



1.1.1. This Master Software Agreement Terms and Conditions (the "MSA" or "Agreement") is made and entered into as of _____ (the "Effective Date") by and between PTC Inc. ("Publisher") and _____ on behalf of the entire Department of Defense ("Licensee" or "DoD").

1. Applicability of the MSA

- 1.1. This MSA shall apply to the Publisher software products ("Software" or "Products") licensed by Licensee and annual maintenance services ("Maintenance") ordered from immixTechnology, Inc. ("Contractor") pursuant to an ESI BPA # _____ (the "BPA") between DoD and Contractor under GSA Schedule GS-35F-0265X (the "Schedule") and all BPA Attachments. Licensee may place orders under this MSA by issuing Delivery Order documents in accordance with the ordering procedures of the Schedule and BPA.
- 1.2. Delivery Orders issued hereunder will specify the processes for delivering and receiving Software, as well as the details of the License terms and conditions. The license agreement terms and conditions shall be those set forth in Attachment A to the Schedule, the "Contractor Supplemental Price List Information and Terms," which terms shall include the Publisher "Software Products Licensing Basis" table and "Schedule of Third Party Terms" (which documents are hereinafter collectively referred to as the "License" or "EULA"). Notwithstanding the foregoing, the terms, conditions and responsibilities of the parties regarding Software licenses and Maintenance specified in this Agreement take precedence over any conflicting terms and conditions of the License and/or in any Delivery Order issued hereunder or in Contractor's click-wrap software license agreements furnished with the Software to enable installation, whether or not attached to this MSA or a Delivery Order.
- 1.3. Attached hereto is the Schedule version of Publisher's License to be used for orders placed under the BPA, including Publisher's "Software Products Licensing Basis" table and "Schedule of Third Party Terms." Modification of these documents made to the Schedule to incorporate terms applicable to new or revised Publisher products will apply to purchases of such products made under this Agreement.

2. License Grants

- 2.1. At the time a DoD component wishes to place an order for Publisher's Products or Maintenance, the DoD component and Contractor shall execute a Delivery Order specifying the license grant details, including the license type, unit of measure and units ordered.
- 2.2. Publisher acknowledges that DoD and its users shall not be bound by the terms of a click wrap license or end user terms in Contractor's EULA that conflict with the terms of this MSA.

3. Evaluation of the Software.

- 3.1. If Licensee wishes to evaluate any Software generally available from Publisher, Licensee may order trial Software which Licensee may use for trial non-production purposes only.
- 3.2. Licensee's right to use such Software shall be at no additional charge and shall be: (i) subject to the terms of this License for the period of the evaluation, (ii) used solely for trial non-production purposes only, and (iii) on an "AS IS" basis, without warranties or Maintenance Services of any kind. Publisher shall specify the duration of time for the evaluation. Following



the end of the evaluation period, Licensee will cease using and will delete any such trial software from its computer systems and/or return any such trial software to Contractor.

4. US Government Configuration Baseline

4.1. Publisher has been granted a Certificate of Networthiness ("CoN") for the Products included in this BPA and therefore requirements under the US Government Configuration Baseline shall not apply. Additional Products submitted by Publisher and accepted by DoD for inclusion in the BPA can be added to the BPA by amendment.

5. Net-Centricity

5.1. Publisher has been granted a Certificate of Networthiness ("CoN") for the Products included in this BPA and therefore requirements under Net-Centricity shall not apply. Additional Products submitted by Publisher and accepted by DoD for inclusion in the BPA can be added to the BPA by amendment.

6. Section 508 of the Rehabilitation Act Compliance

6.1. All Products provided under this BPA and MSA must meet the applicable accessibility standards at 36 CFR Part 1194 as required by FAR Case 1999-607. General information regarding the Section 508 Act can be found at the web site www.section508.gov. The Publisher's Section 508 compliance information can be obtained from Publisher.

7. Intellectual Property Rights and Data Ownership.

7.1. New Program Features. If DoD suggests any new features, functionality or performance for the Products and based upon such suggestions Publisher subsequently incorporates new features, functionality or performance into its Products ("New Features"), such New Features, if made available by Publisher as a Product enhancement under Maintenance purchased by DoD hereunder, shall be available to DoD under such Maintenance at no additional charge to DoD.

7.2. Data Ownership. The DoD information furnished to Publisher ("DoD Data") belongs to DoD and Publisher makes no claim to any right of ownership in it. If Publisher is granted access to DoD Data, Publisher agrees to keep the DoD Data confidential as that term is defined in the relevant FAR and DFARS provisions pertaining to confidential information and the confidentiality of U.S. Government furnished information. Upon DoD's request, for any reason whatsoever, Contractor must promptly return all DoD Data in Contractor's possession in the format in which DoD originally provided it.

