



PLM ON DEMAND SUBSCRIPTION AGREEMENT

PLEASE READ THE TERMS AND CONDITIONS OF THIS AGREEMENT CAREFULLY BEFORE ACCESSING THE PLM ON DEMAND SYSTEM (AS DEFINED BELOW). BY CLICKING ON THE "ACCEPT" BUTTON BELOW, YOU ARE AGREEING ON BEHALF OF THE SUBSCRIBER (AS DEFINED BELOW) TO BE BOUND BY THIS AGREEMENT AND REPRESENTING THAT YOU ARE AUTHORIZED TO DO SO.

IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, CLICK THE "DECLINE" BUTTON. IN SUCH CASE, SUBSCRIBER WILL NOT BE GRANTED ACCESS TO THE PLM ON DEMAND SYSTEM. SUBSCRIBER MAY NOT CANCEL A SUBSCRIPTION UNDER THIS AGREEMENT ONCE YOU HAVE CLICKED THE ACCEPT BUTTON.

This Agreement sets out the terms under which Subscriber is ordering, and PTC is providing upon acceptance of such order, remote access to PTC's PLM On Demand System, as more fully set forth below.

1. Definitions. Capitalised terms used in this Agreement have the meanings described in the Agreement or in Exhibit A.

2. Subscriber Remote Access to Hosted Software and Hosted Data.

(a) Access criteria. PTC shall, during the Subscription Term, (i) maintain a copy of the Hosted Software and the Hosted Data on a Host Server, (ii) allow Permitted Users to remotely access and interface with (via the Internet using supported and properly configured web browsers) an executing instance of the Hosted Software that is operating on and from a Host Server, and (iii) allow Permitted Users to access and modify the Hosted Data, and store additional Hosted Data, through Subscriber's use of the Hosted Software (collectively, the "Services").

(b) Entitlement. Subscriber acknowledges that the Services only entitle Subscriber to have Permitted Users remotely access the Hosted Software as described in this Agreement and do not entitle Subscriber to download or otherwise obtain a copy of the Hosted Software.

(c) Maintenance of Hosted Software. Subject to Section 11(a), PTC and/or its subcontractors shall provide such Services 24 hours per day, seven days a week; provided, however, that from time to time, PTC or its subcontractors may perform scheduled or unscheduled maintenance as may be necessary to maintain the proper operation of the Hosted Software and Hosted Data, and access to such Hosted Software and Hosted Data by Subscriber may be impaired or interrupted while such maintenance is being performed. PTC may conduct scheduled maintenance between the hours of Saturday 6 p.m to Sunday 2 a.m., Eastern Time, United States, or such similar time period as PTC may from time to time substitute by providing electronic notice on the PLM On Demand System ("Scheduled Downtime"). Subscriber shall be solely responsible, at its expense, for establishing, maintaining, and operating Subscriber's connection to the Internet (the speed of which may have a significant impact on the responsiveness of the PLM On Demand System), including all computer hardware and software, properly configured web browsers, modems and access lines.

3. Permitted Users; Technical Support; Training.

(a) Registered Users. Upon entering into this Agreement and subject to the restrictions in Section 3(c) and the terms of Section 8 (b) below, Subscriber shall deliver to PTC the names of Subscriber's Registered Users. During the Subscription Term, certain Registered Users (whom Subscriber has designated as having such authority) may, on behalf of Subscriber, request PTC to add or remove persons as Registered Users.

(b) Invited Users. Certain Registered Users (whom Subscriber has designated as having such authority) may invite other persons to access the Hosted Software and Hosted Data as "Invited Users." The PLM On Demand System will send an email to the Invited User providing instructions on how to access the PLM On Demand System.

(c) Restrictions and Requirements for Permitted Users. Subscriber agrees, and agrees to cause its Registered Users, to only appoint as Registered Users, and only invite as Invited Users, persons (i) who are not, and are not employed by, Competitors of PTC, and (ii) who are using the Hosted Software directly in furtherance of Subscriber's internal product development and information management operations. Subscriber acknowledges that when a Permitted User accesses the PLM On Demand System for the first time, the PLM On Demand System may require such Permitted User to (A) read and affirmatively agree online to certain terms of use, which shall contain restrictions consistent with the terms of this Agreement, and (B) provide certain personal information, which shall be used solely by the PLM On Demand System for purposes of identifying and verifying such Permitted User. Subscriber agrees to promptly suspend Authorized Passwords of any persons who (1) cease to qualify as Permitted Users, (2) Subscriber no longer wishes to have access to the Hosted Software or Hosted Data, or (3) Subscriber knows or reasonably believes Permitted Users are causing Subscriber to breach this Agreement or is in any way mishandling an Authorized Password. If PTC reasonably believes that a Permitted User is causing Subscriber to breach this Agreement or is in any way mishandling an Authorized Password, then PTC may, at its sole discretion, suspend the use of such Permitted User's Authorized Password indefinitely, in addition to any other rights or remedies provided under this Agreement or under law.

