

MSC SOFTWARE LICENSE AGREEMENT

(Americas and AP - July 2010 Version)

- 1 **INTRODUCTION.** Except for Section 5.3, all references to MSC in this Agreement should be read as “Contractor (immixTechnology, Inc.), acting as an independent contractor on behalf of its supplier MSC.” MSC shall be considered a third-party beneficiary of this Agreement. The terms and conditions of this Agreement apply to the licensing of Software and the provision of Maintenance and Services by MSC to Customer hereunder. From time to time, Software licenses, Maintenance and/or Services may be acquired under this Agreement by Customer’s submittal and MSC’s acceptance of an Order Schedule incorporating this Agreement. Each mutually agreed upon Order Schedule shall become an integral part of this Agreement.
- 2 **DEFINITIONS.**
 - 2.1 “**Authorized Users**” means Customer’s: (i) employees, and (ii) contractors working on Customer’s premises who are not competitors of MSC and have agreed in writing to use restrictions and confidentiality obligations no less restrictive than those set forth in this Agreement. Customer shall at all times be responsible for its Authorized Users’ compliance with this Agreement.
 - 2.2 “**Customer or Ordering Activity**” means the entity identified in the MSC quotation or Order Schedule as the “Customer”. Customers or Ordering Activities are those agencies and activities authorized under 552.238-78 Scope of Contract (Eligible Ordering Activities) and GSA Order ADM 4800.2G, February 16, 2011, to use GSA Schedule 70. More specifically, Customers or Ordering Activities that are Executive agencies (as defined in FAR Subpart 2.1), including non-appropriated fund activities as prescribed in 41 CFR 101-26.000, are referred to as “**Executive Customers**”, while all other Customers or Ordering Activities are referred to as “**Other Customers**”.
 - 2.3 “**Customer Computer**” means the Customer computer specifically identified in the Order Schedule. The Customer Computer runs the license manager program accompanying the Software and is sometimes referred to herein as the “license server”.
 - 2.4 “**Documentation**” means the user manuals and other user documentation, in any form and on any media, provided by MSC for use with the Software.
 - 2.5 “**Installation Site**” means the Customer facility identified in the Order Schedule where the Customer Computer resides.
 - 2.6 “**Lease License**” means a license of short-term duration (often a year). The license term of any Lease License acquired by Customer shall be set forth in the Order Schedule, and if not specified shall be one (1) year, subject to termination as set forth in this Agreement (and auto-renewal, if any, as set forth in the Order Schedule). Unless otherwise stated in the Order Schedule, for a Lease License, Maintenance during the license term is included in the Lease License fee.
 - 2.7 “**Maintenance**” means software maintenance and technical support as described in Section 6.1 and 6.2 of this Agreement.
 - 2.8 “**MSC**” means MSC Software Corporation or one of its subsidiaries from whom the Software, Maintenance and/or Services is ordered.
 - 2.9 “**Order Schedule**” means an MSC Order Schedule (or other order document) agreed to by Customer and MSC, and which incorporates this Agreement, by reference or otherwise, and sets forth, among other things, the Software, Maintenance and/or Services ordered.
 - 2.10 “**Paid-up License**” means a license which has a term beginning on the date specified in the Order Schedule and continuing perpetually, subject to termination as set forth in this Agreement.
 - 2.11 “**Services**” means training or other services, if any, purchased under an Order Schedule.
 - 2.12 “**Software**” means the executable code version of the computer program(s) specified in the applicable Order Schedule, including any error corrections, updates and subsequent releases thereto furnished by MSC to Customer under Maintenance.
Additional terms with specific meanings are defined near where they first appear in this Agreement.
- 3 **GRANT OF LICENSE.** Upon MSC’s acceptance of Customer’s Order Schedule, MSC grants to Customer, and Customer accepts from MSC, a non-exclusive, non-transferable license to use the Software specified in the Order Schedule (together with accompanying Documentation, if any), solely for Customer’s own internal data processing purposes and subject to the terms and conditions of this Agreement. This license shall be in accordance with the limitations of the license type(s) and in the quantities specified in the Order Schedule. The license term(s) (duration) shall be as specified in the Order Schedule, subject to early termination as set forth in this Agreement.