8. Functionality Protection.

8.1. If during the period in which Publisher is required to offer Maintenance services under a delivery order for Maintenance in accordance with Attachment C-4, Publisher shall have ceased providing Maintenance services for a Product to its customer base in general; or if a new release of a Product no longer performs a material function contained in the prior release of the Products or the licensed version currently used by the DoD (hereafter, the "Unsupported Program") during a period in which DoD would have been entitled to Maintenance services in accordance with Attachment C-4, then Publisher will continue to



deliver, at no additional cost to DoD, Maintenance on the Unsupported Program for the duration of the DoD delivery order for such Maintenance.

8.2. For a minimum period of one year from the date of shipment of a New Product as defined in Section 8.3 below to the DoD, Publisher or Contractor shall extend support to the DoD for such New Product under the same terms and conditions as are offered to its other licensees for the New Product. The choice to purchase support under such terms will be at the discretion of the DoD.

8.3. **Functionality Replacement and Extended Support.**

If, during the term of this Agreement, (i) Publisher discontinues support for any Product licensed to DoD hereunder (the "Discontinued Product"), and (ii) the functionality of the Discontinued Product is repackaged into another Publisher Product (the "New Product"), and (iii) DoD is at such time on a Maintenance plan with respect to the Discontinued Product, Publisher will provide DoD with one license copy of the New Product for each license of the Discontinued Product owned by DoD with no further license fee, provided that the New Product is substantially similar in price, features, and functionality and the DoD returns, destroys, or ceases use of the Discontinued Product. If the New Product contains additional functionality, then the DoD can purchase the New Product at a mutually negotiated fee determined at that time.

The Publisher will provide Maintenance services for the New Product for the duration of DoD's purchase order for Maintenance services following replacement of the Discontinued Product.

8.4. Reserved.

8.5. Reserved.

8.6. **Discontinuance.** Publisher will give DOD one hundred eighty (180) days advance written notice before Publisher or its authorized Resellers discontinue Maintenance support of any Product.

9. **Delivery.**

9.1. **Delivery.** Publisher's delivery of the Products to DoD shall be by electronic download or as otherwise specified in Delivery Orders, FOB Destination.

9.2. **Title and Risk of Loss.** Publisher agrees that DoD will deal directly with Publisher or Contractor on any claims for transit loss or damage and that DoD shall not be required to assert any claims for loss or damage against the common carrier or insurers.

9.3. **Return Charges.** All Products returned by DoD to Publisher or Contractor under a breach of warranty claim under the warranty provision of the License, and all replacement or repaired Products shipped by Publisher or Contractor to DoD to replace Products under warranty will be at Publisher's or Contractor's risk and expense, including transportation charges (round trip charges for replacement or repaired Publisher Products).



10. Audit

10.1. Notwithstanding Publisher audit provisions to the contrary, DoD may perform an internal audit of Software use and will use its best efforts to keep full and accurate accounts that may be used to properly ascertain and verify numbers of licenses, users and subscription parameters in use. Upon Publisher written request, DoD will provide audit reports to Publisher from Licensee's internal audit records. Notwithstanding anything to the contrary in this Section 10.1, to confirm DoD's compliance with the terms and conditions of this MSA, DoD agrees that Publisher may perform usage assessments with respect to DoD's use of the Software. DoD agrees, subject to Publisher compliance with DoD security policies in effect at a particular facility, to provide Publisher access to DoD's facilities and computer systems, and cooperation from DoD's employees and contractors, as reasonably requested by Publisher in order to perform such assessments, all during normal business hours, and after reasonable prior notice from Publisher.

10.2. For any period in which DoD's use of the Products exceeds the number and/or the scope of the licenses in effect during such period for such Product, DoD agrees to pay for any such excess usage, including applicable Product license and Maintenance fees, and without limiting any other rights or remedies to which it is entitled, failure to pay shall be grounds for termination of this MSA by Publisher and/or Contractor.