(d) Technical Support Requests. Technical support from PTC is included as part of the Services, as provided in this subsection. Such support shall consist of Permitted Users having access to on-line resources including service request logging and tracking tools, knowledge base documents and other resource documents. PTC shall also communicate via email only in response to electronic requests for technical support from two Registered Users designated by Subscriber as the persons entitled to request technical support from PTC (the "Super Users"). Technical support shall be subject to the additional technical support guidelines published in the PLM On Demand System from time to time.

(e) Training. As part of the services covered by the Set Up Fee, PTC will allow up to ten Permitted Users to remotely access and interface with, via the Internet, an executing instance of PTC's web-based Windchill training software during the twelve-month period commencing on the Commencement Date (as defined in Section 6 below). If the Product Schedule specifies that Subscriber is ordering additional training subscriptions in excess of ten, such additional number of Permitted Users shall also be permitted to access such training software during such twelve-month period, subject to Subscriber's paying the specified monthly training fee. Furthermore, if the Product Schedule specifies that Subscriber is ordering training subscriptions after the first twelve-month period for a specified number of Permitted Users, such number of Permitted Users shall be permitted to access such training software during such additional period, subject to Subscriber's paying the specified monthly training fee. Such training services shall be subject to Sections 7, 10, 11(e) and 12 of this Agreement, as if such training services were part of the Services.

4. Workgroup Manager(s). If the Product Schedule specifies that Subscriber is acquiring a subscription to one or more Workgroup Manager(s), then for each Workgroup Manager Seat acquired, one Permitted User may remotely access, via the Internet, an executing instance of the Workgroup Manager solely for the purpose of permitting Subscriber's CAD software to communicate with the PLM On Demand System during the Subscription Term. PTC also grants to Subscriber a non-exclusive license during the Subscription Term for such Permitted Users to download, install and use the "client" portions of such Workgroup Manager(s) (each a "Client"). At the end of the Subscription Term, Subscriber agrees that it will delete all copies of the Clients and certify to PTC that it has done so. The license granted in this Section 4 shall be subject to such limitations or other terms and conditions as are contained in the Product Schedule (whether directly or by reference to the catalogue number or part number of the ordered Workgroup Manager(s)) and to the following additional restrictions:

(a) Payment for Additional Use of Seats. The number of Permitted Users who access the Workgroup Manager(s) in a given month shall not exceed the number of Workgroup Manager Seats Subscriber has ordered. If in a month more people use the Workgroup Manager(s) than the number of Workgroup Manager Seats Subscriber has ordered, Subscriber will be required to pay for additional Workgroup Manager Seats at PTC's then-current list price therefor for the remainder of the Subscription Term.

(b) No Sublicensing to Third Parties. Subscriber may not sublicense or otherwise permit any third party to access the Workgroup Manager(s), other than the Permitted Users for whom Subscriber has purchased a Workgroup Manager seat.

(c) Prohibitions. Subscriber shall not and shall not permit any third party to:

- (i) modify or create any derivative work of any part of any Client;
- (ii) disassemble, decompile, reverse engineer the Clients or otherwise attempt to gain access to the source code;
- (iii) alter, remove, or obscure any copyright, trade secret, patent, trademark, logo, proprietary and/or other legal notices on or in copies of the Clients; and
- (iv) copy or otherwise reproduce the Clients in whole or in part, except as may be required for their installation into computer memory for the purpose of executing the Clients in accordance with this Section 4, and except 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 shall reproduce all PTC copyright, trade secret, patent, trademark, logo, proprietary and/or other legal notices contained in the original copy obtained from PTC).

5. Fees and Charges.

(a) Set Up Fee. In consideration for PTC's performing the Set Up Services, Subscriber hereby agrees to pay to PTC, or to a party designated by PTC, the Set Up Fee within thirty days of the Effective Date. No additional Set Up Fee is paid for Renewal Terms (as defined in Section 6). However, if this Agreement expires, causing Subscriber's account to be terminated, and Subscriber subsequently elects to extend this Agreement or enter a new subscription agreement with PTC, then a Set Up Fee may apply.