4 LICENSE TYPES.

- 4.1 **Nodelock License:** If Customer acquires a *Nodelock License*, installation and use of the Software will be limited to a single Customer Computer. The number of target host-ID's may not exceed the number of Nodelock License(s) purchased. Software licensed under a Nodelock License may only be accessed or used by Authorized Users who are at the Installation Site.
- 4.2 **Named User License:** If Customer acquires a *Named User License*, access to and use of the Software will be limited to Authorized Users who are designated as named users. Each named user designated must be an individual who at all times during the designation meets the definition of an "Authorized User". Group or shared logins are strictly prohibited. In addition to any other restrictions set forth herein, unless otherwise specified in the Order Schedule, Software licensed under a Named User License may only be accessed or used in the country where the Installation Site is located.
- 4.3 **Network (Floating) Licenses:** If Customer acquires a *Local Network License, Country Network License, or Regional Network License*, access to and use of the Software will be controlled by a single Customer Computer (license server) and Authorized Users may access and use the Software on client machines served by the license server, provided that access to and use of the Software at any one time does not exceed the number of floating licenses (or "licensing units" in the case of an MSC "Licensing System" – see Section 4.3.1) acquired by Customer for that Software. In addition, Customer shall strictly comply with the following restrictions: (i) if Customer acquires a *Local Network License* (also sometimes referred to simply as a *Network License*), the Software may only be accessed or used by Authorized Users at the Installation Site (where the Customer Computer (license server) resides) solely on Customer machines located at the Installation Site and served by the license server, or if Customer's local area network is shared by a grouping of Customer facilities, then by Authorized Users at any Customer facility within ten (10) miles of the Installation Site solely on Customer machines located at such Customer facilities and served by the license server; (ii) if Customer acquires a *Country Network License*, the Software may only be accessed or used by Authorized Users at Customer facilities located within the country where the Installation Site is located solely on Customer machines located at such Customer facilities and served by the license server; or (iii) if Customer acquires a *Regional Network License* in the MSC Americas Region, the Software may only be accessed or used by Authorized Users at Customer facilities located in North, Central and South America, solely on Customer machines located at such Customer facilities and served by the license server, except as prohibited by United States and other applicable laws and regulations, including without limitation, those regarding export and import of software and technical data. Any network (floating) license acquired by Customer hereunder shall be deemed a Local Network License, unless it is expressly identified in the Order Schedule as a "Country" or "Regional" Network License.
- 4.3.1 **Licensing System-Specific Terms:** If Customer licenses Software under MSC's *MasterKey Plus™* licensing system, *Enterprise Advantage* licensing system, or other similar MSC licensing system (each a "Licensing System") then in addition to the above terms in Section 4.3, the following Licensing System-specific terms apply: Under a Licensing System, Customer purchases "licensing units" (e.g., "*MasterKey Plus Tokens*" under the MasterKey Plus licensing system, "*Enterprise Advantage License Units*" under the Enterprise Advantage licensing system). A specified number of licensing units are required to run each instance of each Software licensed under the Licensing System. Licensing units acquired under one Licensing System cannot be used to run Software under another Licensing System (e.g., MasterKey Plus Tokens may not be used to run software available under the Enterprise Advantage licensing system). Software licensed under a particular Licensing System is strictly limited to the software identified in the applicable Licensing System attachment (sometimes referred to as a "Table") attached to or incorporated into the Order Schedule or this Agreement. Customer shall not be entitled to use any other software programs under the Licensing System, whether or not such other software programs are marketed by MSC under the same Licensing System.
- 4.4 **Evaluation License:** If Software is licensed to Customer under an *Evaluation License*, Customer agrees that, NOTWITHSTANDING ANYTHING TO THE CONTRARY ELSEWHERE IN THIS AGREEMENT: (i) Customer may use such Software for evaluation, non-production purposes only; (ii) the term (duration) of the evaluation license shall be as set forth in the Order Schedule but shall in no event exceed ninety (90) days; (iii) such Software is provided on an "as is" basis, with no warranties of any kind; and (iv) MSC has no obligation to provide any Maintenance for such Software.

4.5 **Product-Specific Terms.** Certain Software products and/or licensing systems may be subject to additional product-specific terms, as set forth in the applicable MSC schedules, exhibits and/or addenda to Order Schedule(s) or this Agreement.