11. Publisher Warranties, Disclaimers, Exclusive Remedies.

11.1. Intellectual Property Warranty. Publisher represents and warrants that, as of the Effective Date:

11.1.1. Publisher has full power and authority to grant DoD the rights granted herein or in any Delivery orders issued hereunder including the right to use, display and distribute each Product to the extent set forth in the License and this Agreement or any Delivery Order issued hereunder and that each Product is free of any and all restrictions, settlements, judgments or adverse claims;

11.1.2. Publisher has obtained all necessary licenses for DoD to any third party software (including without limitation, all open source licenses) provided with each Product and Publisher has included in the License all third party terms that are applicable to the Products available under this Agreement;

11.1.3. Publisher complies with and shall continue to comply with all third party licenses (including, without limitation, all open source licenses) associated with any third party software provided with each Product;

11.1.4. to the extent any third party software is provided with a Product, DoD's use of such Product as provided by Publisher and in accordance with the terms and conditions of the License, this Agreement or any Delivery Orders issued hereunder will not be in conflict with any third party license requirements and will satisfy all conditions on use, modification or distribution of any such third party software without the need for any additional, unanticipated action or license fees on DoD's part;



- 11.1.5. DoD does not and will not need to procure any rights or licenses to any patents or other third-party intellectual property rights to use as intended in this Agreement, the License, and in any Delivery Orders issued hereunder, the Product delivered by Publisher; provided, however, DoD acknowledges and agrees that Publisher is not responsible for providing licenses to the third party operating system, database, and other components of any kind of the DoD's required operating environment for the Product. Publisher is responsible solely for furnishing the Products as they are defined in Publisher's documentation.
- 11.1.6. the Product does not constitute and, to the best of Publisher's knowledge, will not constitute a misuse or misappropriation of the trade secrets of any third party;
- 11.1.7. any Marks on the Product or its packaging do not infringe any third party trademark rights;
- 11.1.8. the Product and the use thereof, does not infringe on any US patent, copyright, trade secret or other proprietary right of any third party and that Publisher is not aware of any facts upon which such a claim for infringement could be based;
- 11.1.9. the Product will not (i) contain lock out devices or have any virus, disabling device, time bomb, trojan horse, back door or any other harmful component, (ii) replicate, transmit or activate itself without control of a person operating the computing equipment on which it resides, (iii) intentionally alter, damage or erase any data or other computer programs without control of a person operating the computing equipment on which it resides or (iv) contain any code, key, node lock, time-out or other function whether implemented by electronic, mechanical or other means which restricts or may restrict use or access to programs or data based on residency on a specific hardware configuration, frequency or duration of use, or other limiting criteria; provided, however, that Publisher shall be entitled to include in the Products a license key and/or other security measures that activate the Programs for use in accordance with this Agreement, the License or any Delivery Orders issued hereunder, or other security measures or timing mechanisms for licenses that operate on a term basis for the duration of the use period specified in the Delivery Order for such Products, which license key or security measures or timing mechanism shall not be deemed disabling code and shall not be deemed a virus or other code in violation of this sub-paragraph.
- 11.1.10. If Publisher breaches this Intellectual Property Warranty, DoD's exclusive remedy, and Publisher's sole liability, shall be the infringement indemnification provided by Publisher. Notwithstanding the foregoing, DoD is solely responsible for its use of the Products in compliance with the License and this Agreement, and shall be solely responsible for any breach by DoD of such terms. Publisher assumes no liability and provides no indemnification for any breach by DoD of any of the terms of the License or this Agreement.
- 11.2. Program Warranty. Publisher's warranty is set forth in the License and this Agreement.



11.3. Non-complying Product. In the event DoD makes a claim that Publisher has breached its warranty obligation as set forth in the License with respect to a Product during the warranty period specified in the License, DoD will notify Publisher and the parties will proceed as set forth in Section 11.4 below.

11.4. Publisher Remedies. Licensee must report to Publisher in writing any claimed breach of the warranty during the relevant warranty period. Publisher shall use commercially reasonable efforts to correct or provide a workaround for reproducible Errors that are the cause of a breach of the warranty; if Publisher is unable to make the Software operate as warranted within a reasonable time considering the severity of such Error and its impact on Licensee, Licensee shall be entitled to return the Software to Publisher and recover the fees paid by Licensee to Publisher for the license to such Software as set forth in the License.

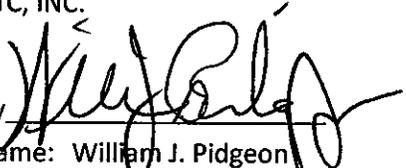
12. License Assignment and Transfer

12.1. Assignment and transfer rights are as set forth in the License.

In Witness whereof, the parties have caused this License to be executed by their duly authorized representatives effective as of the Effective Date.

Publisher:

PTC, INC.

By 

Name: William J. Pidgeon

Title: VP, Corporate Contracts Counsel

Date: JUNE 4, 2013

US ARMY CONTRACTING COMMAND-ROCK ISLAND
On behalf of the US Department of Defense (DoD)

By _____

Name: JILL M. SOMMER

Title: Contracting Officer

Date: