



## MASTER SOFTWARE AS A SERVICE AGREEMENT

THIS MASTER SOFTWARE AS A SERVICE AGREEMENT GOVERNS CUSTOMER'S ACQUISITION AND USE OF PTC SERVICES (WHETHER PURCHASED DIRECTLY FROM PTC OR VIA A THIRD PARTY) AND ALSO GOVERNS ANY RELATED FREE SERVICES SUPPLIED TO CUSTOMER BY PTC.

CUSTOMER AGREES TO BE BOUND BY THE TERMS OF THIS AGREEMENT BY EITHER (I) CLICKING A BOX INDICATING ACCEPTANCE, (II) ACCEPTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT (WHETHER BY SIGNING THE ORDER FORM OR ISSUING A PURCHASE ORDER REFERENCING THE ORDER FORM), OR (III) USING THE SERVICES. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT IS ACCEPTING ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, SUCH INDIVIDUAL REPRESENTS THAT THEY HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERM "CUSTOMER" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT DOES NOT HAVE SUCH AUTHORITY, OR DOES NOT AGREE WITH THESE TERMS AND CONDITIONS, SUCH INDIVIDUAL MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

The Services may not be accessed by Customer for purposes of monitoring their availability, performance, or functionality, or for any other benchmarking or competitive purposes. PTC's direct competitors are prohibited from accessing the Services, except with PTC's prior written consent.

This Agreement is effective between Customer and PTC as of the date of Customer accepting this Agreement (the "Effective Date").

### 1. DEFINITIONS

"Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control" of an entity, for purposes of this definition, means the direct or indirect ownership or control of more than 50% of the voting interests of such entity.

"Agreement" means this Master Software as a Service Agreement.

"Beta Services" means PTC Services of functionality that may be made available to Customer to try at its option at no additional charge which is clearly designated as beta, pilot, limited release, early access, preview, non-production, evaluation, or by a similar description.

"Customer" means: (a) in the case of an individual accepting this Agreement on his or her own behalf, such individual, or (b) in the case of an individual accepting this Agreement on behalf of a company or other legal entity, the company or other legal entity for which such individual is accepting this Agreement and Affiliates of that company or entity (for so long as they remain Affiliates) which have entered into Order Forms.

"Customer Data" means electronic data and information submitted by or for Customer to the Services, excluding Non-PTC Applications.

"Documentation" means the applicable SaaS+ Help Center accessible via the Service.

"Non-PTC Application" means web-based, mobile, offline or other software functionality that interoperates with a Service, that is provided by Customer or a third party and/or listed on a marketplace or under similar designation.

"Order Form" means a quote or ordering document or online order specifying the Services to be provided hereunder that is entered into between Customer and either PTC or a Reseller or any of their Affiliates, including any addenda and supplements thereto. By entering into an Order Form hereunder, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto.

"PTC" means PTC Inc. or an Affiliate of PTC Inc., as specified at [www.ptc.com/en/documents/legal-agreements/ptc-affiliates](http://www.ptc.com/en/documents/legal-agreements/ptc-affiliates).

"Registered User" means a single individual User without regard to how often the person accesses the offering. A Registered User offering is priced, in whole or in part, on the number of Registered Users, and an authorization is required for every such individual, regardless of whether the User is accessing the offering directly or via an intermediate application.

"Reseller" means a third-party appointed and authorized by PTC to resell any Services to Customer.

"Service Description" means the document (if any, available on the PTC Legal Agreement webpage at [www.ptc.com/en/documents/legal-agreements](http://www.ptc.com/en/documents/legal-agreements)) which contains a service description and any additional terms applicable to a particular Service offering. If no Service Description is available on the PTC Legal Agreement webpage for the offering being purchased, then the Documentation shall serve as the "Service Description" for purposes of this MSA.

"Services" means the products and services that are ordered by Customer under an Order Form or online purchasing portal, or provided to Customer free of charge (as applicable) or under a free trial, and made available online by PTC, including associated PTC offline or mobile components, as described in the applicable Service Description. "Services" exclude Non-PTC Applications.

“SLA” means the service level agreement located at [PTC Cloud/SaaS Contract Website | PTC](#).

“User” means, in the case of an individual accepting these terms on his or her own behalf, such individual, or, in the case of an individual accepting this Agreement on behalf of a company or other legal entity, User means an individual who is authorized by Customer to use a Service, for whom Customer has purchased a Services subscription (or in the case of any Services provided by PTC without charge, for whom a Service has been provisioned), and as applicable to whom Customer has supplied a user identification. Users may include, for example, employees, consultants, contractors and agents of Customer and of third parties with which Customer transacts business.

“Work Product” means any materials and any intellectual property rights that are made, conceived, written, created, developed, reduced to practice and/or delivered by PTC in the course of providing professional services hereunder, including without limitation any reports, computer software and/or software documentation. Work Product shall in no case include Customer Data.