5 **RESTRICTIONS AND PROTECTIONS.**

5.1 Customer acknowledges that the Software and its structure, organization and source code constitute and contain valuable trade secrets of MSC and/or its suppliers. Accordingly, Customer shall not: (i) reverse-engineer, decompile, disassemble, or otherwise attempt to derive the source code for the Software, or allow any third party to do the foregoing; (ii) modify, adapt, alter, translate or create derivative works from the Software or Documentation; (iii) sublicense, rent, loan, lease, sell, or otherwise transfer all or part of the Software or Documentation to any third party except as expressly permitted under this Agreement; (iv) allow any third party to access or use the Software on a service bureau, application service provider, time-sharing, or similar basis; (v) disable, modify or circumvent the license management system provided with the Software; (vi) remove, alter, or obscure any proprietary notices, labels, or marks from the Software or Documentation; (vii) disclose results of any Software benchmark tests without MSC's prior written consent; (viii) disclose, display, or permit access to or use of the Software or Documentation by persons other than Authorized Users using the Software and Documentation within the scope of the license acquired by Customer; or (ix) otherwise disclose, use or copy the Software or Documentation except as expressly permitted under this Agreement. Customer agrees to notify MSC immediately of any unauthorized access to or use of the Software.

5.2 Customer may copy the Software as reasonably required in conjunction with permitted use under this Agreement and for backup purposes. Any such copies made by Customer must reproduce and include, in exact form, all proprietary rights notices. Customer shall maintain records of the location of each copy of the Software, and the location and identity of the computers on which the Software is installed.

5.3 The Software and Documentation, and all worldwide intellectual property rights therein, are and remain the property of MSC and/or its suppliers. Nothing in this Agreement will be deemed to convey to Customer any title, ownership, or other intellectual property rights in or related to the Software or Documentation, and Customer agrees not to assert any such rights. All rights in and to the Software and Documentation not expressly granted to Customer in this Agreement are reserved by MSC (and/or its suppliers, as applicable).

5.4 Upon fifteen (15) days written notice, MSC or its authorized agent may audit Customer's installation and use of the Software and Documentation. Customer shall cooperate with MSC's audit and provide reasonable assistance and access to information. In addition to any other remedies available to MSC, Customer agrees to pay within thirty (30) days of written notification any fees and charges applicable to Customer's use of the Software and Documentation in excess of Customer's license rights. MSC shall not be responsible for Customer's costs incurred in cooperating with the audit. MSC shall comply with Customer's reasonable security procedures while on Customer's facilities.

5.5 Except as required by applicable law, or as necessary for Customer to enforce or exercise its rights hereunder, Customer shall not disclose the terms of any Order Schedule or MSC's pricing in connection with this Agreement to any third-party.

5.6 Customer acknowledges that the obligations of Customer under this Section 5 are of a special and unique character which gives them peculiar value to MSC for which MSC cannot be reasonably or adequately compensated in damages in the event Customer breaches such obligations. Customer therefore agrees that injunctive relief is an appropriate remedy for such breach or threatened breach. Such relief shall be in addition to, and not in lieu of, any other rights or remedies in law or equity to which MSC may be entitled.

6 **MAINTENANCE.**

6.1 If Customer acquires Maintenance for Software, then during the applicable Maintenance term and subject to the terms and conditions of this Agreement, MSC will provide Customer with error corrections, updates and subsequent releases of the Software (and updated Documentation), if any, that MSC, in its sole discretion, makes generally available at no additional charge to its end-users who are on Maintenance. Maintenance shall not entitle Customer to any release, option, module, or future product, which MSC, in its sole discretion, licenses separately or offers for an additional fee. MSC is under no obligation to develop any future programs or functionality. MSC reserves the right to discontinue, in whole or in part, and at any time, offering Maintenance for any Software or platform.

6.2 Further, if Customer acquires Maintenance for Software, then during the applicable Maintenance term and subject to the terms and conditions of this Agreement, MSC will provide Customer with technical support in English via telephone, email and any other means MSC, in its sole discretion, makes generally available from time to time under technical

support. Technical support is provided only for the then-current major release and the immediately preceding major release (as designated by MSC) of the Software, running unaltered, and on an appropriate hardware and operating system configuration, as specified in the applicable Documentation. Technical support is limited to reasonable assistance in response to Customer's technical support inquiries regarding: (i) Software installation, (ii) Software errors, and (iii) general questions regarding the usage of Software features. Technical support does not include training, consulting, on-site services, or the provision of engineering judgment for a customer-specific simulation. Upon request, Customer shall provide information required by MSC to verify that Customer and the specific license are entitled to technical support.

6.3 If Customer acquires Maintenance, the term for Maintenance shall be as set forth in the Order Schedule. Unless otherwise agreed to by the parties in writing: (i) annual Maintenance renewal, if any, will be at MSC's then-current Maintenance prices, and (ii) to purchase any Maintenance, Customer is required to purchase Maintenance for all Software Customer has licensed from MSC. In the event that Maintenance expires or was not originally purchased, upon the commencement of Maintenance a reinstatement fee will be assessed in accordance with MSC's then current policies. In addition to any other remedies available to MSC, MSC reserves the right to refuse to provide Maintenance if Customer is overdue on any payment obligation under this Agreement.

