable level of Program functionality until a resolution can be implemented.

## **2. SUPPORT FEES**

(a) Support is available for annual and incremental fees as set forth in the Quote. On the Support Start Date, and thereafter at the beginning of each Renewal Term, You shall pay Provance the non-refundable annual fee for the Support level for which You are subscribing for that year. If You elect to purchase annual Support, then You are required to purchase annual Support for all of the Programs that have been licensed to You and/or Your Affiliates. You may elect to purchase incremental Support packs as described in the Provance Support Guide for the fees specified in the Provance Support Guide. Fees for annual Support are payable in advance and shall be paid by You to Provance within thirty (30) days of receipt by You of the applicable invoice. Fees for incremental Support are payable upon acceptance by Provance of Your order for such incremental Support and shall be paid by You to Provance within thirty (30) days of receipt by You of the applicable invoice. Provance shall only be obliged to provide Support to You if You are in compliance with all of Your obligations under this Agreement. If You have not paid any fees within thirty (30) days after You receive an applicable invoice or if You fail to perform any of its material obligations in this Agreement, then Provance shall be entitled to suspend or terminate Support in addition to all of its other remedies.

## **3. SUPPORT SERVICES**

(a) Subject to the terms and conditions of this Agreement and payment of the applicable fees, Provance will provide Support Services to Customer during those periods for which Customer has purchased Support. You acknowledge and agree that in certain geographic territories Provance may use a distributor to provide first and/or second level Support services. If You have purchased Support from a Provance distributor that has been approved by Provance to provide first and/or second support, then unless directed otherwise by Provance, You shall deal directly with such distributor in respect to Your receipt or use of such Support

(b) If after using commercially reasonable efforts, including consultation of the applicable Documentation, You are unable to diagnose or resolve problems or performance deficiencies in the Program(s), then You may submit an Incident report through Provance Self Service Portal and Provance shall provide Support Services in respect to such Incident in accordance with the terms of this Agreement. Support Services for the Program(s) are available for access by Customer during the times set forth in the Provance Support Guide. Your Support Contacts may also access self-service Support materials through Provance Web Support, including technical and product information: frequently asked questions; solutions to common problems; release notes; a searchable knowledge base; community forums; and other technical information that provides self-diagnosis and resolution capabilities. Provance Web Support is available twenty-four hours a day, seven days a week, subject to scheduled maintenance and network or server unavailability. When You report an Incident, Provance shall, in consultation with You, first classify the Incident according to its severity and nature. The Incident will then be logged in Provance’s Incident tracking system and the Incident will be classified as a Severity 1, Severity 2, or Severity 3 Incident. The definitions for these classifications can be found in the Provance Program Guide. In the case of disagreement on the determination of the severity level, Provance’s final judgment shall apply.

(c) Support Contacts may access Provance technical support specialists and Provance Web Support. The Support Contacts shall coordinate communications between Customer and Provance.

(d) Provance shall use commercially reasonable efforts (as described in further detail in the Provance Support Guide) to provide Error Corrections for the Program(s) provided that Provance can successfully reproduce the suspected Error; and provided further that: (i) You have not modified the Program(s); (ii) You are using the Program(s) in the manner for which they were designed; and (iii) the suspected Error(s) are not the result of accident, misuse, neglect, or other damage. If Customer encounters an issue in using the Program(s), Customer may submit an Incident report to Provance which contains sufficient detail to permit Provance to understand and reproduce the problem. If Provance determines that an issue is an Error, Provance will use commercially reasonable efforts to diagnose the Error and provide an Error Correction or any available Program software fixes, as respectively applicable, to Customer. Provance’s targeted response times are set forth in the Provance Support Guide. If Provance has previously identified and resolved a reported Error in the Program(s) and has issued a fix or major or minor upgrade that includes an Error Correction for such Error, then Customer’s resolution for such Error will be to install the applicable fix or major or minor upgrade, as the case may be. Provance will use commercially reasonable efforts to back-propagate Error Corrections into earlier supported major releases (either as a fix or as a new minor release for such supported major releases), however, in certain instances changes in the Program(s) or in the underlying platforms on which the Program(s) operate may prevent back propagation of Error Corrections.

## **4. MAINTENANCE**

(a) Subject to the terms and conditions of this Agreement and payment of the applicable Support fees, Provance will provide Maintenance to Customer during those periods for which Customer has purchased Support.

(b) Pursuant to Maintenance, Provance shall provide Customer with all minor and major upgrades for the Program(s) and/or Distributed Products, if and when made generally commercially available. Upgrades are defined as those versions of the Program(s) that Provance, in its discretion, deems to be logical improvements or extensions to the Program(s) and that have been released for general commercial distribution. Upgrades do not include additional Program modules that may be released from time to time by Provance and that may or may not be connected to or integrated with the Program(s). For Distributed Products, the designation of minor and major upgrades shall be as specified by the applicable third-party developer. Customer’s right to use any upgrades received by Customer pursuant to this Agreement shall be limited to rights granted in the Provance End User License Agreement. The receipt of upgrades shall not increase the number of authorized copies of the Program(s) or the number of Authorized Licenses for the Program(s). Releases designated by Provance as third digit releases (e.g., 4.2.2 to 4.2.3) are not considered upgrades for the purposes of this Agreement but rather are considered to be fix releases which must be downloaded by Customer from Provance Web Support. Support for a particular major upgrade of a Program is available for a minimum of five (5) years from the date of first commercial release. Notwithstanding anything contained in this paragraph 4(b), if You have cancelled or discontinued Support for a period of one (1) year or longer, You shall not be entitled to receive free upgrades upon reinstatement of Support unless You pay Provance the Support fees that would have been applicable for the period during which You were not subscribing for Support. Customer shall be responsible

for distribution of new minor and major upgrades within Customer's and its Affiliates' organization (to the extent permitted by licensing terms of the Provance End User License Agreement).

## **5. LIMITED WARRANTY**

Provance warrants that it will use commercially reasonable efforts to provide Support. Customer's sole and exclusive remedy for any breach of the foregoing warranty shall be to have Provance re-perform the applicable Support service, subject to such request for re-performance being made within thirty (30) days of the provision of the Support service that did not meet the foregoing warranty.

**EXCEPT FOR THE LIMITED WARRANTY PROVIDED IN THIS SECTION 5, SUPPORT 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, AND/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.**

**THE DISCLAIMER OF REPRESENTATIONS, WARRANTIES AND CONDITIONS AND LIMITATION OF LIABILITY CONSTITUTE AN ESSENTIAL PART OF THIS AGREEMENT. CUSTOMER ACKNOWLEDGES AND AGREES THAT BUT FOR THE DISCLAIMER OF REPRESENTATIONS, WARRANTIES AND CONDITIONS AND LIMITATION OF LIABILITY, PROVANCE WOULD NOT PROVIDE SUPPORT AS SET FORTH IN THIS AGREEMENT.**

## **6. 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 AGENTS, REPRESENTATIVES, DISTRIBUTORS OR LICENSORS BE LIABLE TO CUSTOMER 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, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHATSOEVER, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH DAMAGES ARE FORESEEABLE. TO THE GREATEST EXTENT PERMISSIBLE BY APPLICABLE LAW, THE MAXIMUM AGGREGATE LIABILITY OF PROVANCE AND ITS AGENTS, REPRESENTATIVES, DISTRIBUTORS AND LICENSORS IN ANY CONNECTION WITH THIS AGREEMENT OR THE PROGRAM(S), WHETHER IN TORT (INCLUDING STRICT LIABILITY AND NEGLIGENCE), CONTRACT OR OTHERWISE SHALL NOT EXCEED THE SUPPORT FEES PAID BY CUSTOMER UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS PRECEDING THE EVENT OR EVENTS GIVING RISE TO THE CLAIM. 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.**