(b) User Subscription Fees. In addition to the Set Up Fee, Subscriber agrees to pay monthly to PTC, or to a party designated by PTC, an amount (the "User Subscription Fees") equal to the sum of (i) the product of the Committed Seat Subscription Fee and the number of Committed Seats and (ii) the product of the Variable User Subscription Fee and the number of Active Users in excess of the Committed Seats in such month, as reported by PTC to Subscriber. For purposes of determining the number of Active Users in a given month, Subscriber acknowledges and agrees that any Permitted User of Subscriber who remotely accesses the PLM On Demand System at least once during such month, whether on behalf of Subscriber or a third party subscriber, shall be deemed an Active User for purposes of such calculation and this Agreement. Furthermore, Subscriber acknowledges and agrees that Subscriber is responsible for the number of Registered Users and Invited Users that Subscriber or its Registered Users include as Permitted Users and for any User Subscription Fees that accrue due to such persons becoming Active Users. The User Subscription Fees for each month shall be due within thirty days of the applicable invoice date and shall be made payable and delivered to PTC at the address specified on the invoice.

(c) Windchill Upgrade. If the Product Schedule identifies that the order is for an upgrade from Windchill ProjectLink or Windchill PDMLink to the Windchill ProjectLink and PDMLink Package, the User Subscription Fees identified in such Product Schedule shall supersede the User Subscription Fees set forth in the original Product Schedule pursuant to which the Subscriber originally subscribed to the Windchill ProjectLink or Windchill PDMLink Services.

(d) Conversion to Perpetual License. If Subscriber elects to convert an existing perpetual license of Windchill software to a Committed Seat of the same software via the PLM On Demand System (a "Converted Seat"), the Product Schedule shall establish a different User Subscription Fee for Converted Seats than the User Subscription Fee for other Committed Seats ("New Seats"). In such event, in consideration for the discounted User Subscription Fee provided to Customer in the Product Schedule for Converted Seats, Subscriber agrees that, during the

Subscription Term, Subscriber shall (i) suspend use of the underlying perpetual license, and (ii) continue (or subscribe for) an active maintenance plan for such underlying perpetual license, and pay the maintenance fees therefor (including any appropriate fees for previous periods that Subscriber was not on a maintenance plan with respect to the underlying license), provided that the technical support PTC shall provide shall be in accordance with Section 3(d) of this Agreement and not such maintenance plan.

(c) Workgroup Manager Subscription Fee. If the Product Schedule indicates that Subscriber is acquiring a subscription to one or more Workgroup Managers, Subscriber agrees to pay monthly to PTC, or to a party designated by PTC, an amount equal to the product of the Workgroup Manager Subscription Fee and the number of Workgroup Manager Seats. Such amount for each month shall be due within thirty days of the applicable invoice date and shall be made payable and delivered to PTC at the address specified on the invoice.

(d) Data Storage Charge. For any month in which Subscriber's Peak Data Use at any time in such month exceeds the Data Storage Allocation, Subscriber shall pay to PTC an amount calculated according to the following formula: namely the Data Storage Overage Fee multiplied by the number of gigabytes that the Subscriber's Peak Data Use exceeds the Data Storage Allocation (rounded up to the nearest whole number of gigabytes). The data storage charges for each month (if any) shall be due within thirty days of PTC's delivery to Subscriber of an invoice for such charges and shall be made payable and delivered to PTC at the address specified on the Product Schedule or, if PTC delivers notice to Subscriber, to PTC's designee at the address specified in such notice.

(e) Template Setup Fees. The Product Schedule shall identify any initial Template Options Subscriber is ordering in addition to the standard templates that are part of the standard PTC package for the Hosted Software. The Product Schedule shall also identify the one-time, upfront fee for each Template Option ordered (the "Template Setup Fees"). From time to time, Subscriber may order additional Template Options by submitting additional Product Schedules. Subscriber hereby agrees to pay to PTC, or to a party designated by PTC, the Template Setup Fees within thirty days of the applicable order from Subscriber.

(f) Taxes and Interest. Subscriber shall be responsible for all taxes payable hereunder other than taxes based on the net income of PTC. Subscriber shall pay interest at the rate of one and one half percent (1.5%) per month (or, if lesser, the maximum amount permitted by law) on all amounts owed under this Agreement which remain unpaid thirty days after due, such interest to commence on the due date. Subscriber shall reimburse PTC's reasonable attorneys' fees and costs incurred in collecting overdue amounts.

6. Subscription Term and Term of Agreement. Subscriber's subscription shall commence on the "Commencement Date," and shall continue for the initial term specified on the Product Schedule (the "Initial Term"), which Initial Term shall be at least one year (but not more than two years), unless terminated earlier in accordance with Section 7 below. Subscriber may elect to renew the subscription annually thereafter for consecutive one year terms (each a "Renewal Term") at the then current subscription fees being offered by PTC (except that the Product Schedule may specify a different renewal rate), unless PTC has ceased to offer new subscriptions or unless this Agreement is earlier terminated in accordance with Section 7 below. The Initial Term and any Renewal Terms are referred to as the "Subscription Term." The term of this Agreement shall be coterminous with the Subscription Term, except that the term of this Agreement shall commence on the Effective Date.

7. Termination; Suspension of Service.

(a) Termination for Cause. Either party may terminate this Agreement upon thirty days written notice to the other party by specifying in such notice a breach of this Agreement by the other party, if such breach is not remedied to the non-breaching party's reasonable satisfaction during such thirty-day period.

(b) Termination for Convenience. PTC may terminate this Agreement for any reason or for no reason at all upon one hundred and eighty days written notice to Subscriber. If PTC terminates this Agreement during the twelve month period commencing with the Effective Date, PTC will refund to the Subscriber such portion of the Set Up Fee and the Template Setup Fees as is equal to such fees multiplied by the fraction obtained by dividing the number of days elapsed between the Effective Date and the termination date by three hundred and sixty five. Furthermore, in the event of such a termination, PTC will exercise commercially reasonable efforts to assist Subscriber with the transition of the Hosted Data back to Subscriber's computer systems.

(c) Effect of Termination. Expiration or termination of this Agreement for any reason shall not relieve the parties of any obligation accruing prior to expiration or termination. Upon any termination of this Agreement by PTC under paragraph (a) above, the User Subscription Fees and Workgroup Manager Subscription Fees that would have been owed to PTC on or before expiration of the then current Subscription Term (had this Agreement not been terminated) shall immediately become due and payable in full. The provisions of Sections 5 through 13 shall survive the expiration or termination of this Agreement.

(d) Hosted Data. Subscriber may download the Hosted Data to Subscriber's computer system by using the export function provided in the Hosted Software at any time during the Subscription Term and for up to thirty days after expiration or termination of this Agreement (except during any time period when the Services have been suspended pursuant to paragraph (e) below). Subscriber shall be responsible for downloading the Hosted Data within thirty days following termination or expiration of this Agreement and PTC shall have no obligation after such thirty day period to maintain or store or otherwise deliver the Hosted Data to Subscriber. Subscriber acknowledges that PTC may delete all Hosted Data after thirty days following any termination or expiration of this Agreement.

(e) Suspension of Services. Without limiting other remedies, PTC may immediately issue a warning or temporarily or indefinitely suspend Subscriber's access to the Hosted Software and/or Hosted Data and refuse to provide the Services to Subscriber if Subscriber and/or its Permitted Users breach this Agreement (including by failure to pay any amounts required to be paid hereunder) or if Subscriber's actions may cause liability for PTC, its subcontractors or other subscribers to the PLM On Demand System. The suspension of the Services shall not cause the Subscription Term to be extended and PTC may, at a later time, elect to instead terminate this Agreement in accordance with subsection 7(a) above if Subscriber remains in breach of this Agreement.

8. Hosted and Personal Data Requirements

(a) Hosted Data. During the Subscription Term, PTC or its subcontractors will perform daily backup of changed Hosted Data files, each of which will be stored for at least seven (7) days from the date of backup unless a subsequent backup replaces it. Such daily backup as provided herein should not be considered a replacement for Subscriber having appropriate disaster or business recovery plans for the destruction, loss, interception or damage to Subscriber's data, and Subscriber acknowledges that PTC's liability under this Section 8 is expressly limited by Section 12 below. PTC shall treat all Hosted Data as confidential and shall only use such Hosted Data to (a) provide the Services, (b) aggregate information relating to transactions for statistical analysis and business measures of the performance of the Services, (c) monitor Subscriber's and its Permitted Users' use of the Services for security purposes, (d) enforce the terms of this Agreement, and (e) share with any PTC subcontractors who need to know such information in order to provide the Services, provided that they are bound by similar confidentiality obligations. For purposes of clarity, PTC's obligation to keep such Hosted Data confidential shall not apply to information that (1) PTC learns of from another source or independently develops without reference to the Hosted Data and does not reveal to be included in Subscriber's Hosted Data or (2) PTC is required to disclose by law (but only to the extent of such required disclosure). PTC may retain copies of Hosted Data solely for back-up purposes after termination or expiration of this Agreement, provided, however, that PTC shall not be obligated to retain any such copies of the Hosted Data for more than thirty days following termination or expiration of this Agreement.

