



## Prophix Software Subscription License Agreement

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This is a Software Subscription License Agreement ("Agreement") between **Prophix Software Inc.**, 350 Burnhamthorpe Road West, Suite 1000, Mississauga, Ontario, Canada L5B 3J1, fax number 905-279-2232 (referred to as the "**Licensor**") and **Licensee** (referred to as the "**Customer**")

This Agreement sets out the terms that apply to the use of the Licensor's **Prophix** Software by the Customer.

# PROPHIX Software Subscription License Agreement

Section 1 **Definitions.** These definitions apply to this Agreement:

“Addendum” means the applicable document appended to this Agreement which is entered into in accordance with the terms of this Agreement.

“Agreement” means this Software Subscription License Agreement, including every Addendum and amendment entered into in accordance with the terms of this Software Subscription License Agreement.

“Business Day” means any day except Saturday, Sunday and statutory holidays in the Province of Ontario.

“Documentation” means the online help materials and release notes Prophix provides for use in conjunction with the Licensed Materials. The Documentation describes functional aspects of the Licensor’s Licensed Materials.

“Foundation Server” means the single server on which the Customer is licensed to install the Licensed Materials as set out in the Section entitled “License”.

“Licensed Materials” means, collectively, the Software and updates to the Software and related documentation, and any third party software or documentation or other third party materials provided with as a part of or incorporated into the Licensed Materials, including the subscribed Licensed Materials set out on the first page of this Agreement and any other subscribed Licensed Materials set out in any Addendum.

“Licensed User” means an individual, who is either an employee or contractor of the Customer and who may from time to time review data or information in a Model or input data or information into a Model. The applicable Subscription Fees, the number of Licensed Users and the type of Licensed Users who are licensed to use the Software must be specified in this Agreement or in an Addendum.

“Licensed Server” means the server at the Licensed Location upon which the Software will be installed.

“Location” means the location of the server on which the Licensed Materials may be installed, as set out on the first page of this Agreement and as may be set out in any Addendum.

“Model” means a business model, created using the Licensed Materials, located on the Licensed Server, for the Customer’s business in the jurisdictions in which the Customer carries on business and for the internal business purposes of the Customer, and not for the business purposes of any other person.

“Software” means the object code version of the Licensor’s PROPHIX software.

“Subscription Fee” means the fee set out on the first page of this Agreement and of all additional fees set out in all Addenda, as set out in those Addenda.

“Subscription License” has the meaning set out in the Section entitled “License” for use of the subscribed Licensed Materials by a Licensed User.

“Subscription License Term” means the total period of time during which this Agreement and the terms herein shall be in full force and effect, specifically beginning on the Subscription Start Date and ending upon three years less one day from the Subscription Start Date.

“Warranty Period” means the period of 365days following the Subscription Start Date.

Section 2 **Interpretation.** In this Agreement, words in the masculine, feminine or neuter gender include all genders; words expressed in the singular include the plural, and vice versa; and words importing persons include individuals, sole proprietors, corporations, partnerships, trusts and unincorporated associations.

Section 3 **Start Date, Term and Renewal.** This Agreement is effective from the Subscription Start Date specified above when signed by duly authorized representatives of each party and will continue in effect until terminated according to its terms. The Subscription License shall commence on the Subscription Start Date and shall continue for the Subscription License Term unless terminated earlier as provided in the Section entitled “Termination”. Termination of this Agreement for any reason shall however not entitle Customer to a pro-rate or refund of any of Subscription Fees paid.

Upon expiration of the original Subscription Term this Agreement will Auto-Renew with respect to the pricing table on page 1 for an additional one-year renewal term (each a “Renewal Term”). Licensor shall provide you with a renewal notice ninety (90) days prior to the Renewal Term, unless (i) Customer provides Licensor with written notice no later than sixty (60) days prior to the end of the original Subscription Term or the then-current Renewal Term of Customer’s intention not to renew such Subscription, or (ii) Licensor provides Customer with written notice no later than ninety (90) days prior to the end of the original Subscription Term or the then-current Renewal Term of its intention not to renew.