## **7. TERM**

This Agreement and Support shall begin on the Support Start Date and shall continue for a twelve (12) month period from the first day of the month following the Support Start Date (the "Initial Term"). Thereafter this Agreement and Support shall only be renewed after the end of the Initial Term for additional one (1) year renewal terms (any such subsequent renewal terms referred to in this Agreement as a "Renewal Term"), upon receipt by Provance of a valid purchase order from Customer at least thirty (30) days prior to the end of the Initial Term or any Renewal Term hereof. Provance may terminate this Agreement immediately by giving Customer written notice if any of the following events occur: (a) Customer fails to pay any amount due to Provance within thirty (30) days after Provance gives Customer written notice of such non-payment; (b) Customer is in material breach of any non-monetary provision of this Agreement, which breach, if capable of being cured, is not cured within thirty (30) days after Provance gives Customer written notice thereof; or (c) Customer has committed a non-curable material breach of this Agreement. In addition to this Section, the Sections entitled Definitions, Limited Warranty, Limitation of Liability, Fees and Taxes, Governing Law, Assignment, Confidentiality, and General shall continue in force even after any termination of this Agreement. No termination of this Agreement will entitle Customer to a refund of any amounts paid by Customer in respect to Support or affect any obligations Customer may have to pay any outstanding amounts owing in respect to Support. Upon termination by Customer or Provance, Customer shall promptly return to Provance all Provance confidential information and make immediate payment of any outstanding fees owed in respect to Support.

## **8. FEES AND TAXES**

Customer shall pay Provance, or its distributor or reseller (if applicable), the charges and fee(s) specified in the Quote(s) within the time specified in this Agreement (unless another time period is specified in such Quote(s)). All charges and fees specified in any Quote(s) are exclusive of and do not include any taxes, duties or similar charges imposed by any government ("Taxes"). Customer agrees 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 Customer is outside of Canada, the amounts Customer remits 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 Customer is located, and which withholding taxes or assessments shall be paid by Customer. Upon request, Customer shall promptly furnish Provance with certificates evidencing payment of any withholding taxes or other assessments Customer may be required to pay in connection with Customer's 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 Customer 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.

## **9. GOVERNING LAW**

This Agreement shall be governed by the laws of the Province of Ontario, Canada, without giving effect to: (a) the principles of conflicts of law and that body of law applicable to choice of law; (b) the United Nations Convention on Contracts for the International Sale of Goods, and/or its implementing and/or successor legislation and/or regulations; (c) the Uniform Commercial Code and/or its implementing and/or successor legislation and/or regulations; and/or

(d) the Uniform Computer Information Transactions Act and/or its implementing and/or successor legislation and/or regulations, as applicable respectively. The parties agree that the courts of the Province of Ontario in Ottawa, Ontario constitute a convenient forum for any litigation and both parties attorn and submit to the jurisdiction of such courts. Except to the extent required by law, the parties waive trial by jury. Each party hereby agrees to comply with all applicable laws, regulations and government orders in performing its obligations under this Agreement. The parties agree that this Agreement, as well as any documentation, manuals or any other items to be provided by one party to another (including letters, notices or any other communication) shall be drafted and/or provided solely in the English language. Les Parties ont expressément exigé que cet accord, toute annexe, de même que toute documentation, manuel ou autres items à être remis par une Partie à l'autre Partie (incluant toutes lettres, avis et autre communication) soit rédigé et/ou remis uniquement en la langue anglaise.

#### **10. 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. Customer may not transfer or assign this Agreement without the prior written consent of Provance. Any successor, representative or assignee of Customer by purchase, merger, or consolidation of all or substantially all of the properties of Customer 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.

#### **11. 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 Program(s)), 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 the receiving party's written records; (c) is independently developed by the receiving party, as evidenced by the 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.

#### **12. GENERAL**

This Agreement is 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 type and duration of Support 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 or part of 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 the exercise of any right that it holds 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. Customer acknowledges and agrees 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. In this Agreement words importing a singular number only shall include the plural and vice versa. The division of this Agreement into articles and the insertion of headings are for convenient reference only, and shall affect neither the construction nor the interpretation of this Agreement.