## 2. PTC RESPONSIBILITIES

2.1. **Provision of Services.** PTC will (a) make the Services available to Customer pursuant to this Agreement and the applicable Order Form(s) and Service Description, (b) provide applicable PTC standard support for the Services to Customer at no additional charge and subject to the support terms and conditions available on the [PTC Legal Agreements](#) webpage and/or in the applicable Service Description, (c) use commercially reasonable efforts to make the Services available in accordance with the SLA except for (i) offerings for which the SLA is not applicable, as specified in the Service Description, (ii) planned downtime (of which PTC shall give advance electronic notice) and (iii) any unavailability caused by circumstances beyond PTC’s reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem (other than one involving PTC employees), Internet service provider failure or delay, Non-PTC Application, or denial of service attack, and (d) provide the Services in accordance with laws and government regulations applicable to PTC’s provision of its Services to its customers generally (i.e., without regard for Customer’s particular use of the Services), and subject to Customer’s and Users’ use of the Services in compliance with this Agreement, the Service Description and the applicable Order Form. PTC will apply new versions, upgrades and updates to the Services from time to time at such time(s) as PTC determines in its sole discretion, and PTC publishes a calendar of anticipated new versions, upgrades and updates for most Service offerings. For each such new version, upgrade and update, Customer is responsible for any modifications required in order for any customizations and integrations to continue to function as intended.

### 2.2. Customer Data and Personal Information.

- (1) PTC will maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data, as described in the Service Description. Those safeguards will include, but will not be limited to, measures designed to prevent unauthorized access to or disclosure of Customer Data (other than by Customer or Users). The terms of the PTC Cybersecurity and Data Privacy Addendum at <https://www.ptc.com/en/documents/policies> (“DPA”) posted as of the Effective Date are hereby incorporated by reference. To the extent Personal Information from the European Economic Area (EEA), the United Kingdom and Switzerland are processed by PTC, the Standard Contractual Clauses shall apply, as further set forth in the DPA. For the purposes of the Standard Contractual Clauses, Customer and its applicable Affiliates are each the data exporter, and Customer’s acceptance of this Agreement, and an applicable Affiliate’s execution of an Order Form, shall be treated as its execution of the Standard Contractual Clauses and Appendices.
- (2) Customer agrees that the Customer Data will not include: (i) any information, or documents or technical data that are U.S. Government Classified, Controlled Unclassified Information, ITAR or otherwise have been determined by the United States Government or by a foreign government to require protection against unauthorized disclosure for reasons of national security unless provided for in the Quote where PTC is agreeing to comply with associated regulatory requirements in the execution of the Service, or (ii) any data relating to the health of an individual, including without limitation any protected health information, medical, demographic, visual or descriptive information that can be used to identify a particular patient/individual, and/or any other data subject to the U.S. “Health Insurance Portability & Accountability Act of 1996” and regulations promulgated under that Act (collectively “HIPAA”), or (iii) any personal credit information, including without limitation credit card account numbers, cardholder names, card expiration dates and security codes.

### 2.3. Beta Services/Evaluations/Free Trials

- (1) **Beta Services.** From time to time, PTC may make available Services or functionality at no additional charge which is designated as beta, limited release, pre-release, “lighthouse,” preview, pre-production, non-production, or by a similar description (“Beta Services”). The performance, quality, security, and uptime availability of Beta Services are not at the level of performance or compatibility of PTC’s generally available SaaS offerings. Customer acknowledges and agrees that: (a) the Beta Services are not complete in development and have not been commercially released by PTC, (b) the Beta Services may not be fully functional, and it is expected that they may contain errors, design flaws or other problems, (c) the Beta Services may not be reliable, (d) the Beta Services and their use may result in unexpected results, loss of data or other unpredictable damage or loss to Customer, (e) PTC is under no obligation to release a commercial version of the Beta Services, and (f) PTC has the right to unilaterally abandon development of the Beta Services at any time and without any obligation or liability to Customer.
- (2) **Evaluations and Free Trials.** If PTC provides any Services on an evaluation or free trial basis (“Eval Services”), as specified in the Order Form or as otherwise communicated to Customer by PTC, then the term of such Customer access shall be as set forth on the applicable Order Form, and in the absence of a stated term, the term shall be thirty days. Additional trial terms and conditions may appear on the Order Form.

(3) **Disclaimer of Warranty and Limitation of Liability for Beta Services and Eval Services.** Any representation or warranty in this Agreement or otherwise regarding product security or availability/uptime is void as relates to Beta Services and Eval Services. BETA SERVICES AND EVAL SERVICES ARE PROVIDED "AS IS" WITHOUT ANY GUARANTEED SECURITY PROVISIONS OR WARRANTY OF ANY KIND AND PTC SHALL HAVE NO INDEMNIFICATION OBLIGATIONS OR LIABILITY OF ANY TYPE UNLESS SUCH EXCLUSION OF LIABILITY IS NOT ENFORCEABLE UNDER APPLICABLE LAW, IN WHICH CASE PTC'S LIABILITY WITH RESPECT TO THE BETA SERVICES AND THE EVAL SERVICES SHALL NOT EXCEED ONE THOUSAND U.S. DOLLARS (\$1,000). ANY DATA CUSTOMER ENTERS INTO THE BETA SERVICES AND/OR EVAL SERVICES MAY BE PERMANENTLY LOST AT THE END OF THE BETA TESTING OR EVALUATION PERIOD, AS APPLICABLE.

2.4. **Professional Services.** If PTC provides to Customer professional consulting services in addition to the Services provided hereunder, the parties may execute a separate Order Form or statement of work ("SOW") for such professional services which shall set forth the applicable fees. Customer will reimburse PTC's travel expenses, including reasonable transportation, lodging, and meal expenses incurred in relation to the provision of professional services, which shall be estimated on the applicable Order Form or SOW. PTC shall have exclusive ownership of any Work Product. PTC grants to Customer, subject to receipt of payment by Customer and Customer's compliance with this Agreement, a nonexclusive, non-transferable right and license to use such Work Product solely for Customer's internal use purposes during the applicable SaaS Subscription term.