6.4 MSC's sole and exclusive liability, and Customer's sole and exclusive remedy, for a failure to meet any obligation under Maintenance and failure to cure such deficiency after thirty (30) days written notice will be that Customer may terminate Maintenance for the Software involved and receive a pro-rata return of any Maintenance fees paid for the remaining unused Maintenance period of the Software involved.

7 ORDER AND DELIVERY.

7.1 MSC reserves the right, in its sole discretion, to accept or reject any Customer order.

7.2 MSC reserves the right to deliver the Software and Documentation either by making them available to Customer for electronic download or by physical delivery. Where the Software and Documentation are made available to Customer for electronic download, MSC is under no further delivery obligation under the Order Schedule, whether physical or otherwise. For electronic delivery, the delivery date shall be when the Software is made available to Customer electronically.

7.3 Where physical shipment is made, MSC shall ship (or cause to be shipped) to the physical delivery address set forth in the Order Schedule one copy of the Software media and one set of Documentation (in the form generally available, as determined by MSC) for each Software licensed under the Order Schedule. Delivery terms are F.O.B. Shipping Point. Unless otherwise agreed to in writing by the parties, MSC will determine the method of shipment. Additional media and shipping and handling fee may apply to physical shipments.

7.4 To the extent available, additional Documentation may be purchased at MSC's then-current prices.

8 INSTALLATION AND AUTHORIZATION CODES.

8.1 Customer may install the Software only on the applicable Customer Computer identified in the Order Schedule, provided however that in the case of a Network (Floating) License or a Named User License Customer may install the Software on client machines within the scope of the license type acquired, as long as use of the Software is controlled by the Customer Computer (license server). Customer shall be responsible for installation of the Software and all associated costs. Customer may only relocate the Customer Computer with MSC's prior written consent.

8.2 THE SOFTWARE MAY REQUIRE AUTHORIZATION CODES (also known as "LICENSE KEYS") TO RUN. ANY SUCH REQUIRED AUTHORIZATION CODES WILL BE ISSUED IN ACCORDANCE WITH MSC'S THEN-CURRENT LICENSE MANAGEMENT POLICY. Customer shall provide MSC with the host identifier and any other information reasonably required by MSC for each Customer Computer to permit MSC to generate the necessary authorization codes.

8.3 MSC reserves the right to charge MSC's then-current standard hardware transfer fees whenever MSC, in response to a Customer request, generates and delivers to Customer replacement authorization codes due to a change to the Customer Computer. Prior to any such delivery, Customer shall complete, sign and submit MSC's standard hardware transfer request form. MSC has no obligation to provide replacement authorization codes for changes to the Customer Computer if: (i) the applicable Software is not covered by Maintenance; (ii) the Software is not supported on the proposed substitute computer; or (iii) if Customer is in breach of this Agreement.

9 FEES, TAXES AND PAYMENT.

9.1 The terms in this Section 9.1 apply when Customer orders directly from MSC: Customer shall pay in full all fees payable under this Agreement, including all fees under any and all Order Schedules. All fees will be due and payable in the

currency identified in the applicable Order Schedule, and if no currency is identified, then in the currency quoted and/or invoiced by MSC. Fees are due and payable as set forth in the Order Schedule

- 9.2 Fees are exclusive of all applicable sales, use, value added, GST, and other taxes (and all applicable tariffs, customs duties and similar charges), and Customer will be responsible for payment of all such taxes (other than taxes based on the net income of MSC), tariffs, duties and charges (and any related penalties and interest), payable in connection with this Agreement or the provision of Software, Documentation, Maintenance, or Services hereunder.