Section 4 **License.** The Licensor grants and, by signing this Agreement or the applicable Addendum, the Customer accepts for the Subscription License Term, a non-exclusive non-transferable, non-assignable license to use the Licensed Materials at the Location solely for the internal business use of the Customer (the “Subscription License”) This license permits the Customer to:

- \* install the Licensed Materials on a single server (the “Foundation Server”) and design, build and create any number of Models on that server; and

- \* install the Licensed Materials on additional Licensed Servers under the terms and conditions detailed in an applicable Addendum; and

- \* enable Licensed Users to electronically access the Licensed Materials and for such Licensed Users to use the Licensed Materials solely for the Customer’s internal use.

With respect to each Licensed User specified in this Agreement or in an Addendum, the Licensor grants and, by signing this Agreement or the applicable Addendum, the Customer accepts for the Subscription License Term a non-exclusive, personal license for one Licensed User to electronically access the Software from anywhere in the world and to use the Licensed Materials solely for the internal business use of the Customer for the purpose of permitting such Licensed User to input and review data or information in a Model, subject to the terms and conditions set out in this Agreement.

With respect to each Licensed Server specified in this Agreement or in an Addendum, the Licensor grants and, by signing this Agreement or the applicable Addendum, the Customer accepts

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for the Subscription License Term a non-exclusive, non-transferable, non-assignable, license for the Software to be installed on a single Licensed Server solely for the internal business use of the Customer, subject to the terms and conditions set out in this Agreement.

The Customer may either (a) make one copy of the Licensed Materials solely for backup or archival purposes, or (b) transfer the Licensed Materials to a single hard disk provided the Customer keeps the original solely for backup or archival purposes. The Customer shall not otherwise copy the Licensed Materials, except with the prior written consent of the Licensor.

The Customer understands that the Licensed Materials may contain software, documentation or other materials licensed by the Licensor from one or more third parties. The Customer shall not use any third party software or documentation or any other third party materials provided with or incorporated into the Licensed Materials except for the purpose of using the Licensed Materials in accordance with the terms and conditions of this Agreement.

The Customer shall inform all users of the Licensed Materials of the terms and conditions of this Agreement.

**Section 5 Restrictions on Use.** The Customer may not loan, rent, lease, transfer or assign or otherwise make available any or all of the Licensed Materials to any third party. The Customer may not directly or indirectly translate, reverse engineer, reverse compile, disassemble or otherwise attempt to create any part of the source programs from any or all of the Licensed Materials or to permit any other person or entity to do so, except to the extent that this restriction is expressly prohibited or limited by applicable law. The Customer may not modify all or any part of the Licensed Materials in any form or merge any or all of it into any other program. The Customer may not transmit all or any part of the Licensed Materials by telecommunication or any other means, except as expressly permitted in the Section entitled "License".

The Customer shall not permit any person who is not a Licensed User to use or access the Licensed Materials. The Customer shall not permit a greater number of Users to use or access the Licensed Materials than the number of Licensed Users specified on the first page of this Agreement. Despite any other provision in this Agreement, the Licensed Materials may not be used or accessed by any person or entity in relation to any business, financial or budgetary model or charts of account or any other matter related to the business of any person or entity other than the Customer.

**Section 6 Subscription Fees.** Under this Agreement, fees for the use of the Licensed Materials consist of a Subscription Fee for each Licensed User and each Licensed Server. Different Subscription Fees may be applicable to different types of Licensed User or Licensed Server, depending on the functionality available to such Licensed Users or Licensed Servers. A separate User License is required for each Licensed User and a separate Server License is required for each Licensed Server.

The Subscription Fee in effect on the Subscription Start Date of this Agreement is set out in the first page. The Licensor may increase the Subscription Fees upon any subsequent or additional renewal term. Additional licenses are required for the use of the Licensed Materials other than as set out in this Agreement.

