

## PTC CUSTOMER AGREEMENT

THIS PTC CUSTOMER AGREEMENT (“AGREEMENT”) IS A LEGAL AGREEMENT BETWEEN THE INDIVIDUAL, OR THE COMPANY OR OTHER ORGANIZATION ON WHOSE BEHALF SUCH INDIVIDUAL ACCEPTS THIS AGREEMENT, THAT EITHER (A) CLICKS THE “I ACCEPT” BUTTON BELOW OR (B) INSTALLS, ACCESSES, OR USES ANY SOFTWARE OR DOCUMENTATION FROM PTC (“CUSTOMER”), AND PTC INC. OR, IF THE PURCHASE WAS MADE IN A COUNTRY SPECIFIED ON SCHEDULE A TO THIS AGREEMENT, THE PTC AFFILIATE SPECIFIED ON SCHEDULE A (AS APPLICABLE, “PTC”).

PLEASE READ THE TERMS AND CONDITIONS OF THIS AGREEMENT CAREFULLY BEFORE ACCEPTING THIS AGREEMENT. BY CLICKING ON THE “I ACCEPT” BUTTON BELOW OR BY INSTALLING, ACCESSING, OR USING ANY SOFTWARE OR DOCUMENTATION FROM PTC, CUSTOMER HEREBY AGREES TO BE BOUND BY THIS AGREEMENT AND REPRESENTS THAT IT IS AUTHORIZED TO DO SO.

IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT OR IF YOU DO NOT HAVE AUTHORITY TO BIND THE COMPANY OR OTHER ORGANIZATION ON WHOSE BEHALF YOU ARE ACCEPTING THIS AGREEMENT, CLICK THE “I DECLINE” BUTTON AND RETURN TO PTC THE SOFTWARE AND DOCUMENTATION PRODUCTS PROVIDED TOGETHER WITH THIS AGREEMENT IN ACCORDANCE WITH THE INSTRUCTIONS PROVIDED WHEN YOU CLICK THE “I DECLINE” BUTTON. NOTE THAT FAILURE TO COMPLY WITH SUCH INSTRUCTIONS WITHIN THE TIME PERIOD SPECIFIED WILL VOID ANY RIGHT YOU WOULD OTHERWISE HAVE HAD FOR A REFUND OF ANY FEES PAID. EACH ORDER FOR LICENSED PRODUCTS MAY NOT BE CANCELLED ONCE THIS AGREEMENT HAS BEEN ACCEPTED.

IF CUSTOMER DID NOT OBTAIN THE LICENSED PRODUCT FROM PTC DIRECTLY, FROM AN AUTHORIZED PTC DISTRIBUTOR OR RESELLER OR FROM THE PTC ONLINE STORE (AT WWW.PTC.COM), CUSTOMER IS USING AN ILLEGALLY OBTAINED UNLICENSED VERSION OF THE APPLICABLE LICENSED PRODUCT. PTC REGARDS SOFTWARE PIRACY AS THE CRIME IT IS AND PURSUES (BOTH CIVILLY AND CRIMINALLY) THOSE WHO TAKE PART IN THESE ACTIVITIES. AS PART OF THESE EFFORTS, PTC UTILIZES DATA MONITORING AND SCOURING TECHNOLOGIES TO OBTAIN AND TRANSMIT TO PTC DATA ON USERS OF ILLEGAL COPIES OF LICENSED PRODUCTS. IF CUSTOMER IS USING AN ILLEGAL COPY OF SOFTWARE, CEASE USING THE ILLEGAL VERSION AND CONTACT PTC TO OBTAIN A LEGALLY LICENSED COPY. BY USING THIS SOFTWARE, YOU CONSENT TO THE COLLECTION, USE, AND TRANSFER OF PERSONAL DATA (INCLUDING TO THE UNITED STATES) FOR THE PURPOSES OF IDENTIFYING USERS OF ILLEGAL COPIES OF OUR SOFTWARE. SUCH CONSENT SHALL BE BINDING ON ANY USERS OF THIS SOFTWARE, INCLUDING USERS OTHER THAN YOU.

IN ORDER TO UNDERSTAND THE PREFERENCES OF OUR SOFTWARE USERS, PTC USES DATA MONITORING TECHNOLOGIES TO OBTAIN AND TRANSMIT DATA ON SYSTEM USE AND PERFORMANCE AND FOR GATHERING USER DATA AND USE METRICS ON USERS OF OUR SOFTWARE. WE WILL SHARE THIS DATA WITHIN PTC, ITS AFFILIATED COMPANIES AND OUR BUSINESS PARTNERS, INCLUDING WITHIN THE UNITED STATES AND ELSEWHERE FOR TECHNICAL AND MARKETING PURPOSES AND WILL ENDEAVOR TO ENSURE THAT ANY SUCH DATA TRANSFERRED IS APPROPRIATELY PROTECTED. OUR COMMERCIAL LICENSES PERMIT USERS TO OPT-OUT OF THIS DATA COLLECTION AND OUR STUDENT/EDUCATIONAL VERSIONS ONLY COLLECT DATA ON SYSTEM USE AND PERFORMANCE. OUR FREE AND TRIAL VERSIONS OF SOFTWARE DO NOT ALLOW USERS TO OPT-OUT OF THIS DATA COLLECTION, INCLUDING USER DATA.

IF YOU ARE USING PTC SOFTWARE, VISITING A PTC WEBSITE OR COMMUNICATING ELECTRONICALLY WITH US FROM A COUNTRY OTHER THAN THE UNITED STATES, VARIOUS COMMUNICATIONS WILL NECESSARILY RESULT IN A TRANSFER OF THIS INFORMATION ACROSS INTERNATIONAL BOUNDARIES.

IF YOU DO NOT CONSENT TO THE COLLECTION AND/OR TRANSMISSION (INCLUDING TO THE UNITED STATES) OF YOUR DATA AS DESCRIBED ABOVE, DO NOT DOWNLOAD OR USE PTC SOFTWARE. BY (I) USING FREE OR TRIAL SOFTWARE OR (II) NOT OPTING-OUT OF THE COLLECTION OF CERTAIN PERSONAL DATA AS YOU ARE ABLE TO WITH PTC COMMERCIAL SOFTWARE, YOU CONSENT TO PTC’S COLLECTION, USE, AND TRANSFER OF YOUR PERSONAL DATA (INCLUDING TO THE UNITED STATES).

CAPITALIZED TERMS NOT DEFINED IN THE TEXT BELOW ARE DEFINED IN SCHEDULE B AT THE END OF THIS AGREEMENT.

SCHEDULE A TO THIS AGREEMENT CONTAINS ADDITIONAL (OR ALTERNATIVE) TERMS APPLICABLE TO SPECIFIC GEOGRAPHIES.

## 1. License.

1.1 License Grant. Subject to the terms and conditions of this Agreement, PTC hereby grants to Customer a non-exclusive, revocable, non-transferable license, without any right to sub-license, to install and use the Licensed Products identified in the Quote during the applicable License Term, solely for Customer's internal business purposes and solely in accordance with the applicable usage and license-type restrictions identified in the Quote and in the the Licensing Basis Webpage ("License"). Notwithstanding the foregoing:

- (a) If the Licensed Product is being provided by PTC on an "evaluation" or "trial" basis, such License will be instead to install and use the Licensed Product solely to evaluate such Licensed Products, and Customer agrees not to use the Licensed Product in any commercial applications or for productive purposes.
- (b) If the Licensed Software is Educational Software, Customer must be enrolled in, or employed by, an accredited, academic institution, and shall use the Licensed Software solely for educational purposes in a degree-granting program. If Customer does not meet one of these qualifications, Customer has no rights under this Agreement. Without limitation, non-educational research or funded educational research conducted using the facilities of an academic institution or under an academic name does not qualify as "educational purposes" and use of Educational Software for such purposes represents a violation of the terms of this Agreement.
- (c) If the Licensed Software is sold on a "demo and test" or "non-production" basis (or similar designation), such Licensed Software may not be used in a production environment.

1.2 Designated Country/Computers/Networks. Subject to Section 1.3, Customer may only install and operate Licensed Products on the applicable Designated Computers or Designated Networks on computer systems and networks situated in the applicable Designated Country. Customer may, from time to time, change the Designated Computer, Designated Network, and/or the Designated Country in which Customer seeks to install or operate a Licensed Product, provided that in each case (i) Customer shall give prior written notice to PTC of any such change, and (ii) upon moving the Licensed Products to a different Designated Country, Customer shall pay all applicable PTC transfer fees and/or Uplift Fees, as well as any taxes, tariffs or duties that may be payable as a result of such move (collectively, the "Relocation Charges"). Notwithstanding the foregoing, Registered Users need not be located in the Designated Country when accessing a Registered User Product.

1.3 Global/Restricted Global Licenses. If a Concurrent User Licensed Product is licensed by PTC on a "Global" or "Restricted Global" basis, Section 1.2 shall not apply to such Licensed Products and the following provisions shall apply instead:

- (i) Global Licenses. Subject to the other requirements of this Agreement, a Global License allows the Customer to install, operate and use such Licensed Product at any Customer's site(s) throughout the world.
- (ii) Restricted Global Licenses. Subject to the other requirements of this Agreement, a Restricted Global License allows the Customer to install, operate and use such Licensed Product at any Customer site(s) located in the Designated Country and/or in any Permitted Country. "Permitted Countries" means China, India, Russia, the Czech Republic, Poland, Hungary, Malaysia, South Africa, Israel, Mexico, Brazil, Argentina, and Romania.

1.4 Additional Restrictions on Use. Customer shall not and shall not permit any third party(ies) to:

- (i) modify or create any derivative work of any part of the Licensed Products;
- (ii) rent, lease, or loan the Licensed Products;
- (iii) use the Licensed Products, or permit them to be used, for third-party training, to deliver software implementation or consulting services to any third parties, or for commercial time-sharing or service bureau use;
- (iv) disassemble, decompile or reverse engineer the Licensed Products or the file format of the Licensed Products, or otherwise attempt to gain access to the source code or file format of the Licensed Products, except as expressly permitted in Schedule A, if applicable;
- (v) sell, license, sublicense, loan, assign, or otherwise transfer (whether by sale, exchange, gift, operation of law, or otherwise) to any third party the Licensed Products, any copy thereof, or any License or other rights thereto, in whole or in part, without in each case obtaining PTC's prior written consent;
- (vi) alter, remove, or obscure any copyright, trade secret, patent, trademark, logo, proprietary and/or other legal notices on or in any copies of the Licensed Products; and
- (vii) copy or otherwise reproduce the Licensed Products in whole or in part, except (a) as may be required for their installation into computer memory for the purpose of executing the Licensed Products in accordance with this Section 1, and/or (b) to make a reasonable number of copies solely for back-up purposes (provided that any such permitted copies shall be the property of PTC, and Customer shall reproduce thereon all PTC copyright, trade secret, patent, trademark, logo, proprietary and/or other legal notices contained in the original copy of the Licensed Product obtained from PTC).

If Customer uses any unlicensed or unauthorized copies of any PTC software, Customer agrees that, without limiting PTC's right to terminate this Agreement for breach in accordance with Section 7 and without limiting any other remedies to which PTC may be entitled, Customer will pay to PTC the PTC then-current list price for all such unlicensed software, in addition to any fines or penalties that may be imposed by law.

**1.5 Additional Restrictions on Use Applicable to Concurrent User Products.** If the Licensed Product is a Concurrent User Product, the following provisions apply:

- (i) The number of Permitted Users accessing or operating a Concurrent User Product at any point in time may not exceed the number of Licenses in effect at such time for that particular Licensed Product.
- (ii) Except with respect to Integrity and Implementer Products, only Permitted Users physically located in the Designated Country may access, operate and/or use the Licensed Products. Permitted Users who are not employees of Customer may use the Licensed Products while physically located at Customer's site only.
- (iii) Where a Concurrent User Product is Licensed on a "fixed," "locked" or "node-locked" basis, or the Licensed Product is licensed as a "Designated Computer" product, such Licensed Product is licensed to operate solely on the Designated Computer on which it is installed.

**1.6 Additional Restrictions on Use Applicable to Registered User Products.** A License is required for each individual who accesses a Registered User product or the data contained therein, whether directly or through a web portal or other mechanism for "batching" or otherwise achieving indirect access to the Licensed Product or such data. Generic or shared log-ins are not permitted. Customer may add and/or substitute from time to time new Registered Users as long as the aggregate number of Registered Users does not exceed at any point in time the number of Licenses in effect at such time for that particular Licensed Product and, provided further, that if a person who was previously a Registered User returns to Registered User status, a new License fee must be paid to PTC at PTC's then current rates.

**1.7 Additional Restrictions on Use Applicable to Designated Server Products.** Each Designated Server product may only be used on the computer server that is designated by the Customer in connection with the initial installation of such product and that has one unique instance of the applicable installed product application. In the event a computer server is partitioned in any manner (physically, logically or otherwise), the reference in the preceding sentence to "computer server" shall mean each partition of such server, and such Designated Server product may only be used on one of such partitions. Customer may, from time to time, change the Designated Server(s) for a Designated Server Product, and/or the location thereof, provided that in each case (a) Customer shall give prior written notice to PTC of any such change, and (b) upon transferring the Designated Server Products to a different Designated Country, Customer pays all applicable Relocation Charges.

**1.8 Third Party Components and Bundled Third Party Products.** Certain of the Licensed Products may contain third party software components for which additional terms apply ("Third Party Components"). The current additional terms are set forth on the Schedule of Third Party Terms available in the legal policies and guidelines section of <http://www.ptc.com>. Separately, certain third party software products that PTC may elect to bundle for distribution with the Licensed Products are licensed to Customer directly by the manufacturer of such third party software products ("Bundled Third Party Products"). Such Bundled Third Party Products are also described on the Schedule of Third Party Terms. Customer agrees that its use of Third Party Components and/or Bundled Third Party Products is subject to the terms of the Schedule of Third Party Terms. New Releases containing Third Party Components or Bundled Third Party Products may be subject to additional or different third party terms, of which PTC shall notify the Customer at the time such New Releases are delivered to the Customer.

**1.9 Upgrades:** If the Licensed Software was licensed as an upgrade from a previous version, Customer must first be licensed for the Licensed Software identified by PTC as eligible for the upgrade and Customer must be active on Support Services for such software. After installing the upgrade, Licensed Software licensed as an upgrade replaces and/or supplements the product that formed the basis of Customer's eligibility for the upgrade and Customer may no longer use the original Licensed Software that formed the basis for Customer's upgrade eligibility.

## **2. Compliance.**

**2.1 License Usage Assessments.** To confirm Customer's compliance with the terms and conditions hereof, Customer agrees that PTC may perform a usage assessment with respect to Customer's use of the Licensed Products. Customer agrees to provide PTC access to Customer's facilities and computer systems, and cooperation from Customer's employees and consultants, as reasonably requested by PTC in order to perform such assessment, all during normal business hours, and after reasonable prior notice from PTC.

**2.2 Reports.** Upon written request from PTC, Customer agrees to provide to PTC an installation and/or usage report with respect to the Licensed Products (and in the case of Registered User Products, such report shall include a list of all users for whom Customer has issued a password or other unique identifier to enable such individual to use the Registered User Product). Such report shall be certified by an authorized representative of Customer as to its accuracy within ten (10) business days after receipt of any written request from PTC. For any period in which Customer's use of the Licensed Products exceeds the number and/or the scope of the Licenses in effect during such period for such Licensed Products, Customer agrees to pay for any such

excess usage, including applicable license and Support Services fees, and without limiting any other rights or remedies to which it is entitled, failure to pay shall be grounds for termination in accordance with Section 7 hereof.

**3. Intellectual Property.** PTC and its licensors are the sole owners of the Licensed Products and of any copies of the Licensed Products, and of all copyright, trade secret, patent, trademark and other intellectual or industrial property rights in and to the Licensed Products. All copies of the Licensed Products, in whatever form provided by PTC or made by Customer, shall remain the property of PTC, and such copies shall be deemed to be on loan to Customer during the License Term. Customer acknowledges that the License granted hereunder does not provide Customer with title to or ownership of the Licensed Products or any copies thereof, but only a right of limited use consistent with the express terms and conditions of this Agreement. Customer shall have no rights to the source code for the Licensed Products, and Customer agrees that only PTC shall have the right to maintain, enhance, or otherwise modify the Licensed Products.

**4. Support Services; Warranty; Disclaimer of Warranties.**

See Schedule A for a modified version of this Section 4 for Licensed Products licensed and used in Germany, Austria or Switzerland.

4.1 Support Services. A Support Services plan may not be cancelled by Customer following PTC's acceptance of the order therefor. PTC and/or its authorized subcontractors shall provide Support Services at the appropriate level in accordance with the policies at [http://www.ptc.com/support/maintenance/maintenance\\_support\\_policies.htm](http://www.ptc.com/support/maintenance/maintenance_support_policies.htm). If Customer does not order Support Services to commence on shipment of the Licensed Product(s) and on a continuing basis thereafter, and subsequently wishes to obtain Support Services, Customer must pay (i) the then current fees for Support Services and (ii) the fees for Support Services for any period for which Customer has not purchased Support Services. With respect to Registered User Products, e-Learning products and Integrity and Implementer Products, Support Services ordered by Customer must cover all Licenses granted to Customer for such Licensed Products. The services offered under any Support Services plan may change from time to time. In addition, PTC may cease to offer any Support Services at any time without notice, subject only to the obligation to refund to Customer the unused portion of any previously paid applicable Support Services fee (on a prorated basis). PTC shall have no Support Services obligations hereunder with respect to any evaluation Licenses or Licensed Products that are provided by PTC free of charge to Customer.

4.2 Warranty. PTC warrants to Customer that PTC is authorized to grant the License(s) and that, subject to Section 4.3, the Licensed Products will be free from Errors for a period of ninety (90) days following PTC's initial shipment to Customer or Customer's designee of such Licensed Products (the "Warranty Period").

4.3 Warranty Exceptions. PTC shall have no warranty obligations hereunder with respect to any (i) evaluation, "trial" or "express" Licenses, (ii) New Releases, (iii) computer software provided to Customer in the course of PTC's delivery of Training Services, (iv) Errors attributable to the use of the Licensed Product in an application or environment for which it was not designed or contemplated, (v) Errors attributable to any modifications or customizations of the Licensed Products, (vi) Licensed Products that are provided by PTC free of charge to Customer, and/or (vii) Sun Software, Oracle Software and/or Bundled Third Party Products.

4.4 Sole Remedy. PTC's and its licensors' entire liability and Customer's exclusive remedy for any breach by PTC of the warranty given in Section 4.2 above shall be, at PTC's sole discretion, either to (a) replace the Licensed Product(s) or (b) use diligent efforts to repair the Error. PTC's obligations set forth in the preceding sentence shall apply only if notice of the Error is received by PTC within the Warranty Period and Customer supplies such additional information regarding the Error as PTC may reasonably request. If PTC does not replace the applicable Licensed Product(s) and/or does not repair the Error (either by providing a bug fix, a workaround or otherwise) within a reasonable time after notice of the Error and associated information from Customer is received by PTC, PTC will provide a refund of the license fees paid by Customer for the applicable Licensed Product(s) upon return of such Licensed Product(s) and any copies thereof.

4.5 No Additional Warranties. No third party, including any employee, partner, distributor (including any Reseller) or agent of PTC or any of its resellers or sales agents, is authorized to give any representations, warranties or covenants greater or different than those contained in this Agreement with respect to any Licensed Products or Services, except as specifically set forth in a written agreement signed on behalf of Customer by an authorized officer and on behalf of PTC by its legal counsel or Corporate Controller.

4.6 Disclaimer of Warranties. EXCEPT AS EXPRESSLY STATED IN SECTION 4, PTC DISCLAIMS (AND CUSTOMER WAIVES) ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, WRITTEN OR ORAL, INCLUDING ANY WARRANTY OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND/OR ANY WARRANTY THAT CUSTOMER WILL ACHIEVE ANY PARTICULAR RETURN ON INVESTMENT. THE LICENSED PRODUCTS ARE INTENDED TO BE USED BY TRAINED PROFESSIONALS AND ARE NOT A SUBSTITUTE FOR PROFESSIONAL JUDGMENT, TESTING, SAFETY AND UTILITY. CUSTOMER IS SOLELY RESPONSIBLE FOR ANY RESULTS OBTAINED FROM USING THE LICENSED PRODUCTS, INCLUDING THE ADEQUACY OF INDEPENDENT TESTING OF RELIABILITY AND ACCURACY OF ANY ITEM DESIGNED

USING LICENSED PRODUCTS. PTC does not warrant that the operation or other use of the Licensed Products will be uninterrupted or error free or will not cause damage or disruption to Customer's data, computers or networks.

## **5. Indemnification; Infringement.**

5.1 PTC's Obligation to Indemnify Customer. PTC, at its own expense, will defend any action brought against Customer based on a claim that any Licensed Product infringes a United States patent, copyright or trademark and, at its option, will settle any such action or will pay any final judgment awarded against Customer, provided that: (a) PTC shall be notified promptly in writing by Customer of any notice of any such claim; (b) PTC shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise and shall bear the costs of the same (save where one or more of the exclusions in Section 5.3 applies); and (c) Customer shall cooperate fully at PTC's expense with PTC in the defense, settlement or compromise of such claim. This Section 5 states PTC's sole and exclusive liability, and Customer's sole remedy, for any and all claims relating to infringement of any intellectual property right.

5.2 PTC's Right to Act to Prevent a Claim. If a claim described in Section 5.1 hereof occurs or, in PTC's opinion, may occur, Customer shall permit PTC, at PTC's option and expense to: (a) procure for Customer the right to continue using the Licensed Product; (b) modify the Licensed Product so that it becomes non-infringing without materially impairing its functionality; or (c) terminate the applicable Licenses, accept return of the Licensed Products and grant Customer a credit thereon equal to the lesser of the License fees paid by Customer for such Licensed Product or PTC's list price for such Licensed Product at the time of the order therefor, in each case depreciated on a straight-line, five year basis.

5.3 Exclusions from PTC's Obligation to Indemnify Customer. PTC shall have no liability to Customer under Section 5.1 hereof or otherwise to the extent that any infringement or claim thereof is based upon: (a) use of the Licensed Product in combination with equipment or software not supplied hereunder where the Licensed Product itself would not be infringing; (b) use of the Licensed Product in an application or environment for which it was not designed or not contemplated under this Agreement; (c) use of other than a current release of the Licensed Product(s) provided to Customer; (d) modification of the Licensed Product by anyone other than PTC or its employees or agents; or (e) any claims of infringement of any patent, copyright, trade secret, trademark or other proprietary right in which Customer has an interest.

## **6. Limitation of Liability.**

See Schedule A for a modified version of this Section 6 for Licensed Products licensed and used in Germany, Austria or Switzerland.

6.1 The warranty and indemnification provisions of Sections 4 and 5 hereof state the entire liability of PTC, its subsidiaries and affiliates, and each of their respective directors, officers, employees or agents, with respect to the Licensed Products and Services, including (without limitation) any liability for breach of warranty, or for infringement or alleged infringement of patent, copyrights, trademarks, trade secrets and other intellectual or proprietary rights by the Licensed Products, or their use.

6.2 EXCEPT FOR PTC'S INDEMNIFICATION OBLIGATIONS IDENTIFIED IN SECTION 5.1 ABOVE, THE MAXIMUM LIABILITY OF PTC AND ITS LICENSORS ARISING OUT OF, OR RELATING TO, THE CREATION, LICENSE, FUNCTIONING, USE OR SUPPLY OF THE LICENSED PRODUCTS OR THE PROVISION OF SERVICES OR OTHERWISE RELATING TO THIS AGREEMENT, WHETHER BASED UPON WARRANTY, CONTRACT, TORT, OR OTHERWISE, SHALL NOT EXCEED THE LESSER OF THE FEES PAID BY CUSTOMER FOR THE LICENSED PRODUCTS OR SERVICES THAT GAVE RISE TO THE CLAIM OR PTC'S LIST PRICE FOR SUCH LICENSED PRODUCTS OR SERVICES AT THE TIME OF THE ORDER THEREFOR.

6.3 IN NO EVENT SHALL PTC, ITS LICENSORS, ITS AFFILIATES (INCLUDING ITS SUBSIDIARY COMPANIES), OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS BE LIABLE FOR: (A) ANY LOSS OF PROFIT, LOSS OF USE DAMAGES, LOSS OF GOODWILL, LOSS OF BUSINESS OPPORTUNITY, LOSS OF SALES, LOSS OF REPUTATION OR LOSS OF ANTICIPATED SAVINGS; (B) ANY LOSS OR INACCURACY OF DATA OR BUSINESS INFORMATION OR FAILURE OR INADEQUACY OF ANY SECURITY SYSTEM OR FEATURE; AND (C) SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL LOSS OR DAMAGE HOWSOEVER CAUSED; IN EACH CASE EVEN IF PTC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

6.4 Customer agrees not to bring any suit or action against PTC, and/or its subsidiaries and affiliates, and/or any of their respective directors, officers, employees or agents for any reason whatsoever more than one year after the cause of action arises. Customer recognizes that fees paid by Customer for the Licensed Products and Services are based in part on the disclaimer of warranty and limitation of liability provisions set forth herein and that, in the absence of Customer's agreement to such terms, the charges for the Licensed Products would be significantly higher. The limitations and exclusions set forth in this Section 6 shall not apply to any claim in respect of death or personal injury.

## **7. Term and Termination.**

7.1 Events Causing Termination. This Agreement and all Licenses will terminate:

- (a) Automatically and without notice on the following events: (I) Customer's breach of any of clauses (i) through (vii) of Section 1.4 or Sections 3 or 8.4 hereof; (II) a receiver, trustee, liquidator, or such similar officer is appointed for Customer or for any of Customer's properties or assets; (III) Customer makes a general assignment for the benefit of Customer's creditors; (IV) Customer files a petition for its reorganization, dissolution or liquidation, or such a petition is filed against Customer and is not dismissed within sixty (60) days thereafter; or (V) Customer ceases doing business or commence dissolution or liquidation proceedings; or
- (b) Thirty (30) days after written notice from PTC specifying a breach (other than as listed in Section 7.1(a) above) of this Agreement, including failure to make any payment due to either PTC or a Reseller in connection with the Licensed Products in a timely manner, if that breach is not, within that thirty (30) day period, remedied to PTC's reasonable satisfaction.

7.2 Effects of Expiration or Termination. Upon expiration of a given License Term and/or any expiration or termination of this Agreement, Customer shall promptly pay all sums owed by Customer, return to PTC the original copies of all Licensed Products for which the License Term has expired or has been terminated, destroy and/or delete all copies and backup copies thereof from Customer's computer libraries, storage facilities and/or hosting facilities, and certify in writing by an officer that Customer is in compliance with the foregoing requirements and that such Licensed Products are no longer in Customer's possession or in use.

7.3 Survival. Sections 2, 3, 4.6, 5, 6, 7.2, 7.3 and 8 shall survive expiration or termination of this Agreement.

## 8. General.

8.1 Governing Law and Jurisdiction. Unless otherwise stated in Schedule A, all disputes arising under, out of, or in any way connected with this Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without reference to conflict of laws principles (and specifically excluding the Uniform Computer Information Transactions Act). The parties hereby expressly disclaim the application of the U.N. Convention for the International Sale of Goods. All disputes arising under, out of, or in any way connected with this Agreement shall be litigated exclusively in the state or federal courts situated in the Commonwealth of Massachusetts, and in no other court or jurisdiction. Notwithstanding the foregoing or anything to the contrary, PTC shall have the right to bring a claim in any court of competent jurisdiction to enforce any intellectual property rights and/or protect any confidential information. Customer stipulates that the state and federal courts situated in the Commonwealth of Massachusetts shall have personal jurisdiction over its person, and Customer hereby irrevocably (i) submits to the personal jurisdiction of said courts and (ii) consents to the service of process, pleadings, and notices in connection with any and all actions initiated in said courts. The parties agree that a final judgment in any such action or proceeding shall be conclusive and binding and may be enforced in any other jurisdiction. Each party waives its right to trial by jury in connection with any dispute arising out of this Agreement.

8.2 Notices. Any notice or communication required or permitted under this Agreement shall be in writing. In the case of notice to Customer, the notice shall be directed to the address set forth on the Customer's purchase order or to such other address as may be provided to PTC in writing. In the case of notice to PTC, such notice shall be directed to PTC, 140 Kendrick Street, Needham, MA 02494; Attn: Corporate Controller, with a copy to General Counsel. Any notice provided under this section shall be deemed to have been received: (a) if given by hand, immediately; (b) if given by mail, five (5) business days after posting; (c) if given by express courier service, the second business day following dispatch in the jurisdiction of the sender; or (d) if given by fax, upon receipt thereof by the recipient's fax machine or as stated in the sender's transmission confirmation report as produced electronically by sender's fax machine.

8.3 Assignment, Waiver, Modification. Customer may not assign, transfer, delegate or sublicense any of Customer's rights or obligations hereunder (including without limitation by operation of law or by sale of Customer assets, whether directly or by merger, and a change in control of Customer shall be deemed to be an "assignment" for purposes of the foregoing) without PTC's prior written consent, and any such attempted delegation, assignment, transfer or sublicense shall be void and a breach of this Agreement. No waiver, consent, modification, amendment or change of the terms of this Agreement shall be binding unless in writing and signed by PTC and Customer. PTC reserves the right to charge a transfer fee for any proposed assignment, transfer or sublicense of this Agreement.

8.4 Export. Customer hereby warrants and represents that Customer is eligible under applicable U.S. and Canadian export laws to receive and use the Licensed Products and technical data related thereto and that neither Customer nor any of Customer's directors, officers or affiliates is listed on any U.S. Department of Commerce listing or U.S. Department of Treasury listing or any similar Export Controls Division-Foreign Affairs and International Trade Canada listing that designates individuals or entities to which export restrictions apply. Customer shall not export or re-export, directly or indirectly, or provide to any other person or entity for export or re-export, any Licensed Products, or technical data related thereto, without first complying with all applicable export control regulations of any jurisdiction to which Customer or the Licensed Products are subject, including, without limitation, obtaining any necessary export or re-export consent from the U.S. Department of Commerce, Export Controls Division-Foreign Affairs and International Trade Canada or other governmental authority. Customer will indemnify and hold PTC harmless against any damage, loss, liability or expense (including attorneys' fees) that PTC may incur as a result of Customer's failure to comply with this Section.

8.5 **Severability.** It is intended that this Agreement shall not violate any applicable law and the unenforceability or invalidity of any provision (other than the provisions obligating Customer to make payments to PTC) shall not affect the force and validity of the remaining provisions and such provisions determined to be invalid shall be deemed severed from this Agreement and, to the extent possible, be replaced with terms which as closely as possible approximate the interest and economic intent of such invalid provisions.

8.6 **Entire Agreement.** This Agreement is the complete and exclusive statement of the contract between PTC and Customer with respect to the subject matter hereof. No waiver, consent, modification, amendment or change of this Agreement shall be binding unless in writing and signed or otherwise expressly acknowledged by PTC and Customer.

8.7 **Third Party Beneficiaries.** It is agreed by the parties to this Agreement that PTC’s third party licensors are intended beneficiaries of this Agreement and have the right to rely upon and directly enforce its terms with respect to the products of such licensors.

8.8 **Marketing.** Customer agrees that while this Agreement is in effect, PTC shall be authorized to identify Customer as a customer/end-user of PTC software and services (as applicable) in public relations and marketing materials.

8.9 **Government Licensees.** If Customer is a United States Governmental entity, Customer agrees that the Licensed Products are “commercial computer software” under the applicable federal acquisition regulations and are provided with the commercial license rights and restrictions described elsewhere herein. If Customer is acquiring the Licensed Product(s) under a United States government contract, Customer agrees that Customer will include all necessary and applicable restricted rights legends on the Licensed Products to protect PTC’s proprietary rights under the FAR or other similar regulations of other federal agencies. Customer agrees to always include such legends whenever the Licensed Products are, or are deemed to be, a deliverable under a government contract.

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## Schedule A – Purchases from PTC Affiliates

If the Customer has obtained a License to any Licensed Products in one of the following countries, the entity granting the License is specified below and, notwithstanding Section 8.1 of this Agreement, the governing law and jurisdiction shall be as set forth below.

Country	PTC Affiliate Licensing Entity	Governing Law/Jurisdiction for Disputes
Belgium, Netherlands, Luxembourg	Parametric Technology Nederland B.V.	Netherlands
Austria, Germany	Parametric Technology GmbH	German Law*, Landgericht München I, Germany
France	Parametric Technology S.A.	France
Ireland	PTC Software and Services (Ireland) Limited	Republic of Ireland
Italy	Parametric Technology Italia S.r.L.	Italy
Spain, Portugal	Parametric Technology España, S.A.	Spain
Switzerland	Parametric Technology (Schweiz) AG	German Law*, Landgericht München I, Germany
United Kingdom	Parametric Technology (UK) Limited	United Kingdom
Remaining countries of the European Union	PTC Software and Services (Ireland) Limited	Republic of Ireland
Turkey, Kosovo, Serbia, Macedonia, Montenegro, Croatia, Bosnia and Herzegovina, and Albania	PTC Software and Services (Ireland) Limited	Republic of Ireland
The Russian Federation	PTC International LLC	Russian Law / International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation in Moscow
Belarus, Moldova, Ukraine, Armenia, Georgia, Azerbaijan, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan	PTC Software and Services (Ireland) Limited	Republic of Ireland
Norway, Sweden, and Denmark, Finland, Iceland, and the Faeroe	PTC Sweden AB	Sweden

Country	PTC Affiliate Licensing Entity	Governing Law/Jurisdiction for Disputes
Islands		
Japan	PTC Japan K.K.	Japan / Tokyo District Court
China	Parametric Technology (Shanghai) Software Co., Ltd.	The People's Republic of China/China International Economic and Trade Arbitration Commission in Shanghai
Taiwan	Parametric Technology Taiwan Limited	Taiwan / Courts of Taipei, Taiwan
India	Parametric Technology (India) Private Limited	India
Korea	Parametric Technology Korea Ltd.	Republic of Korea
Other Asia Pacific Countries including Australia and New Zealand, but excluding China, Japan and Taiwan)	PTC Inc.	Special Administrative Region of Hong Kong / Hong Kong International Arbitration Centre
Canada	PTC (Canada) Inc.	Ontario
Any other country	PTC Inc., or such other affiliate of PTC as PTC directs at the time of the order	Commonwealth of Massachusetts, United States

**\* Specific Provisions for Austria, Germany and Switzerland:**

For Licensed Products licensed and used in Austria, Germany or Switzerland, the following provisions shall apply. The following provisions shall have no applicability to any Licensed Products or Services purchased outside of Austria, Germany or Switzerland. References to sections below are references to the applicable sections in the body of the Agreement.

- Section 1.4 (iv) above shall not apply to the extent that (i) the processes Customer undertakes are required to achieve information necessary to achieve interoperability of an independently created computer program with other software programs, (ii) the further requirements of Section 69e of the German Copyright Act are fulfilled and (iii) PTC, upon Customer's written request, has not made available the information required for this within a reasonable period.
- Sections 4.2 (Warranty), 4.4 (Sole Remedy), 4.5 (No Additional Warranties) and 4.6 (Disclaimer of Warranties) are hereby replaced by the following provisions:

4.2 Warranty Period, Restarts and Investigation Duty. The limitation period for warranty claims shall be twelve (12) months from delivery. Any replacement of the Licensed Product(s) and/or repair of Errors will not restart the warranty period. The pre-requisite for the Customer's warranty claims (Mängelansprüche) is that: (i) the Customer inspects the Licensed Products according to Section 377 German Commercial Code, (ii) the defect is an Error as defined in this Agreement, (iii) the Error already existed at the time of delivery and (iv) the Customer effects a proper notification of the Error. Customer shall provide notifications of Errors to PTC in writing and Customer shall provide specific details of the Error as deemed reasonable under the specific circumstances. Customer shall notify PTC of obvious Errors in writing within one week of delivery and of latent Errors within one week of discovery of such Error. The periods specified are preclusion periods.

4.4 Remedies. In the event of an Error, PTC in its sole discretion may: (a) replace the Licensed Product(s) or (b) repair the Error, provided that notice of the Error is received by PTC within the periods set forth in Section 4.2 and Customer provides such additional information regarding the Error as PTC may reasonably request. If the repair (either by providing a bug fix, a workaround or otherwise) or replacement is not successful (after at least two repair attempts for the same Error by PTC within a reasonable period of time), Customer shall be entitled, at Customer's choice, to either: (i) rescission of the affected order so that PTC provides a refund of the license fees paid by Customer for the applicable Licensed Product(s) upon return of such Licensed Product(s) and any copies made thereof or (ii) a reasonable reduction in the purchase price. Replacements or repairs shall be made without acknowledgement of a legal obligation and shall not suspend the limitation period for warranty claims related to the Licensed Products.

4.5 No Additional Warranties. No employee, partner, distributor (including any Reseller) or agent of PTC or any of its resellers or sales agents is authorized to give representations, warranties or covenants greater or different than those contained in this Agreement, except as specifically set forth in a written agreement signed on behalf of Customer by an authorized officer and on behalf of PTC by its legal counsel or Corporate Controller. Apart from claims for damages based on Errors that are subject to the limitation of liability as set forth in Section 6, the obligations provided for in this Section 4 shall be PTC's exclusive liability in case of warranty claims.

4.6 Customer Responsibility. The Licensed Products are intended to be used by trained professionals and are not a substitute for the exercise by Customer of professional judgement, testing, safety and utility in their use. Customer is



solely responsible for any results which were obtained by using the Licensed Products, including the adequacy of independent testing of reliability and accuracy of any item designed using Licensed Products.

4.7 Qualities (Beschaffenheit), Guarantees. Qualities of the Licensed Products stated in publications of PTC or its sales representatives, in particular in advertising, in drawings, brochures or other documents, including presentations in the Internet, or on packaging and labeling of the Licensed Products, or which fall under trade usages, shall only be deemed to be covered by the contractual quality of the Licensed Products if such qualities are expressly contained in an offer or an order confirmation in writing. Guarantees, in particular guarantees as to quality, shall be binding on PTC only to the extent to which they (i) are contained in an offer or an order confirmation in writing, (ii) are expressly designated as “guarantee” or “guarantee as to condition” (Beschaffenheitsgarantie), and (iii) expressly stipulate the obligations for PTC resulting from such guarantee.

- Section 6 is hereby replaced by the following provisions:

#### 6. Limitation of Liability

6.1 Liability Categories. PTC shall be liable for damages, regardless of the legal grounds, only if: (i) PTC breaches a material contractual obligation (cardinal obligation) culpably (i.e., at least negligently), or (ii) the damage has been caused by gross negligence or wilfull intent on the part of PTC or (iii) PTC has assumed a guarantee.

6.2 Predictability. PTC’s liability shall be limited to the typical, foreseeable damage: (i) if PTC breaches material contractual obligations (cardinal obligations) with slight negligence, or (ii) if employees or agents of PTC who are not officers or executive staff have breached other obligations by gross negligence, or (iii) if PTC has assumed a guarantee, unless such guarantee is expressly designated as guarantee as to condition (Beschaffenheitsgarantie).

6.3 Maximum Amount. In the cases of Section 6.2 (i) and (ii), PTC’s liability shall be limited to a maximum amount of EU RO 1,000,000 or, in case of purely financial losses, to a maximum amount of EU RO 100,000.

6.4 Indirect Damages. In the cases of Section 6.2, PTC shall not be liable for indirect damages, consequential damages or loss of profit.

6.5 Liability Period. Customer’s claims for damages against PTC and/or PTC’s affiliates, regardless of the legal grounds, shall expire at the latest one year from the time the Customer gains knowledge of the damage or, irrespective of this knowledge, at the latest two years after the damaging event. For claims based on Errors of the Licensed Product(s), the warranty limitation period pursuant to Section 4.2 shall apply.

6.6 Mandatory Liability. PTC’s liability pursuant to the German Product Liability Act (Produkthaftungsgesetz), for injury of life, body and health, for fraudulent concealment of a defect or for the assumption of a guarantee as to condition (Beschaffenheitsgarantie) remains unaffected.

6.7 Employees. Sections 6.1 to 6.6 shall also apply in the case of any claims for damages of Customer against employees or agents of PTC and/or PTC’s affiliates.

6.8 Contributory Negligence. In the event of a guarantee or liability claim against PTC any contributory fault of Customer must be taken into account accordingly, particularly in the event of inadequate fault notification or inadequate data securing. It constitutes inadequate data securing if the client, among others, does not, by way of appropriate state of the art security measures, take precautions against external influences, e.g. computer viruses and other phenomena which could put individual data or an entire data stock at risk.

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## Schedule B - Definitions

“Concurrent User Products” means the Licensed Products licensed on a concurrent user basis, as specified either in the Quote or at the Licensing Basis Webpage.

“Designated Computer” means the central processing unit(s) designated in writing by Customer to PTC at the time of installation of the Licensed Products (as may be modified in accordance with Section 1.2 of this Agreement).

“Designated Computer Product” means the Licensed Products licensed on a “Designated Computer” basis or otherwise designated as “fixed,” “locked” or “node-locked”, as specified either in the Quote or at the Licensing Basis Webpage.

“Designated Country” means the country of installation specified in writing by Customer to PTC at the time Customer places its order of the Licensed Products. The Designated Country may be changed only in accordance with Section 1.2 of this Agreement.

“Designated Network” means the network designated in writing by Customer to PTC at the time of installation of the Licensed Products (as may be modified in accordance with Section 1.2 of this Agreement).

“Designated Server” means a computer server designated in writing by Customer to PTC at the time of installation of the Licensed Products (as may be modified in accordance with Section 1.2 of this Agreement) that has one unique instance of the applicable installed Licensed Product application.

“Designated Server Products” means the Licensed Products licensed on a Designated Server basis, as specified either in the Quote or at the Licensing Basis Webpage.

“Documentation” means the applicable Licensed Software user manuals provided or made available by electronic means by PTC at the time of shipment of the Licensed Software.

“Educational Software” means Licensed Products identified as “Priced for Education,” “Student Edition,” “Schools Edition,” “Schools Advanced Edition,” “University Edition,” “Professor’s Edition/Version” or “Academic Edition/Version,” or otherwise designated as educational or academic licenses.

“Error” means a failure of the Licensed Software to conform substantially to the applicable Documentation, provided that Customer informs PTC of such failure in writing and PTC is able to replicate such failure after making reasonable efforts.

“External User” means a Registered User who is a vendor or other third party external to the Customer and its affiliates.

“License” shall have the meaning set out in Section 1.1 of the body of the Agreement.

“License Term” means the time period during which the License for the applicable Licensed Products shall be in effect, as specified in the applicable Quote (subject to earlier termination pursuant to the terms hereof) or, if no Quote was provided to Customer, as otherwise communicated by PTC to Customer. In the absence of a stated license term, the License Term shall be perpetual, except that the License Term for evaluation Licenses shall be no longer than thirty days from the date of Customer’s request for an evaluation license, unless otherwise specifically designated by PTC, and the evaluation License will cease to be operational after such term expires.

“License Locked Product” means a Licensed Product licensed for use with another PTC product to which the License Locked Product is an extension. The License Locked Product will assume the licensing basis of such other product.. License Locked Products are specified either in the Quote or at the Licensing Basis Webpage.

“Licensed Products” means collectively the Licensed Software and the Documentation.

“Licensed Software” means, collectively, the computer software product identified in the applicable Quote, as well as (i) any software product that is provided to operate with such computer software product (e.g., modules, software bundled with this software product, etc.), but excluding any software that is a consulting services deliverable, (ii) any Error corrections pursuant to Section 4.4 hereof, (iii) any updates, Error corrections and/or New Releases provided to Customer by PTC pursuant to Support Services purchased by Customer and (iv) any computer software provided to Customer in the course of PTC’s delivery of Training Services.

“Licensing Basis Webpage” means the “Licensing Basis” document at [http://www.ptc.com/support/customer\\_agreements/index.htm](http://www.ptc.com/support/customer_agreements/index.htm), which specifies the licensing basis of PTC’s different products and states certain additional product-specific terms and conditions.

“Support Services” means the provision of New Releases and, depending on the level of Support Services ordered, may also include telephone support, web-based support tools, and correction of Errors.

“New Release” means a modified or enhanced version of a Licensed Product that is designated by PTC as a new release of that product and that PTC makes generally available to its Support Services customers.

“Permitted User” means an individual who is authorized by Customer to use the Licensed Products, such use to be solely in accordance with the terms and conditions of the Agreement. Permitted Users are limited to Customer’s employees, consultants, subcontractors, suppliers, business partners and customers who (i) are not competitors of PTC or employed by competitors of PTC and (ii) are directly involved in the utilization of the Licensed Products solely in support of Customer’s internal business purposes. Customer shall at all times be responsible for its Permitted Users’ compliance with this Agreement.

“Per Instance Product” means a Licensed Product for which one License is required for each instance of a system to which the applicable Licensed Product connects. For example, if an adapter that is licensed on a Per Instance basis enables Windchill to connect to an ERP system and a CRM system, two licenses of such adapter will be required. The Licensed Products that are Per Instance Products are identified either in the Quote or at the Licensing Basis Webpage.

“Quote” means the PTC product schedule, quote or order confirmation provided to Customer in connection with the purchase of the applicable Licensed Product or, if no such document is provided, Customer’s purchase order for such Licensed Product, if any.

“Registered User” means a Permitted User for whom Customer has purchased a License to use a Registered User Product and for whom Customer has issued a password or other unique identifier to enable such individual to use the Registered User Product.

“Registered User Products” means the Licensed Products licensed on a Registered User basis, as specified either in the Quote or at the Licensing Basis Webpage.

“Reseller” means a third-party appointed and authorized by PTC to resell or distribute any Licensed Product. .

“Services” means collectively Support Services and Training Services.

“Site License” means a Licensed Product for which one License is required for each Customer location, as specified either in the Quote or at the Licensing Basis Webpage. Multiple customer facilities located in the same city or town (based on postal address) shall be considered one “location,” whereas locations located in different cities or towns will require multiple Site Licenses.

“Training Services” means instruction or other training provided by PTC in the use of the Licensed Products. “Training Services” does not include PTC’s e-Learning training products (e.g., “PTCU”), which are considered Licensed Products for purposes of this Agreement.

“Uplift Fee” means a fee based upon the difference between the License fee applicable to installation of the applicable Licensed Product in the original Designated Country and the License fee applicable to the installation of such Licensed Product in the Designated Country to which Customer wishes to move the Licensed Product.

“Usage License Fee” means an ongoing fee that commences upon installation of the applicable Licensed Product and that, during the period for which the Usage License Fee is paid, entitles Customer to (i) continued use of the Licensed Product in accordance with the terms of the License and (ii) telephone support, Error corrections or workarounds, and New Releases for such software.