10 **WARRANTY; LIMITATIONS.**

- 10.1 MSC warrants that the Software when used as permitted under this Agreement and in accordance with the instructions in the Documentation (including use on a computer hardware and operating system platform supported by MSC) will conform substantially to its associated Documentation for a period of ninety (90) days from the delivery date. Any claim by Customer of a breach of this warranty must be made in writing and within ninety (90) days of the delivery date.
- 10.2 EXCEPT AS EXPRESSLY STATED IN SECTION 10.1 OF THIS AGREEMENT AND TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, NEITHER MSC NOR ANY SUPPLIER OF MSC MAKE ANY WARRANTIES OF ANY KIND, WITH RESPECT TO THE SOFTWARE, DOCUMENTATION, MAINTENANCE, OR SERVICES PROVIDED UNDER THIS AGREEMENT. MSC FURTHER EXPRESSLY DISCLAIMS THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. MSC MAKES NO WARRANTY THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE.
- 10.3 Customer's exclusive remedy, and MSC's sole liability, for Software that does not meet the warranty set forth in Section 10.1 will be, at MSC's option: (i) to correct the non-conforming Software within a reasonable time so that it conforms to the warranty; (ii) to replace the non-conforming Software with another MSC software offering of substantially similar functionality; or (iii) if neither (i) or (ii) is commercially feasible, permit Customer to terminate the license as to the non-conforming Software and refund of the license fees and associated, unused Maintenance fees actually paid to MSC for the non-conforming Software. MSC will have no responsibility or obligation under the foregoing warranty or otherwise with respect to: (a) any Software that has been modified by anyone other than MSC, or (b) failure of the Software caused by Customer or its agents through accident, abuse or misapplication.

11 **LIMITATION OF LIABILITY.**

- 11.1 Customer acknowledges that the Software along with the Documentation, Maintenance and any Services provided hereunder are only an aid in Customer's development of Customer's products and is not intended as a substitute for sound engineering judgment. MSC will not be liable in any manner whatsoever for the data output obtained through use of the Software. Customer shall, at its own expense, indemnify, defend and hold MSC harmless from and against any claim(s) brought against MSC by a third party arising out of, or related to, Customer's use of the data output obtained from use of the Software.
- 11.2 NEITHER MSC NOR ITS SUPPLIERS WILL BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES (INCLUDING LOST DATA, SAVINGS, PROFITS OR REVENUES) ARISING FROM OR RELATED TO THIS AGREEMENT, EVEN IF MSC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR CLAIM. MSC'S TOTAL CUMULATIVE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT, OR OTHERWISE, WILL BE LIMITED TO AND WILL IN NO EVENT EXCEED THE AMOUNT ACTUALLY PAID BY CUSTOMER TO MSC UNDER THIS AGREEMENT FOR THE SPECIFIC ITEM THAT IS THE SUBJECT MATTER OF, OR IS DIRECTLY RELATED TO THE CAUSE OF ACTION. CUSTOMER ACKNOWLEDGES THAT THE FEES REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT MSC WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON LIABILITY. NO ACTION, REGARDLESS OF FORM, ARISING OUT OF OR RELATING TO THIS AGREEMENT MAY BE BROUGHT BY CUSTOMER MORE THAN ONE YEAR AFTER THE CAUSE OF ACTION ACCRUED. TO THE EXTENT ANY APPLICABLE LAW LIMITS THE SCOPE OF THIS SECTION 11.2, THIS AGREEMENT SHALL BE INTERPRETED TO CONFORM TO SUCH LAW IN A MANNER THAT LIMITS MSC'S LIABILITY TO THE FULLEST EXTENT ALLOWED BY LAW.

12 **TERM AND TERMINATION.**

- 12.1 This Agreement will remain in full force until terminated in accordance with this Agreement. Except where otherwise provided in this Agreement, this Agreement may be terminated as follows:

- 12.1.1 Agreements with Executive Customers may be (i) terminated for cause pursuant to FAR 52.212-4(m) or (ii) for convenience pursuant to FAR 52.212-4 (l).
- 12.1.2 Agreements with Other Customers may be terminated (i) by either party upon thirty (30) days prior written notice upon the occurrence of a material breach by the other party of its obligations under this Agreement if such breach remains uncured at the end of the notice period, provided however that no cure period shall apply as to any material breach of Sections 3, 4, 5 and 14 of this Agreement by Customer and MSC may terminate this Agreement effective immediately upon written notice; (ii) by MSC if Customer makes a general assignment for the benefit of its creditors, is the subject of an involuntary bankruptcy petition, or is otherwise subject to insolvency or dissolution proceedings unless Customer is released from such proceedings within ninety (90) days; or (iii) by MSC, if no Software license, Maintenance, Service or order is pending under this Agreement.
- 12.2 Upon termination of this Agreement, all licenses and service rights granted to Customer under this Agreement will automatically terminate, and Customer agrees to immediately cease using all Software and Documentation and promptly uninstall and erase all Software and Documentation (and related authorization codes) from all Customer computers. Within fifteen (15) days following termination, Customer shall return or destroy (at MSC's sole option) all originals and copies of the Software (and related authorization codes) and Documentation, and upon MSC's request, certify in writing that it has returned or destroyed (as applicable) all such originals and copies. Termination of this Agreement shall not relieve Customer from any obligation accrued on or before the date of termination. Provisions that survive termination of this Agreement include those in Sections 5, 6.4, 9, 10, 11, 12, 13, 14, 15, 16 and others which by their nature are intended to survive.
- 13 INTELLECTUAL PROPERTY INDEMNITY.**
- 13.1 MSC shall, at its own expense and subject to the terms of this Agreement indemnify, defend and hold Customer harmless from and against any claim(s) brought against Customer by a third party alleging that the Software or any portion thereof as furnished under this Agreement and used within the scope of the licenses granted to Customer infringes any copyrights or U.S. patents, or violates any trade secrets; provided that Customer gives MSC: (i) prompt written notice of such claim; (ii) assistance and information reasonably requested by MSC; and (iii) to the extent permitted by applicable law, the sole authority to defend and settle such claim.
- 13.2 Notwithstanding the provision of Section 13.1, MSC shall have no liability for any infringement arising from: (i) the integration or combination of the Software together with other software, materials or products not integrated or combined by MSC, if the infringement would have been avoided in the absence of such integration or combination; (ii) the use of other than a current unaltered release of the Software available from MSC, if the infringement would have been avoided by the use of the then-current release; (iii) modifications to the Software that were not authorized by MSC or were undertaken at the request of or direction of Customer; or (iv) Customer's use of the Software in a manner that does not comply with this Agreement.
- 13.3 If the Software becomes, or in MSC's opinion is likely to become, the subject of an infringement claim, MSC may, at its sole option and expense, either: (i) substitute non-infringing software of substantially similar functionality; (ii) modify the infringing Software so that it no longer infringes but remains substantially similar in functionality; (iii) obtain for Customer, at MSC's expense, the right to continue use of such Software; or (iv) if none of the foregoing is commercially feasible, MSC will take back the Software involved, and grant Customer a refund or credit for the unused portion of the license fee and associated unused Maintenance fees actually paid to MSC for the Software involved, using a straight line amortization over sixty (60) months from initial delivery for Paid-up License(s). THIS SECTION 13 STATES MSC'S ENTIRE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR INFRINGEMENT CLAIMS AND ACTIONS.
- 14 **EXPORT.** Customer acknowledges that this Agreement and all orders hereunder are subject to United States laws and regulations relating to export controls. Customer shall comply with all applicable United States export control laws and regulations, and further agrees not to export or re-export the Software, Documentation, technical data or other deliverables provided under this Agreement without: (i) MSC's prior written approval and (ii) obtaining, at Customer's sole cost and expense, any required authorization from the applicable governmental authority as may be required by law. Upon MSC's request, Customer shall promptly cooperate with MSC and provide MSC with any end-user certificates, affidavits, or other documents reasonably requested by MSC in connection with the exporting or importing of any products or services under this Agreement. Customer shall further comply with all applicable foreign export control laws and regulations to the extent not in conflict with applicable United States laws and regulations.

- 15 **U.S. GOVERNMENT CONTRACTS.** The Software provided under this Agreement is commercial computer software as described in the Department of Defense Federal Acquisition Regulation Supplement (DFARS) 252.227-7014(a)(1) and Federal Acquisition Regulation (FAR) 2.101 (commercial item). If acquired by or on behalf of the Department of Defense (DOD), or any component thereof, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in DFARS 227.7202-3, Rights in Commercial Computer Software or Commercial Computer Software Documentation. If acquired by or on behalf of any civilian agency or authorized governmental entity, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in FAR 12.212, Computer Software.
- 16 **MISCELLANEOUS.**
- 16.1 This Agreement, together with any schedules, exhibits and addenda attached hereto, and any and all mutually agreed upon Order Schedule(s) incorporating (by reference or otherwise) this Agreement, constitute the complete agreement between MSC and Customer with respect to the subject matter hereof, and this agreement supersedes all prior or contemporaneous agreements or representations, written or oral, with respect to the subject matter. If Customer issues a purchase order or other instrument covering the Software, Maintenance, and/or Services provided under this Agreement, it is expressly agreed that the terms and conditions of this Agreement supersede any different, conflicting or additional terms and conditions in such purchase order or other customer-issued instrument. This Agreement may not be modified except in a writing signed by the authorized representatives of the parties.
- 16.2 The Software may be accompanied by or contain certain third party software, including open source software (collectively, "Third Party Software"), for which MSC is required to pass-through to its licensees certain additional terms and conditions and/or notices. Such required Third Party Software terms and conditions and/or notices are provided at <http://www.mssoftware.com/thirdpartysoftware> or any other successor site designated by MSC. Customer agrees to be bound by and comply with the applicable Third Party Software terms and conditions, if any. Hardcopies of the Third Party Software terms and conditions may be printed from the foregoing site. **THIRD PARTY SOFTWARE IS PROVIDED "AS-IS," WITHOUT WARRANTIES OR LIABILITY OF ANY KIND BY MSC.**
- 16.3 This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns. However, Customer may not assign or transfer, by operation of law or otherwise, this Agreement (or any of the licenses or other rights or obligations hereunder), without MSC's prior written consent. Any attempted assignment or transfer in violation of the foregoing will be void. MSC may subcontract a service, or any part of it, to subcontractors selected by MSC, provided MSC will remain responsible to Customer for such subcontractor's performance in accordance with this Agreement.
- 16.4 If any provision of this Agreement is invalid, the parties agree that such invalidity will not affect the validity of the remaining portions of this Agreement. The parties further agree to substitute a valid provision for the invalid provision which most closely approximates the intent and economic effect of the invalid provision.
- 16.5 Ambiguities, inconsistencies, or conflicts in this Agreement, will not be strictly construed against the drafter of this Agreement; rather, they will be resolved by applying the most reasonable interpretation under the circumstances, giving full consideration to the intentions of the parties at the time of contracting. The section headings in this Agreement are for convenience only and will not be of any effect in constructing the meaning of the Sections.
- 16.6 Except for the making of payment under this Agreement, neither party will be held liable or responsible for delay or failure to perform any of such party's obligations under this Agreement occasioned by any cause beyond its reasonable control, including but not limited to war; terrorist acts; civil disturbance; fire; flood; earthquake; acts or defaults of common carriers; governmental laws, acts, regulations, embargoes or orders; or any other cause, contingency or circumstance not subject to such party's reasonable control. The affected party will resume full performance of interrupted obligations as soon as practicable upon cessation of intervening causes.
- 16.7 Notices permitted or required under this Agreement shall be in writing and delivered personally (including courier service), by certified or registered mail, return receipt requested, or by confirmed facsimile transmission. Notices shall be effective upon receipt. If notice is sent to MSC, it shall be directed to **Attn: Legal Department**.
- 16.8 Customer acknowledges and agrees that any and all consulting services performed or to be performed by MSC for Customer are independent of Customer's purchase and use of the Software licenses. Customer further agrees that payment under this Agreement for items purchased hereunder is in no way dependent or in any other way associated with the commencement, completion or delivery of consulting services.

- 16.9 Signed copies of Order Schedules and related forms provided via facsimile or otherwise will be deemed binding to the same extent as original documents. The English language version of this Agreement is legally binding in case of any inconsistencies between the English version and any translations.
- 17 **SOFTWARE MIGRATION OR UPGRADE.** If a Software license is migrated or upgraded, the old license is deemed to have automatically terminated and Customer no longer has any right to use the terminated license.

MasterKey Plus Addendum

The terms and conditions of this MasterKey Plus Addendum (“Terms”) apply when Customer licenses Software under MSC’s **MasterKey Plus™** licensing system. These Terms are in addition to, and not in lieu of, the terms and conditions of the MSC software license agreement (and any amendments thereto) entered into by MSC and Customer (the “Agreement”). In the event of a conflict between these Terms and terms and conditions of the Agreement, these Terms shall prevail with respect to Software licensed by Customer under the MasterKey Plus licensing system. Unless otherwise defined in this Addendum, capitalized terms shall have the same meaning as in the Agreement.

MasterKey Plus Licensing System. MasterKey Plus is a flexible licensing system under which Customer may use multiple software products by purchasing licensing units known as MasterKey Plus Tokens (hereinafter, “Tokens”). A specified number of Tokens is required to run each floating license of software licensed under MasterKey Plus. The specified number of Tokens is “checked out” from Customer’s pool of Tokens when each floating license of software is executed and returned to Customer’s Token-pool after usage. Token requirements are set forth in the applicable MasterKey Plus Table.

Licensed Software. Software licensed by Customer under the MasterKey Plus is strictly limited to: (i) the “Base Products” identified in the applicable MasterKey Plus Table; and (ii) any “Optional Product(s)” separately licensed by Customer under the MasterKey Plus licensing system for an additional fee, as specified in the applicable order documentation.