**Section 7 Delivery.** The Licensor shall use commercially reasonable efforts to deliver the Licensed Materials to the Location by either (a) electronic mail, or (b) by a nationally

recognized courier service, to the address of the party specified in this Agreement or such other address as either party may specify in writing.

**Section 8 Additional Fees and Services.** The Licensor, if requested by the Customer, shall provide installation, education and additional services, such as customisation and consulting services, in respect of the Licensed Materials at the Licensor's then prevailing rates.

**Section 9 Payment and Taxes.** In consideration of the use of the Licenses granted under this Agreement or any subsequent Addendum, the Customer shall pay the Licensor the Subscription Fee upon receipt of Invoice for this Agreement or Addendum, or if the payment option set forth on the first page is "Annual Payments", then in addition to the initial Annual Payment which is due upon execution of this Agreement, Customer shall make subsequent equal payments for second and third years not less than 30 days prior to the anniversary of the Subscription Start Date.

The Licensor will invoice the Customer for the services and related out-of-pocket expenses referred to in the Section entitled "Additional Fees and Services" on a weekly basis for such services performed and expenses incurred during each week, where applicable.

Overdue payments shall bear interest at the rate of 12% per annum on the amount outstanding from the date when payment is due until the date payment in full is received by the Licensor.

In addition to the fees payable by the Customer to the Licensor, all taxes and other levies, including sales, custom, excise, property and use taxes, any Goods and Services Taxes, any other value-added taxes and all other taxes (but excluding taxes based on the net income of the Licensor resulting from this Agreement) shall be the responsibility of the Customer and shall be paid by the Customer or reimbursed to the Licensor by the Customer upon receipt of an invoice from the Licensor.

**Section 10 Ownership of the Licensed Materials.** Title to and ownership of all rights in and to the Licensed Materials, including copyright and all other intellectual property rights, shall at all times remain with the Licensor or its third party suppliers or licensors. The Customer shall acquire no right whatsoever to all or any part of the Licensed Materials except the right to use the Licensed Materials in accordance with and subject to the terms of this Agreement. The Licensed Materials are protected by copyright laws in the United States, Canada and other countries.

**Section 11 Third Party Products.** The Licensed Materials may be derived in part from third party products but no such third party warrants the Licensed Materials to the Customer, assumes any liability with respect to the Licensed Materials, or undertakes to provide any support for the Licensed Materials.

The Licensed Materials are an integrated solution that includes not only software that is owned by Prophix Software Inc. but also software (the "Microsoft Software") that is owned by Microsoft Corporation or Microsoft Licensing, GP ("Microsoft"). The Customer is licensed to use the Microsoft Software under the following terms and conditions:

- The Customer is licensed to use only the SQL Server 2016 version of the Microsoft Software.
- The Customer is licensed to use the Microsoft Software by PROPHIX Software Inc., not by Microsoft.
- The Customer is licensed to use the Microsoft Software for the same number of users as are authorized to use the Licensed

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Materials (excluding basic users).

- The Customer is licensed to install and use the Server Software on the same number of servers that are licensed for the Licensed Materials.
- The Licensor, and not Microsoft, is responsible for providing technical support to the Customer for all of the Licensed Materials, including the Microsoft Software.
- The Customer's license to use the Microsoft Software shall remain in effect only as long as the Customer is licensed to use the Licensed Materials.
- The Microsoft Software is Runtime Restricted Use software and may NOT be used in conjunction with any software applications, databases or tables other than the Licensed Materials or to develop any new software applications or as a standalone software application.

Section 12 **Confidentiality of the Licensed Materials.** The Customer, by signing this Agreement, acknowledges that the Licensed Materials constitute the valuable property and trade secrets of the Licensor embodying substantial creative efforts and confidential information. Licensor acknowledges that it may receive confidential information from Customer during the term of this Agreement.

Both Parties therefore agree:

- to take all measures necessary to keep the confidential information and the Licensed Materials confidential,
- not to disclose or otherwise make available any of the confidential information or the Licensed Materials to any person except employees, contractors and Licensed Users to the extent that they have a need to know,
- to ensure such employees and contractors take all measures necessary not to disclose, use or copy the Licensed Materials except as is reasonably required for them to perform their employment obligations,
- except as otherwise permitted under this Agreement, not to copy any of the confidential information or the Licensed Materials, and
- Not to alter or remove any proprietary rights or copyright notice or identification which indicates the Licensor's ownership of the Licensed Materials.

Section 13 **Warranties.** The Licensor warrants that during the Warranty Period, the Software shall operate substantially in accordance with its related Documentation. During the Warranty Period, the Licensor shall provide reasonable assistance in attempting to correct or bypass any material defects or errors in the Software in order that the Software operates substantially in accordance with its related Documentation, at no charge. The Customer agrees to pay the Licensor's expenses associated with travel outside of the greater Toronto area and the Customer shall pay the Licensor's then prevailing rates if the particular problem reported by the Customer proves in fact to be a hardware, operating system or other problem not attributable to the Software and provided that the Customer has not changed or modified the Software without the Licensor's written consent.

During the Warranty Period, if the Licensor is unable to correct or bypass any material defects or errors in the Software in order that the Software operates substantially in accordance with its related Documentation, the entire liability of the Licensor and the Customer's exclusive remedy shall be to return the Licensed Materials to the Licensor and the Licensor will, upon receipt, provide a pro-rated refund to the Customer of the Subscription Fee which has been pre-paid by the Customer to the Licensor for the Software to which that Warranty Period applies.

**THE EXPRESS WARRANTY SET OUT IN THIS SECTION IS IN LIEU OF ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, MADE OR GIVEN OR ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE. IN PARTICULAR, THE LICENSOR SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, MERCHANTABILITY QUALITY, AND FITNESS FOR A PARTICULAR PURPOSE, PARTICULAR, SPECIFIC, OR OTHERWISE. THE LICENSOR'S WARRANTIES, CONDITIONS AND REPRESENTATIONS, IF ANY, EXTEND SOLELY TO THE CUSTOMER.**

Section 14 **Software Maintenance Service.** During the Subscription License Term Licensor shall provide the Customer the following software maintenance service which is at no extra charge other than the Subscription Fees:

- reasonable assistance in attempting to correct or bypass material defects or errors in the Software in order that the Software operates substantially in accordance with its related documentation,
- hotline technical support during the Licensor's normal business hours, and
- periodic updates to the Software that the Licensor generally makes available to its customers and specified by the Licensor to be part of software maintenance service.

Maintenance service shall not include installation, educational, customisation, consulting and other services which may be provided, if requested by the Customer, under the Section entitled "Additional Fees and Services".

Subscription Fees do not include expenses associated with travel outside of the greater Toronto area in order to provide software maintenance service, and any such expenses including telecommunication expenses shall be borne by the Customer. The Customer shall also pay the Licensor's prevailing consulting rates if the particular problem reported by the Customer proves in fact to be hardware, operating system or other problem not attributable to the Software.

Section 15 **Proprietary Rights Infringement.** The Licensor will indemnify and hold the Customer harmless against any claim, loss, cost, liability or demand for any infringement of any Canadian or United States proprietary rights of any third party by the Licensor. The Licensor will, at its own expense, defend or settle any claim or proceeding brought against the Customer by any third party that the Licensed Materials, the use of the Licensed Materials, or the copying by the Customer of any Licensed Materials supplied by the Licensor constitutes an infringement of any such proprietary right, provided that the Licensor is promptly notified in writing of the claim and is given the opportunity to have sole control of the defence and any related settlement negotiations.

If any Software is in the Licensor's opinion likely to or does become the subject of a claim for proprietary rights infringement, the Licensor, at its option, shall either modify it to become non-infringing, or the Licensor may terminate this Agreement.

Despite the above, the Licensor shall have no liability to the Customer if the infringement results from

- use of any of the Licensed Materials in combination with any other software or hardware if there would otherwise not be any infringement,
- modifications to the Licensed Materials not made by the Licensor if such infringement would have been avoided by the absence of such modifications, or
- use of other than the then current release and version level of the Licensed Materials if such infringement would have been

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avoided by use of the then current release and version level.

The foregoing states the entire liability of the Licensor with respect to claims of proprietary rights infringement.

## Section 16 **LIMITATION OF LIABILITY. THE CUSTOMER AGREES THAT ANY LIABILITY ON THE PART OF THE LICENSOR**

- **FOR ANY BREACH OF THE WARRANTIES CONTAINED IN THIS AGREEMENT OR ANY OF THE OTHER PROVISIONS OF THIS AGREEMENT OR ANY OTHER BREACH GIVING RISE TO LIABILITY, INCLUDING BREACH OF A CONDITION OR FUNDAMENTAL TERM OR FUNDAMENTAL BREACH OR BREACHES; OR**
- **IN ANY OTHER WAY ARISING OUT OF OR RELATED TO THIS AGREEMENT**

**FOR ANY CAUSE OF ACTION WHATSOEVER AND REGARDLESS OF THE FORM OF ACTION (INCLUDING BREACH OF CONTRACT, STRICT LIABILITY, TORT INCLUDING NEGLIGENCE OR ANY OTHER LEGAL OR EQUIVOCAL THEORY), SHALL BE LIMITED TO THE CUSTOMER'S ACTUAL DIRECT, PROVABLE DAMAGES IN AN AMOUNT NOT TO EXCEED THE TOTAL AMOUNT PAID TO THE LICENSOR IN RESPECT OF THE SUBSCRIPTION FEE TO USE THE LICENSED MATERIALS.**

**THE CUSTOMER AGREES THAT IN NO EVENT WILL THE LICENSOR BE LIABLE FOR DAMAGES IN RESPECT OF INCIDENTAL, ORDINARY, PUNITIVE, EXEMPLARY, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES EVEN IF THE LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES INCLUDING, INCLUDING WITHOUT LIMITATION, LOST BUSINESS REVENUE, LOSS OF PROFITS, FAILURE TO REALIZE EXPECTED SAVINGS, LOSS OF DATA, LOSS OF USE OF EQUIPMENT, LOSS OF BUSINESS OPPORTUNITY OR ANY CLAIM AGAINST THE CUSTOMER BY ANY OTHER PARTY ARISING OUT OF THE USE OF THE LICENSED MATERIALS.**

Section 17 **Excusable Delays.** Dates and times by which the Licensor is required to render performance under this Agreement will be postponed automatically to the extent and for the period of time that the Licensor is prevented from meeting them by reason of any cause beyond its reasonable control. The Licensor shall not be liable for any failure to perform or any delays in performance, and shall not be deemed to be in breach or default of its obligations set forth in this Agreement, if, to the extent, and for as long as, such failure or delay is due to any causes that are beyond its reasonable control and not to acts or omissions, including, without limitation, such causes as acts of God, fire, flood, severe storm, earthquake, civil disturbance, lockout, riot, order of court or administrative body, embargo, acts of government, war (whether or not declared) acts of terrorism or other similar causes ("Force Majeure Event"). For clarity, labor disputes shall not be deemed a Force Majeure Event. In the event of a Force Majeure Event, the Licensor shall promptly give notice to the Customer and shall use commercially reasonable efforts to avoid or minimize the failure or delay.

Section 18 **Default.** A breach of this Agreement shall be deemed to have occurred when:

- either Party breaches or fails to observe or perform any of the obligations or restrictions set out in this Agreement, including failure to pay any amount under this Agreement when due, and such breach or failure continues for 15 days after notice of such breach or failure is given in writing by the other Party; or
- either Party becomes insolvent, or makes an assignment for the general benefit of creditors, or any proceedings shall be commenced by or against the Customer under any bankruptcy or insolvency laws or proceedings for the appointment of a receiver, or receiver-manager or any other official with similar powers for the Customer are commenced, or if the Customer ceases to carry on business.

Section 19 **Termination.** Upon the occurrence of any breach as set out in the Section entitled "Default" by the Customer, the Licensor shall have the right to terminate the Licenses or this Agreement at the Licensor's option, without intending to waive, remove, limit or in any way restrict any legal or equitable remedy otherwise available to the Licensor in relation to such breach or default. Termination of the Subscription Licenses or this Agreement shall not relieve the Customer of its obligations to pay all amounts owing to the Licensor prior to such termination.

Section 20 **Obligations of the Customer Upon Termination.** Upon termination of the Licenses or this Agreement for any reason, the Customer shall immediately

- cease using the Licensed Materials, and
- return to the Licensor or destroy all copies (in any form or media) of the Licensed Software and shall immediately provide the Licensor with a written certificate of a senior officer of the Customer certifying such return or destruction and that no copies of the Licensed Materials, or any part of the Licensed Materials, in any form remain in the possession or control of the Customer.

Section 21 **Notices.** All notices under this Agreement shall be in writing and shall be duly given if delivered personally or sent by registered mail or certified mail, return receipt requested, postage prepaid, or by fax (with confirmation of receipt) to the respective addresses or fax numbers of the parties set out on the first page of this Agreement.

Any notice given shall be deemed to have been received on the date which it is delivered if delivered personally or, if mailed, on the fifth Business Day next following the mailing of that notice, or, if transmitted by fax, on the next Business Day following the day of transmission. Each party may change its address or fax number for the receipt of notices by giving notice of change as required in this Section.

Section 22 **Assignment.** This Agreement, the Licenses and the Licensed Materials may not be assigned or transferred in whole or in part by the Customer without the prior written consent of the Licensor.

Section 23 **Governing Law.** This Agreement shall be exclusively governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada that apply in that Province. Each party specifically submits to the exclusive jurisdiction of the courts of that Province over all matters arising in relation to this Agreement.

Section 24 **Severability.** Each Section, subsection, paragraph and provision of this Agreement is severable, and if one or more Sections, subsections, paragraphs or provisions are declared invalid, the remaining Sections, subsections, paragraphs and provisions of this Agreement will remain in full force and effect.

Section 25 **COMMENCEMENT OF ACTIONS. NO ACTION AGAINST THE LICENSOR OR ANY OF ITS DIRECTORS, OFFICERS, EMPLOYEES OR SHAREHOLDERS, REGARDLESS OF FORM (INCLUDING NEGLIGENCE) ARISING OUT OF ANY CLAIMED BREACH OF THIS AGREEMENT OR IN ANY OTHER WAY RELATED TO THIS AGREEMENT MAY BE BROUGHT BY THE CUSTOMER MORE THAN ONE YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED.**

Section 26 **Currency.** All monetary amounts referred to in this Agreement are in United States dollars unless stated otherwise in an Addendum with respect to that Addendum.

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Section 27 **Survival.** The provisions of the Sections entitled "Payment and Taxes", "Ownership of the Licensed Materials", "Third Party Products", "Confidentiality of the Licensed Materials", "LIMITATION OF LIABILITY", "Obligations of the Customer Upon Termination", "Governing Law", "Severability", "COMMENCEMENT OF ACTIONS" and "Currency" shall remain in full force and effect after the termination of the Licenses and after the termination of this Agreement.

Section 28 **Modification of Agreement.** This Agreement may be modified or changed only by a written amendment or Addendum signed by the duly authorized representatives of each party.

Section 29 **Entire Agreement** This Agreement, when signed by the duly authorized representatives of the Customer and the Licensor, and any subsequent written amendments and Addenda signed by their duly authorized representatives is the complete agreement between the parties to this Agreement with respect to its subject matter.

End of Software Subscription License Agreement