### 3. USE OF SERVICES.

3.1. **Services Subscriptions.** Unless otherwise provided in the applicable Order Form, (a) Services are purchased for the term stated in the applicable Order Form or in the applicable online purchasing portal, (b) Services may be added during a Services subscription term at the same pricing as the underlying Services pricing, prorated for the portion of that term remaining at the time the new Services are added and as such pricing may have been adjusted in accordance with the renewal terms of the applicable Order Form, and (c) any added Services will renew and/or terminate on the same date as the underlying Services. Customer agrees that its purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written comments made by PTC regarding future functionality or features.

3.2. **Usage Limits.** For most PTC offerings, each User will have a single personal password for his or her account. Sharing of passwords is not permitted. Customer shall notify PTC immediately of any unauthorized use of any Customer passwords for the Services. Many Services are subject to usage limits specified in Order Forms and Service Description. If Customer exceeds the quantities purchased and/or the other authorized parameters (e.g., data storage, named service requests, viewable generation requests, etc.) associated with the Service, (i) Customer agrees to pay the resulting overages from exceeding such usage limits in accordance with the "Invoicing and Payment" section below, and (ii) Customer will be required to true up its committed quantities to avoid further overages. For offerings that are sold on the basis of Registered Users, the Customer may add and/or substitute from time to time new Registered Users, provided, however, that: (i) if the aggregate number of Registered Users (i.e., individuals who are able to access the Service) exceeds at any point in time the number of authorizations in effect at such time for that particular offering, such situation shall constitute overage under this Section 3.2, and (ii) if a person ceases to be a Registered User, such person may not return to being a Registered User within thirty days after ceasing to be a Registered User.

3.3. **Customer Responsibilities.** Customer will: (a) be responsible for Users' compliance with this Agreement, Service Description and Order Forms, (b) be responsible for the accuracy, quality and legality of Customer Data, the means by which Customer acquired Customer Data, Customer's use of Customer Data with the Services, and the interoperation of any Non-PTC Applications with which Customer uses Services, (c) use commercially reasonable efforts to prevent unauthorized access to or use of Services (including but not limited to safe-guarding all passwords, keys, certificates, access codes and other login information), (d) use the Services only in accordance with this Agreement, Service Description, Order Forms and applicable laws and government regulations, and (e) comply with terms of service of any Non-PTC Applications with which Customer uses Services. Any use of the Services in breach of the foregoing by Customer or Users that in PTC's judgment threatens the security, integrity or availability of PTC's services, may result in PTC's immediate suspension of the Services; however, PTC will use commercially reasonable efforts under the circumstances to provide Customer with notice and an opportunity to remedy such violation or threat prior to any such suspension.

3.4. **Usage Restrictions.** Customer will not: (a) make any Service available to anyone other than Users, (b) use any Service for the benefit of anyone other than Customer, (c) sell, resell, license, sublicense, distribute, rent or lease any Service, or include any Service in a service bureau or outsourcing offering, (d) use a Service or Non-PTC Application to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (e) use a Service or Non-PTC Application to store or transmit code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses, (f) interfere with or disrupt the integrity or performance of any Service or third-party data contained therein, (g) attempt to gain unauthorized access to any Service or its related systems or networks, (h) permit direct or indirect access to or use of any Services in a way that circumvents a contractual usage limit, or use any Services to access, copy or use any of PTC intellectual property except as permitted under this Agreement, an Order Form, or the Service Description, (i) modify, copy, or create derivative works of a Service or any part, feature, function or user interface thereof, (j) use any robot, spider, scraper or other automated means to access the Service, or engage in any scraping, data-mining, harvesting, screen-scraping, data aggregating or indexing of the Service, (k) frame or mirror any part of any Service, other than framing on Customer's own intranets or otherwise for its own internal business purposes or as permitted in the Service Description, (l) except to the extent permitted by applicable law, disassemble, reverse engineer, or decompile a Service, or (m) access a Service to (i) build a competitive product or service, (ii) build a product or service using similar ideas, features, functions or graphics of the Service, (iii) copy any ideas, features, functions or graphics of the Service,

(iv) determine whether the Services are within the scope of any patent, or (v) for any other benchmarking or competitive purposes.

3.5. **Removal of Non-PTC Applications.** If Customer receives notice, including from PTC, that a Non-PTC Application may no longer be used or must be removed, modified and/or disabled to avoid violating applicable law, or third-party rights, Customer will promptly do so. If Customer does not take required action, or if in PTC's judgment continued violation is likely to reoccur, PTC may disable the applicable Non-PTC Application. If requested by PTC, Customer shall confirm deletion and discontinuance of use of such Non-PTC Application in writing and PTC shall be authorized to provide a copy of such confirmation to any such third-party claimant or governmental authority, as applicable.

#### 4. NON-PTC PRODUCTS AND SERVICES

4.1. **Non-PTC Products and Services.** PTC or third parties may make available (for example, through a marketplace or otherwise) third-party products or services, including, for example, Non-PTC Applications and implementation and other consulting services. Any acquisition by Customer of such products or services, and any exchange of data between Customer and any Non-PTC provider, product or service is solely between Customer and the applicable Non-PTC provider. PTC does not warrant or support Non-PTC Applications or other Non-PTC products or services, whether or not they are designated by PTC as "certified" or otherwise. PTC is not responsible for any disclosure, modification or deletion of Customer Data resulting from access by such Non-PTC Application or its provider.

4.2. **Integration with Non-PTC Applications.** The Services may contain features designed to interoperate with Non-PTC Applications. However, interoperability with Non-PTC Applications is not a part of the Services provided herein and therefore may be discontinued at any time without entitling Customer to any refund, credit, or other compensation, if for example and without limitation, the provider of a Non-PTC Application ceases to make the Non-PTC Application available for interoperation with the corresponding Service features in a manner acceptable to PTC.

#### 5. FEES AND PAYMENT

5.1. **Fees.** Customer will pay all fees specified in Order Forms. Except as otherwise specified herein or in an Order Form, (i) fees are based on Services subscriptions purchased and not actual usage, (ii) payment obligations are non-cancelable and fees paid are non-refundable, and (iii) quantities purchased cannot be decreased during the relevant Services subscription term.

5.2. **Invoicing and Payment.** Customer will provide to PTC (or, as applicable, the Reseller) valid and updated credit card information or a valid purchase order covering the fees for the entire committed term (or renewal term, as applicable). If Customer provides credit card information, Customer authorizes PTC or the applicable Reseller to charge such credit card for all Services purchased for the initial Services subscription term and any renewal Services subscription term(s) as set forth in the "Term of Purchased Services Subscriptions" section below. Such charges shall be made in advance, either annually or in accordance with any different billing frequency stated in the applicable Order Form, except that fees for usage in excess of authorizations purchased (i.e., overages) will be charged in arrears and at a premium to the fees for items purchased in advance. If the Order Form specifies that payment will be by a method other than a credit card, PTC or the applicable Reseller will invoice Customer in advance and otherwise in accordance with the relevant Order Form. Invoiced fees are due net thirty days from the term start date (and the applicable anniversary of the start date for each subsequent year). Customer is responsible for providing complete and accurate billing and contact information to PTC or the applicable Reseller and notifying PTC or the applicable Reseller of any changes to such information.

5.3. **Overdue Charges.** If any invoiced amount is not received by PTC or the applicable Reseller by the due date, then without limiting PTC's rights or remedies: (a) those charges shall accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, and/or (b) PTC or the applicable Reseller may condition future renewals and Order Forms on payment terms shorter than those specified in the "Invoicing and Payment" section above.

5.4. **Suspension of Service and Acceleration.** If any charge owing by Customer is overdue, PTC may, without limiting its other rights and remedies: (a) accelerate Customer's unpaid fee obligations so that all such obligations become immediately due and payable, and/or (b) suspend Services until such amounts are paid in full; provided that PTC will inform Customer, at least five days prior to the payment due date, of the impending payment due date and that Services will be suspended if payment is not received by the due date. No notice will be provided for customers paying by credit card or direct debit whose payment has been declined.

5.5. **Payment Disputes.** PTC will not exercise its rights under the "Overdue Charges" or "Suspension of Service and Acceleration" section above if Customer is disputing the applicable fees reasonably and in good faith and is cooperating diligently to resolve the dispute.

5.6. **Taxes.** PTC's fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "Taxes"). Customer is responsible for paying all Taxes associated with its purchases hereunder (except for taxes assessable against PTC or the applicable Reseller based on its income, property and employees). Customer is also responsible for any Taxes resulting from Customer's use of the Services in addition to or in substitution of the state/country listed in the bill to/ship to location of the original order. Customer shall not withhold any amount for taxes unless applicable laws require Customer to withhold. Where taxes are withheld, Customer will provide PTC or the applicable Reseller with an applicable Withholding Tax Certificate. Failure to do so will result in any amounts withheld remaining on the Customer's account. If PTC or the applicable Reseller has the legal obligation to pay or collect Taxes for which Customer is responsible under this section, PTC or the applicable Reseller will invoice Customer and Customer will pay that amount unless Customer provides a valid tax exemption certificate authorized by the appropriate taxing authority.

## 6. PTC PROPRIETARY RIGHTS AND LICENSES

6.1. **Reservation of Rights.** Subject to the limited rights expressly granted hereunder, PTC, its Affiliates and its licensors reserve all of their right, title and interest in and to the Services, including all of their related intellectual property rights. No rights are granted to Customer hereunder other than as expressly set forth herein.

6.2. **License by PTC to Customer.** PTC hereby authorizes Customer to access and use the Services, and PTC further grants to Customer and its Affiliates a worldwide, limited-term license to install, copy, use, transmit, and display the clients and agents and other software items provided by PTC as part of or to enable Customer to use the Services as intended.

6.3. **License by Customer to PTC.** Customer grants PTC, its Affiliates and applicable contractors a worldwide, limited-term license to host, copy, use, transmit, and display any Non-PTC Applications and program code created by or for Customer using a Service or for use by Customer with the Services, and Customer Data, each as appropriate for PTC to provide and ensure proper operation of the Services and associated systems in accordance with this Agreement. If Customer chooses to use a Non-PTC Application with a Service, Customer grants PTC permission to allow the Non-PTC Application and its provider to access Customer Data and information about Customer's usage of the Non-PTC Application as appropriate for the interoperation of that Non-PTC Application with the Service. Subject to the limited licenses granted herein, PTC acquires no right, title or interest from Customer or its licensors under this Agreement in or to any Customer Data, Non-PTC Application or such program code.

6.4. **License by Customer to Use Feedback.** Customer grants to PTC and its Affiliates a worldwide, perpetual, irrevocable, royalty-free license to use, distribute, disclose, and make and incorporate into its services any suggestion, enhancement request, recommendation, correction or other feedback provided by Customer or Users relating to the operation of the Services. PTC shall be free to use, disclose, and otherwise exploit in any manner, any such feedback for any purpose and without compensation to Customer. Customer has no obligation to provide feedback.

6.5. **License by Customer to Use Data.** Customer agrees that PTC shall have the right to collect, analyze, and aggregate data and other information relating to the provision, use and performance of the Services and related systems and technologies (including the collection of data about the qualities and usage of Customer Data managed by the Services) and data derived therefrom for any purpose, including but not limited to enable or improve its products and services, and to monitor Customer's compliance with the usage limitations applicable to the Service. PTC may disclose such data and information to third party service providers to PTC as needed to provide the Services.

6.6. **Federal Government End Use Provisions.** Any software and services described herein are commercial computer documentation and software, as such terms are defined at 48 C.F.R. §2.101 as of the date of submission. Consistent with 48 C.F.R. §12.212(a)-(b), or 48 C.F.R. §227.7202-1(a) and §227.7202-3(a), as applicable, such commercial computer documentation and software are provided to the U.S. Government under limited commercial terms only.

## 7. CONFIDENTIALITY

7.1. **Definition of Confidential Information.** "Confidential Information" means all information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information includes Customer Data of Customer, Confidential Information of PTC included in the Services, and the terms and conditions of this Agreement and all Order Forms (including pricing). Confidential Information of each party includes business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without knowledge of any breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party. For the avoidance of doubt, the obligations set forth in this "Confidentiality" section apply to Confidential Information exchanged between the parties in connection with the evaluation of additional PTC services.

7.2. **Protection of Confidential Information.** As between the parties, each party retains all ownership rights in and to its Confidential Information. The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to (i) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement and (ii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not materially less protective of the Confidential Information than those herein. Neither party will disclose the terms of this Agreement or any Order Form to any third party other than its Affiliates, legal counsel and accountants without the other party's prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such Affiliate's, legal counsel's or accountant's compliance with this "Confidentiality" section. Notwithstanding the foregoing, PTC may disclose the terms of this Agreement and any applicable Order Form to a contractor or Non-PTC Application Provider to the extent necessary to perform PTC's obligations under this Agreement, under terms of confidentiality materially as protective as set forth herein.

7.3. **Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the

disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

## **8. REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS**

8.1. **Representations.** Each party represents that it has validly entered into this Agreement and has the legal power to do so.

8.2. **PTC Warranties.** (a) PTC warrants that during an applicable subscription term: (i) PTC will not materially decrease the overall security of the Services as described in the Trust Center at <https://www.ptc.com/en/about/trust-center>, and (ii) the Services will perform materially in accordance with the applicable Documentation and (iii) subject to the "Integration with Non-PTC Applications" section, PTC will not materially decrease the overall functionality of the Services. For any breach of a warranty above, Customer's exclusive remedies are those described in the "Termination" and "Refund or Payment upon Termination" sections below. (b) As to the delivery of any professional services, PTC warrants that the professional services shall be performed in a good and workmanlike manner in accordance with industry standards. PTC's entire liability and Customer's exclusive remedy for any breach by PTC of the foregoing professional services warranty shall be that PTC shall use commercially reasonable efforts to correct and/or re-perform the deficient professional services provided that Customer notifies PTC in writing of the deficient professional services within thirty days of PTC's original performance of such professional services.

8.3. **Disclaimers.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND (WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE), AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES OF NON-INFRINGEMENT, IN EACH CASE TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. SERVICES PROVIDED FREE OF CHARGE, CONTENT, AND BETA SERVICES ARE PROVIDED "AS IS," AND AS AVAILABLE EXCLUSIVE OF ANY WARRANTY WHATSOEVER.

9. **INDEMNIFICATION.** PTC will defend Customer against any claim, demand, suit or proceeding made or brought against Customer by a third party alleging that any purchased Service infringes or misappropriates such third party's intellectual property rights (a "Claim Against Customer"), and will indemnify Customer from any damages, attorney fees and costs finally awarded against Customer (or for amounts paid by Customer under a settlement approved by PTC in writing) as a result of a Claim Against Customer, provided Customer gives (a) prompt written notice to PTC of the Claim Against Customer, (b) PTC sole control of the defense and settlement of the Claim Against Customer (except that PTC may not settle any Claim Against Customer unless it unconditionally releases Customer of all liability), and (c) all reasonable assistance to PTC, at PTC's expense. If PTC receives information about an infringement or misappropriation claim related to a Service, PTC may in its discretion and at no cost to Customer: (i) modify the Services so that they do not infringe or misappropriate, without breaching PTC's warranties under "PTC Warranties" above, (ii) obtain a license for Customer's continued use of that Service in accordance with this Agreement, or (iii) terminate Customer's Service upon thirty days' written notice and refund Customer any prepaid fees covering the remainder of the term of the terminated Service. The above defense and indemnification obligations do not apply if: (I) the allegation does not state with specificity that the Services are the basis of the Claim Against Customer; (II) a Claim Against Customer arises from the use or combination of the Services or any part thereof with software, hardware, data, or processes not provided by PTC, if the Services or use thereof would not infringe without such combination; (III) a Claim Against Customer arises from Services under an Order Form for which there is no charge; or (IV) a Claim against Customer arises from a Non-PTC Application or Customer's breach of this Agreement, or applicable Order Forms. This "Indemnification" section states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any third-party claim described in this section.

## **10. LIMITATION OF LIABILITY**

10.1. **Limitation of Liability.** IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EITHER PARTY TOGETHER WITH ALL OF ITS AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER AND ITS AFFILIATES HEREUNDER FOR THE SERVICES (OR ANY PROFESSIONAL SERVICES WHEN APPLICABLE) GIVING RISE TO THE LIABILITY IN THE TWELVE MONTHS PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE. THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, BUT WILL NOT LIMIT BREACHES OF CUSTOMER'S PAYMENT OBLIGATIONS UNDER THE "FEES AND PAYMENT" SECTION ABOVE.

10.2. **Exclusion of Consequential and Related Damages.** IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOST PROFITS, REVENUES, GOODWILL, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, BUSINESS INTERRUPTION OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF A PARTY'S OR ITS AFFILIATES' REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

## **11. TERM AND TERMINATION**

11.1. **Term of Agreement.** This Agreement commences on the date Customer first accepts it and continues until terminated or replaced by another agreement that covers the Services.



**11.2. Term of Purchased Services Subscriptions.** The term of each Services subscription shall be as specified in the applicable Order Form, and shall renew in accordance with the terms set forth in such Order Form. Unless the Order Form specifies to the contrary, each Services subscription term shall automatically renew without the need for additional paperwork unless Customer or PTC notifies the other party in writing of non-renewal at least sixty days prior to the renewal date. The renewal period will be the same length as the length of the initial term (but not less than twelve months). The fee for each renewal period may be increased and, in such event, Customer shall be informed (email sufficient) of the fee increase approximately ninety days or more prior to the renewal date. Notwithstanding anything to the contrary in this Agreement, any renewal in which Services subscription volume has decreased from the prior term will result in re-pricing at renewal without regard to the prior term's per-unit pricing.

**11.3. Termination.** A party may terminate this Agreement for cause: (i) upon thirty days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

**11.4. Refund or Payment upon Termination.** If this Agreement is terminated by Customer in accordance with the "Termination" section above, PTC will refund Customer any prepaid fees covering the remainder of the term of all Order Forms after the effective date of termination. If this Agreement is terminated by PTC in accordance with the "Termination" section above, Customer will pay any unpaid fees covering the remainder of the term of all Order Forms to the extent permitted by applicable law. In no event will termination relieve Customer of its obligation to pay any fees payable to PTC for the period prior to the effective date of termination.

**11.5. Surviving Provisions.** The sections titled "Definitions," "Fees and Payment," "PTC Proprietary Rights and Licenses," "Confidentiality," "Representations, Warranties, Exclusive Remedies and Disclaimers," "Indemnification," "Limitation of Liability," "Term and Termination," and "General Provisions" will survive any termination or expiration of this Agreement, and the section titled "Customer Data and Personal Information" will survive any termination or expiration of this Agreement for so long as PTC retains possession of CustomerData.

## **12. GENERAL PROVISIONS**

**12.1. Export Compliance.** The Services, PTC technology, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. PTC and Customer each represents that it is not on any U.S. government denied-party list. Customer will not permit any User to access or use any Service in a U.S.-embargoed country or region (currently Cuba, Iran, North Korea, Syria or Crimea) or in violation of any U.S. export law or regulation.

**12.2. Anti-Corruption.** Neither party has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an employee or agent of the other party in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction.

**12.3. Entire Agreement and Order of Precedence.** This Agreement is the entire agreement between PTC and Customer regarding Customer's use of Services and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. The parties agree that any term or condition stated in a Customer purchase order or in any other Customer order documentation (excluding Order Forms) is void. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable Order Form, (2) this Agreement, and (3) the Service Description. Titles and headings of sections of this Agreement are for convenience only and shall not affect the construction of any provision of this Agreement.

**12.4. Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. Each party will be solely responsible for payment of all compensation owed to its employees, as well as all employment related taxes.

**12.5. Waiver and Severability.** No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.

**12.6. Publicity.** PTC may list Customer as a customer of PTC. In addition, Customer agrees to reasonably consider cooperating with PTC from time to time in connection with serving as a customer reference, providing testimonials for the Services; and issuing press releases relating to the relationship between Customer and PTC.

**12.7. Assignment.** Neither party may assign, transfer or delegate any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent, which consent will not be unreasonably withheld. Without limiting the foregoing, a party may withhold consent in any of the following circumstances: (i) the assignment is less than the entirety of the Agreement (including all Order Forms), (ii) the assignee does not agree in writing to be bound by the terms and conditions of this Agreement, (iii) the assignee is not, in the other party's reasonable opinion, at least as credit-worthy as the assigning party, or (iv) the assignment results or is likely to result in a change in the country(ies) of where the Services are being used.

**12.8. PTC Contracting Entity, Notices, Governing Law, and Venue.** Set forth at [www.ptc.com/en/documents/legal-agreements/ptc-affiliates](http://www.ptc.com/en/documents/legal-agreements/ptc-affiliates) is the, region-specific, PTC entity entering into this Agreement, the address to which Customer should direct notices under this Agreement, the legal jurisdiction that will apply in any dispute or lawsuit arising out of or in connection with this Agreement, and the courts that will have exclusive jurisdiction over any such dispute or lawsuit.

**12.9. Changes to these Terms and Conditions.** PTC may make changes to this Agreement from time to time. Material changes to this Agreement will become effective 30 days after they are posted, except to the extent the changes apply to new functionality or the

DPA, or are required by applicable law, in which case they will be effective immediately. PTC will provide at least 90 days' advance notice for materially adverse changes to the SLA by (i) sending an email to Customer; (ii) posting a notice in the Service itself; and/or (iii) posting a notice to the applicable SLA webpage. Customer's continued use of the Services after such material change will constitute Customer's consent to such changes.

12.10. **Discontinuation of Services.** PTC will notify Customer at least twelve months before discontinuing any Service (or associated material functionality) unless PTC replaces such discontinued Service or functionality with a materially similar Service or functionality. Nothing in this Section limits PTC's ability to make changes required to comply with applicable law, address a material security risk, or avoid a substantial economic or material technical burden. This Section does not apply to pre-general availability Services, offerings, or functionality.

12.11. **Manner of Giving Notice.** Except as otherwise specified in this Agreement, all notices related to this Agreement will be in writing and will be effective upon (a) personal delivery, (b) the second business day after mailing, or (c), except for notices of termination or an indemnifiable claim ("Legal Notices"), which shall clearly be identifiable as Legal Notices, the day of sending by email. PTC may broadcast notices or messages through the applicable Service or by posting notices or messages on PTC's website to inform Customer of changes to the Services, or other matters of importance. PTC shall inform Customer of such broadcast by email. Billing-related notices to Customer will be addressed to the relevant billing contact designated by Customer. All other notices to Customer will be addressed to addresses listed on the Order Form.

#### 12.12. **Local Law Requirements: France.**

With respect to Customers domiciled in France:

- in the event of any conflict between any statutory law in France applicable to Customer, and the terms and conditions of this Agreement, the applicable statutory law shall prevail.
- a new Section 12.12.1 is added as follows:

To the extent Customer is subject to Article L.1111-8 (or any successor thereto) of the French public health code (Code de la Santé Publique), Customer shall abide by the Global Information Security Policy for the Healthcare Sector (PGSSI-S) pursuant to Article L.1110-4-1 (or any successor thereto) of the aforementioned code.

12.13. **Local Law Requirements: Spain.** With respect to Customers domiciled in Spain, in the event of any conflict between any statutory law in Spain applicable to Customer, and the terms and conditions of this Agreement, the applicable statutory law shall prevail

12.14. **Local Law Requirements: Austria, Germany, and Switzerland.** With respect to Customers domiciled in Austria, Germany, or Switzerland Section 8 "REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS" and Section 10 "LIMITATION OF LIABILITY" of this Agreement are replaced with the following sections respectively:

- **WARRANTIES FOR CUSTOMERS DOMICILED IN AUSTRIA, GERMANY, AND SWITZERLAND**

a. **Warranty.** This Agreement, the Order Forms, the Documentation and the Service Description describe the Services under this Agreement. PTC warrants that (a) PTC will not materially decrease the overall security of the Services as described in the Trust Center at <https://www.ptc.com/en/about/trust-center>, (b) the Services will be provided substantially in accordance with the applicable Documentation, and (c) subject to the "Integration with Non-PTC Applications" section above, PTC will not materially decrease the overall functionality of the Services.

b. **Reporting of Defects.** Customer shall promptly report any material deviation of the Services from the Documentation ("Defect") to PTC in writing without undue delay and shall submit a detailed description of the Defect or, if not possible, of the symptoms of the Defect. Customer shall forward to PTC any useful information available to Customer for rectification of the Defect.

c. **Exclusive Remedies from Defects.** PTC shall rectify any Defect affecting the usability of the Services (at PTC's sole discretion, by replacement or remedy [correction of the Defect, provision of a workaround or otherwise] in respect of the relevant affected part of the Services) within a reasonable period of time. If such remedy is ultimately unsuccessful (in which case PTC shall be entitled to at least two attempts to replace and/or remedy the relevant Defect within a reasonable time), Customer may, at its opinion, either (i) terminate the portion of the Services of the applicable respective Order Form affected by the relevant Defect (the "Refund or Payment upon Termination" section, sentence and 1 and sentence 3 shall apply accordingly) or (ii) reasonably reduce the charge for the portion of the Services affected by the Defect.

d. **Defects in Title.** Defects in title of the Services shall be handled in accordance with the provisions of Clause 9 "Indemnification".

e. **Exclusions.** Customer shall have no claims under this Clause 8 "Warranty" if a Defect was caused by the Services not being used by Customer in accordance with the provisions of this Agreement, the Service Description and the applicable Order Forms. The strict liability from §536a para. 1 sentence 1 1.case BGB (German Civil Code) is excluded. Customer's right to terminate the Agreement due to non-granting of use according to §543 para. 2 sentence 1 no.1 BGB (German Civil Code) is excluded, unless the remedy or replacement delivery is to be considered as finally failed. Guarantees, in particular guarantees of quality, shall only be binding on both parties to the extent to which they (i) are contained in a written contractual document,



(ii) are expressly designated as “guarantee” or “guarantee as to condition” (*Beschaffheitsgarantie*), and (iii) expressly stipulate the obligations resulting from such guarantee for the respective party.

f. **Liability resulting from Indemnification for Customers domiciled in Austria, Germany, or Switzerland.** The “Limitation of Liability” section shall apply to any claims resulting from this section.

• **LIMITATION OF LIABILITY FOR CUSTOMERS DOMICILED IN AUSTRIA, GERMANY, AND SWITZERLAND**

a. **Unlimited Liability.** The Parties shall be mutually liable without limitation in the event of willful misconduct or gross negligence, within the scope of a guarantee taken over by the respective party, in the event that a defect is maliciously concealed, in case of an injury to life, body or health, according to the German Product Liability Law.

b. **Liability for slight negligence.** If cardinal duties are infringed due to slight negligence the parties’ liability shall be limited to foreseeable damage typical for the contract. In all other respects, any liability for damage caused by slight negligence shall be excluded.

c. **Liability Cap.** Unless the parties are liable in accordance with “Unlimited Liability” section above, in no event shall the aggregate liability of each party together with all of its Affiliates arising out of or related to this Agreement exceed the total amount paid by Customer and its Affiliates hereunder for the Services giving rise to the liability in the twelve months preceding the first incident out of which the liability arose. The foregoing limitation will not limit Customer’s and its Affiliates’ payment obligations under the “Fees and Payment” section above.

d. **Exclusions.** Except in the case of liability in accordance with “Unlimited Liability” section above, PTC shall not be liable for any typical, indirect or consequential damages, including without limitation lost profits, lost savings or damages resulting from the loss or use of Customer Data.

e. **Scope.** With the exception of liability in accordance with the “Unlimited Liability” section, the above limitations of liability shall apply to all claims for damages, irrespective of the legal basis including claims for tort damages. The above limitations of liability also apply in the case of claims for a party’s damages against the respective other party’s employees, agents or bodies.

f. **Limitation.** Claims for damages of one party against the other party shall expire at the latest one year after the other party gains knowledge of the damage or, irrespective of this knowledge, at the latest two years after the damaging event.

12.15. **Local Law Requirements: Italy.** With respect to Customers domiciled in Italy, Section 5.2 “Invoicing and Payment”, Section 5.3 “Overdue Charges”, Section 5.4 “Suspension of Service and Acceleration”, and Section 12.2 “Anti-Corruption” of this Agreement are replaced with the following sections respectively:

a. **Invoicing and Payment.** Fees will be invoiced in advance and otherwise in accordance with the relevant Order Form. Unless otherwise stated in the Order Form, fees are due net thirty days from the invoice date. The parties acknowledge that invoices are also be submitted electronically by PTC in accordance with the “Electronic Invoicing” section below through the Agenzia delle Entrate’s Exchange System (SDI – Sistema di Interscambio) and any delay due to the SDI shall not affect the foregoing payment term. Customer shall be responsible for providing complete and accurate billing and contact information to PTC and shall notify PTC of any changes to such information.

b. **Electronic Invoicing.** The invoice will be issued in electronic format as defined in article 1, paragraph 916, of Law no. 205 of December 27, 2017, which introduced the obligation of electronic invoicing, starting from January 1, 2019, for the sale of goods and services performed between residents, established or identified in the territory of the Italian State. To facilitate such electronic invoicing, Customer shall provide to PTC at least the following information in writing: Customer full registered company name, registered office address, VAT number, tax/fiscal code and any additional code and/or relevant information required under applicable law. In any event, the parties shall cooperate diligently to enable such electronic invoicing process. Any error due to the provision by Customer of incorrect or insufficient invoicing information preventing (a) PTC to successfully submit the electronic invoice to the SDI or (b) the SDI to duly and effectively process such invoice or (c) which, in any event, requires PTC to issue an invoice again, shall not result in an extension of the payment term set out in the “Invoicing and Payment” section above, and such term shall still be calculated from the date of the original invoice. PTC reserves the right to provide any invoice copy in electronic form via email in addition to the electronic invoicing described herein.

c. **Split Payment.** If subject to the “split payment” regime, Customer shall be exclusively responsible for payment of any VAT amount due, provided that Customer shall confirm to PTC the applicability of such regime and, if applicable, Customer shall provide proof of such VAT payment to PTC and, if applicable, Customer shall provide proof of such VAT payment to PTC.

d. **Overdue Charges.** Subject to the “Payment Disputes” section above, if any invoiced amount is not received by PTC by the due date, then without limiting PTC’s rights or remedies, those charges, without the need for notice of default, may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law (Legislative Decree no. 231/2002), whichever is lower and/or (b) PTC may condition future Services subscription renewals and Order Forms on payment terms shorter than those specified in the “Invoicing and Payment” section above.

e. **Suspension of Service.** Subject to the “Payment Disputes” section below, if any charge owing by Customer under this

or any other agreement for services is thirty days or more overdue, (or ten or more days overdue in the case of amounts Customer has authorized PTC to charge to Customer's credit card), PTC may, without limiting its other rights and remedies, suspend Services until such amounts are paid in full, provided that, other than for customers paying by credit card or direct debit whose payment has been declined, PTC will give Customer at least ten days' prior notice that its account is overdue, in accordance with the "Manner of Giving Notice" section below for billing notices, before suspending services to Customer.

f. **Anti-Corruption.** Neither party has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an employee or agent of the other party in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction.

g. **Code of Conduct and Organization, Management and Control Model.** Customer acknowledges that PTC has adopted an Organization, Management and Control Model pursuant to Legislative Decree 231/2001 to prevent crimes provided for therein and commits to comply with the principles contained in the above Legislative Decree 231/2001 and in the PTC Code of Business Conduct and Ethics which is available at the following link: [www.ptc.com/en/documents/legal-agreements/code-business-conduct-ethics](http://www.ptc.com/en/documents/legal-agreements/code-business-conduct-ethics). Customer also acknowledges and agrees that the violation of the principles and the provisions contained in Legislative Decree 231/2001 and in the PTC Code of Conduct by Customer may entitle PTC, based on the severity of the violation, to terminate this Agreement for cause as set out in Section 11.3(i) above.