(b) Personal Data. All personal information provided by Subscriber will not be disclosed by PTC to any third party without its permission. Please note that the information Subscriber enters may be transferred outside the European Economic Area for the purposes of data processing by PTC, its subsidiaries, and its affiliated companies. Any transfer of personal information outside of the European Economic Area is done in circumstances ensuring that the information is processed only in accordance with applicable data protection laws. By submitting personal information, Subscriber consents to the use of that information as set out in this subsection. Where the personal information is that of a third party, Subscriber certifies that it has used best efforts to obtain that information pursuant to applicable data protection laws.

9. Hosted Website Security. As part of the Services, PTC (or its subcontractors) shall use good faith efforts to implement security measures (such as password protection and encryption) and maintain such other safeguards (including virus protection safeguards) which are reasonably intended to prevent the destruction, loss, interception, or alteration of Hosted Data by unauthorized persons and which are consistent with current commercial practices in the industry. The parties expressly recognize that, although PTC shall take such reasonable steps, or cause such reasonable steps to be taken, to prevent security breaches, it is impossible to maintain flawless security. Accordingly, Subscriber agrees that it will not include in the Hosted Data or otherwise upload to the PLM On Demand System any information or documents that are classified 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. Except with respect to PTC's express obligations in this Section 9, Subscriber is solely responsible for any damage or losses caused by unauthorized destruction, loss, interception, or alteration of the Hosted Data by unauthorized persons. Subscriber acknowledges that PTC's liability under this Section 9 is expressly limited by Sections 11(e) and 12 below.

10. Proprietary Rights. PTC and its licensors are the sole owners of the Workgroup Manager(s), the Hosted Software and of all copyright, trade secret, patent, trademark and other intellectual or industrial property rights in and to the Workgroup Manager(s) and the Hosted Software, and this Agreement does not provide Subscriber with title to or ownership of the Workgroup Manager(s) or the Hosted Software or any copies thereof, but only a right of limited remote use under the terms and conditions of this Agreement.

11. Warranties.

(a) PTC Warranty. PTC warrants that all Host Servers, and the connections for such servers to the Internet, have adequate bandwidth capacity and speed to meet the peak demands of Permitted Users accessing the Hosted Software and Hosted Data up to the Data Storage Allocation so that such Permitted Users will not be denied access by reason of the unavailability of the Host Servers or of the Host Servers' Internet connections other than during Scheduled Downtime. PTC's and its licensors' entire liability and Subscriber's exclusive remedy for any breach by PTC of the warranty given in this Section 11(a) shall be to credit to Subscriber a portion of its User Subscription Fees for the month during which such breach of warranty occurred, which credit shall be equal to the User Subscription Fees for such month multiplied by the Downtime Percentage. No credit shall be due to Subscriber if the Downtime Percentage is less than one percent (1%). The "Downtime Percentage" shall equal the result obtained by dividing (1) the aggregate number of minutes of Transaction Outages during such month by (2) the aggregate number of minutes in such month (excluding the aggregate number of minutes of any scheduled maintenance performed during Scheduled Downtime that would otherwise have qualified as a Transaction Outage if it was not performed during Scheduled Downtime). Subscriber may apply such credit against any outstanding or future User Subscription Fees during the then current Subscription Term or any Renewal Term. Notwithstanding anything to the contrary herein, Subscriber must make a written request for a credit under this provisions within five business days after the end of the applicable Transaction Outage and if Subscriber fails to so request a credit, no credit shall be due to Subscriber.

(b) Subscriber Warranty. Subscriber warrants and covenants that (i) Subscriber's use of the Services shall comply with all applicable laws, (ii) Subscriber shall only provide Authorized Passwords to Permitted Users and shall treat, and require its Permitted Users to treat, such Authorized Passwords as confidential using at least a reasonable standard of care, and (iii) Subscriber and its Permitted Users shall not attempt to access the PLM On Demand System except in accordance with the terms of this Agreement.

(c) Hosted Software Warranty. PTC warrants that, during the Subscription Term, the Hosted Software and the Workgroup Managers will be substantially free from Errors. In the event Subscriber believes that an Error is occurring, Customer shall give written notice to PTC of such Error and supply such information about such Error as PTC may reasonably request. If PTC determines that in fact an Error exists, PTC shall use diligent efforts to remedy such Error. If PTC is unable within thirty days after the date of Subscriber's notice to remedy such Error, Subscriber shall be entitled to terminate this Agreement, subject to Section 7(c). PTC shall have no liability for any problems with Subscriber's connection to the Internet, any problems with the Internet itself, or the Subscriber's or any third party's computer hardware and software, modems, and telephone access lines.

(d) No Additional Warranties. No employee, partner, distributor 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 amendment to this Agreement signed on behalf of Subscriber by an authorized officer and on behalf of PTC by its legal counsel.

(e) Disclaimer of Warranties. Other than the warranties set forth in Sections 11(a) and 11(c) above, PTC disclaims (and Subscriber waives) all warranties, whether express or implied, written or oral, including any warranty of satisfactory quality, fitness for a particular purpose, and/or non-infringement, and/or any warranty that Subscriber will achieve any particular return on investment or warranty arising by statute or from a course of dealing or use of trade, and/or any warranty with respect to the security of the PLM On Demand System or that Hosted Data will not be destroyed, lost, intercepted, or altered by unauthorized persons. PTC does not warrant that the operation or other use of the Hosted Software or the Workgroup Manager(s) will be uninterrupted or error free or will not cause damage or disruption to Hosted Data.

12. Limitations of Liability. The warranty provisions of Section 11 state the entire liability of PTC, its subsidiaries and affiliates and each of their directors, officers, employees or agents with respect to the Services, the Hosted Software, the Hosted Data, and the Workgroup Manager(s), including without limitation any liability for breach of warranty, for breach of website security, or for infringement or alleged infringement of patent, copyrights, trademarks, trade secrets and other intellectual or proprietary rights by the Workgroup Manager(s), the Hosted Software or the Services, or their use. PTC's maximum liability arising out of, or relating to, the creation, license, supply, failure to supply or use of the Services or otherwise relating to this Agreement, whether based upon warranty, contract, tort, or otherwise, shall not exceed the fees paid to PTC under this Agreement during the twelve month period prior to the events that gave rise to the applicable claim. In no event shall PTC, its subsidiaries or affiliates, or any of their directors, officers, employees or agents be liable for special, incidental or consequential damages (including without limitation, damages for loss of profits, business interruption, loss of use of data and any loss caused by the interruption, termination or failed operation of the Internet, third party telecommunication services or third party security features or systems), even if PTC has been advised of the possibility of such damages. Subscriber agrees not to bring any suit or action against PTC and/or its directors, officers, employees or agents for any reason whatsoever more than one year after the cause of action arises. Subscriber recognizes that the charges and fees hereunder are based in part on the disclaimer of warranty and limitation of liability provisions set forth herein and that, in the absence of Subscriber's agreement to such terms, PTC's charges to Subscriber hereunder would be significantly higher. The limitations and exclusions set forth in this Section 12 shall not apply to any claim in respect of death or personal injury if contrary to any applicable law.

13. General.

(a) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of, subject to Exhibit B, the Commonwealth of Massachusetts, U.S.A., without reference to conflict of laws principles (and specifically excluding the Uniform Computer Information Transactions Act and 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, subject to Exhibit B, be litigated exclusively in the federal or state courts situated in the Commonwealth of Massachusetts, and in no other court or jurisdiction. Subscriber stipulates that such courts situated in the Commonwealth of Massachusetts shall have personal jurisdiction over Subscriber's person, and Subscriber 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 waive their right to trial by jury for any dispute arising under this Agreement.

(b) Notices. Any notice or communication required or permitted under this Agreement shall be in writing and, if to PTC, to 140 Kendrick Street, Needham, MA 02494, to the attention of the Corporate Controller with a copy to the General Counsel, and, if to Subscriber to the address set forth on the most recent Product Schedule, and shall be effective on the earlier of receipt or five days after dispatch using a commercially reasonable delivery service.

(c) Assignment, Waiver, Modification. Subscriber may not assign, transfer, delegate or sublicense any of Subscriber's rights or obligations under this Agreement, whether directly or by transferring all or substantially all of Subscriber's assets, stock or equity (whether pursuant to merger, acquisition or otherwise), without PTC's prior written consent. Any such attempted delegation, assignment, transfer or sublicense shall be void and a breach of this Agreement. In the event of a change in control of Subscriber in which the acquiror is not a competitor of PTC, PTC shall not unreasonably withhold its consent to an assignment of this Agreement to the acquiror. No waiver, consent, modification, amendment or change of the terms of this Agreement shall be binding unless in writing and signed by PTC and Subscriber.

(d) Export. Subscriber hereby warrants and represents that neither Subscriber nor any Permitted Users are listed on either the U.S. Department of Commerce's entity list or denied persons list or the U.S. Department of Treasury's list of specially designated nationals. Subscriber shall not export or re-export, directly or indirectly, or provide to any other person or entity for export or re-export, the Clients or any Hosted Data or provide access to the Hosted Software or any Workgroup Manager(s) without first complying with all U.S. and applicable foreign export control regulations, including, without limitation, obtaining any necessary export or re-export consent from the U.S. Department of Commerce or other governmental authority. Subscriber will indemnify and hold PTC harmless against any damage, loss, liability or expense (including attorneys' fees) that PTC may incur as a result of Subscriber's failure to comply with this Section.

(e) Purchase Order. Any purchase order issued by Subscriber in connection with this Agreement or a Product Schedule shall be solely for Subscriber's internal administrative purposes and to facilitate payment. In no event shall the terms of such purchase order (other than the line items which are expressly incorporated by this Agreement) modify or become part of this Agreement or become binding on PTC even if an acknowledgment copy is signed by PTC.

(f) Marketing Materials. Subscriber hereby agrees that PTC may identify Subscriber on its customer lists and in its marketing and advertising materials, and announce that Subscriber is a customer of the PLM OnDemand Service, and reproduce Subscriber's company name, logo, trademark, trade name, service mark, or other commercial designations in connection therewith.

(g) Third Party Beneficiaries. It is agreed by the parties to this Agreement that PTC's 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.

(h) Government Licensees. If Subscriber is a United States governmental entity, Subscriber agrees that the Workgroup Manager and the Hosted Software are "commercial computer software" under the applicable federal acquisition regulations and is provided with the commercial license rights and restrictions described elsewhere herein.

Exhibit A – Certain Defined Terms

"Active User" means a Permitted User of Subscriber who has signed on to the PLM On Demand System by entering an Authorized Password to access the PTC PLM On Demand System.

"Authorized Password" means a unique user name and password for use by one Permitted User only.

"Client" has the meaning set out in Section 4.

"Commencement Date" means the date the PLM on Demand System was made available to Subscriber.

"Committed Seats" means the minimum number of users for whom Subscriber will be required to pay a Committed Seat Subscription Fee each month as set forth on the Product Schedule under "Committed Seats."

"Committed Seat Subscription Fee" means for each month the monthly fee set forth on the Product Schedule to be paid by Subscriber for each Committed Seat.

"Competitor" shall mean EDS, Dassault, Matrix1, SAP &/or Smarteam or any other company that has, or may have in the future, a notable presence in the Product Lifecycle Management industry. For the avoidance of doubt, a "notable presence" shall be one as judged in the reasonable opinion of person with a working knowledge within said industry.

"Converted Seat" has the meaning set out in Section 5(b).

"Data Storage Allocation" means a number of gigabytes (or portions thereof) of electronic memory allocated to Subscriber based on total Committed Seats, as set forth in the Product Schedule

"Data Storage Overage Fee" means the Euro amount set forth on the Product Schedule as the "Data Storage Overage Fee."

"Documentation" means the product specific user guides made available to Subscriber on the PLM On Demand System.

"Effective Date" means the date of the Product Schedule.

"Error" means any material failure by the Hosted Software or a Workgroup Manager to conform substantially to the Documentation such that the utility of the Hosted Software or Workgroup Manager is substantially impaired, provided that Subscriber informs PTC of such failure in writing and PTC can reasonably replicate it, and provided further that any occurrence or failure that constitutes a Transaction Outage shall not constitute an Error.

"Hosted Data" means any information, text, or graphics inputted by Subscriber and/or its Permitted Users into the Hosted Software and stored by the Hosted Software on the Host Server.

"Host Server" means a server operated by PTC, or a PTC subcontractor, which is used to make available to Subscriber, via the Internet, an executing instance of the Hosted Software and the Hosted Data.

"Hosted Software" means the Windchill computer software products, in object code form only, specified in a submitted Product Schedule, and any upgrades or updates to such software that PTC elects, in its discretion, to apply to such Hosted Software.

"Hosted Website" means the website from which Permitted Users access via the Internet the Hosted Software and Hosted Data in accordance with Section 2. The address of the Hosted Website may be changed from time to time by PTC by delivering notice to Subscriber or by posting conspicuous notice on such Hosted Website at least thirty days prior to any website address change.

"Invited User" has the meaning set out in Section 3.

"New Seat" has the meaning set out in Section 5(b).

"Permitted Users" means, collectively, Registered Users and Invited Users.

“PLM On Demand System” means the computer network on which PTC and/or its contractors provide Subscriber and other PTC customers remote access to the Hosted Software, Hosted Data and Workgroup Manager(s) via the Hosted Website.

“Product Schedule” means PTC’s standard form “Product Schedule for PLM On Demand”, completed by Subscriber, which incorporates these terms and conditions.

“PTC” means Parametric Technology Corporation or, if the Subscription purchase was made in a country specified in Exhibit B to this Agreement, the affiliate of Parametric Technology Corporation specified in Exhibit B.

“Registered User” means persons who are employees or consultants of either Subscriber or of a subcontractor, supplier, business partner, or customer of Subscriber, and who Subscriber authorizes to access the Hosted Software and Hosted Data pursuant to Section 3(a).

“Scheduled Downtime” has the meaning set out in Section 2.

“Services” has the meaning set out in Section 2.

“Set Up Fee” means the one time initialization fee set out in the Product Schedule under “Set Up Fee.”

“Set Up Services” means the configuration of the PLM On Demand System chosen by Subscriber and the right to access certain training software as provided in Section 3(e), subject to the limitations set forth therein. The Set Up Services do not include (a) system interfaces to third party applications (e.g., LDAPs, ERP systems, legacy databases or PDM systems), (b) customized functionality, (c) data migration services from legacy or file systems or (d) any Workgroup Managers (unless ordered by Subscriber) or third party CAD adapters. The Set Up Services will be considered complete and accepted upon access to the PLM On Demand System being made available to Subscriber.

“Subscriber” means the person or company identified in the applicable Product Schedule that is purchasing this subscription to the PLM on Demand System.

“Subscriber’s Peak Data Use” means, with respect to a particular month, the greatest number of gigabytes used by PTC to store the Hosted Data in electronic memory at any point during such month, as reported by PTC to Subscriber.

“Super User” has the meaning set forth in Section 3(d).

“Template Options” means the template options for the Hosted Software.

“Template Setup Fees” has the meaning set forth in Section 5(e).

“Term” “Subscription Term,” “Initial Term,” and “Renewal Term” have the meanings set forth in Section 6.

“Transaction Outage” means any period (measured in minutes) during which the Host Servers, and the connections for such servers to the Internet, do not have adequate bandwidth capacity and speed to meet the peak demands of Permitted Users accessing the Hosted Software and Hosted Data up to the Data Storage Allocation, resulting in such Permitted Users being denied access or experiencing unavailable or interrupted access due to lack of capacity or speed of the Host Servers or of the Host Servers’ Internet connections other than during Scheduled Downtime, as more fully described in Section 11(a).

“User Subscription Fee” has the meaning set forth in Section 5(b).

“Variable User Subscription Fee” means for each month the monthly fee set forth on the Product Schedule to be paid by Subscriber for each Active User in such month in excess of the number of Committed Seats.

“Workgroup Manager” means a PTC software program designed to permit CAD software to communicate with the Hosted Software.

“Workgroup Manager Seats” means the number of Registered Users who may use a Workgroup Manager, as specified in the applicable Product Schedule.

“Workgroup Manager Subscription Fee” shall mean the amount specified on the Product Schedule as the “Workgroup Manager Subscription Fee.”

Exhibit B - Purchases from PTC Affiliates

If the Subscriber has purchased the Subscription in one of the following countries, the entity granting the Subscription is specified below and, notwithstanding Section 13(a) of this Agreement, the governing law and jurisdiction shall be as set forth below.

Country	PTC Affiliate Licensing Entity	Governing Law/Jurisdiction
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Belgium, Netherlands, Luxembourg	Parametric Technology Nederland B.V.	Netherlands
Austria, Germany	Parametric Technology GmbH	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
Japan	PTC Japan K.K.	Japan
Norway, Sweden, and Denmark. Finland, Iceland, and the Faeroe Islands	PTC Sweden AB	Sweden
Spain	Parametric Technology España, S.A.	Spain
Switzerland	Parametric Technology (Schweiz) AG	Switzerland
Taiwan	Parametric Technology Taiwan Limited	Taiwan
United Kingdom	Parametric Technology (UK) Limited	United Kingdom

For Subscribers in Europe, the following paragraph supersedes and replaces all of Section 13(a) after the first sentence. This paragraph shall have no applicability to other Subscribers.

Except for claims for interim or injunctive relief, all disputes, controversies or differences arising from or in connection with this Agreement shall first be submitted to mediation for a period of three months from the date of notice of claim. The parties agree to participate and attend the mediation in good faith and undertake to abide by the terms of any reached settlement. Both parties agree to share equally the cost of the mediation.