Base Products. By purchasing Tokens under MasterKey Plus, Customer licenses the Software identified in the applicable MasterKey Plus Table under “Base Products”. Access to and use of a Base Product at any moment in time will be limited by the number of Tokens then available for check-out in Customer’s Token-pool.

Example: If each floating license of Base Product “A” checks out 50 Tokens, and at a given time 250 Tokens are available for check-out, then Customer can run up to 5 floating licenses of Base Product “A”.

Optional Products. The purchasing of Tokens does not result in any license with respect to Optional Products. Customer may, subject to availability, purchase a license to use Optional Product(s) within the MasterKey Plus licensing environment (i.e., with Customer’s Token-pool). The license fees (and any associated Maintenance fees) for any licensed Optional Product(s) will be as set forth in the applicable order documentation. Payment of the license and Maintenance fees for Optional Products does not entitle Customer to additional Tokens. Optional Products may be available for licensing under “Token-Based” and/or “Seat Based” models, each of which is described below.

1. **“Token-Based” Model.** If an Optional Product is licensed under a “Token-Based” model, then the “quantity” for that Optional Product as set forth in the applicable order document shall reflect the number of Tokens enabled for use of that Optional Product, and access to and use of each such licensed Optional Product at any moment in time will be limited by the number of enabled Tokens then available for check-out. The licensing (enablement) of each Optional Product requires payment of additional fees. To license any Optional Product under the “Token-Based” model, Customer is required to pay a license (enablement) fee for all Tokens in the Customer Token-pool. No partial enablement of the Token-pool permitted.
2. **“Seat-Based” Model.** If an Optional Product is licensed under a “Seat-Based” model (formerly sometimes referred to as “Premium Option”), then the “quantity” for that Optional Product as set forth in the applicable order document shall reflect the number of floating license(s) (or “seat(s)”) acquired for that Optional Product, with each such floating license requiring a designated number of Tokens to run. Access and use of an Optional Product licensed under the Seat-Based model at any moment in time will be limited by both the number of seats acquired for that Optional Product and the number of Tokens then available for check-out.

MSC reserves the right to: (i) discontinue, in whole or in part, and at any time, offering Maintenance for any Software; or (ii) change, at any time and without notice, the list of products made available for future licensing under MasterKey Plus. Some

products and modules have dependencies and prerequisites. For avoidance of doubt, all restrictions and limitations in the Agreement shall apply, including without limitation, restrictions on authorized users, usage, the license term, and the geographical access limitations on network (floating) licenses. All references in this Addendum to “purchase” of Tokens or software shall mean purchase of a license to use software. Software is licensed, not sold.

SimManager License Management (Rev. June 2012)

As a server/client application that enables users to manage simulation data and to execute remote processes on external compute resources, a typical implementation of SimManager will require multiple license types in operation. Your order schedule documents the licenses that apply to your installation. This document provides a description of the various component license types. There are four types of licenses that are applicable to SimManager:

- SimManager Portal License
- SimManager User License
- Add On Module License
- Concurrent Process License

SimManager Portal License

A SimManager Portal refers to a single logical instance of SimManager with a unique URL address, dedicated database instance, security layer, and portal configuration. A single SimManager Portal may be supported by either a single web application server or a cluster of web application servers in a load-balanced/high-availability configuration. In the latter case, the SimManager server software will be installed on each of the web application servers (see Note below). A Portal License is required to operate a single SimManager Portal in either case.

Note: Customers are only required to purchase a single Portal License to operate a single SimManager Portal in a clustered environment. However, it is required that Portal Licenses are used for each SimManager server that is installed in a clustered environment. The additional Portal Licenses that are to be used exclusively for the servers in the clustered environment supporting the original, single portal can be obtained at no additional charge from MSC upon request through your MSC account manager. Please consult with your account manager to request adequate licenses to run SimManager in your particular environment.

Additional and separate SimManager Portals (with its own URL, dedicated database instance, security layer, and portal configuration) require a separate Portal License purchase, even if located in the same facility or on the same hardware.

In the case of multi-site configuration of a single SimManager Portal, the second, third, etc., instance of the same SimManager Portal will also require a separate Portal License purchase.

SimManager User Licenses

SimManager supports two different user license schemes, referred here as "Named User License Model" or a "Network Client License Model (legacy)". The following sections describe the two different models.

“Network Client License Model (Legacy)”

The Network Client License Model is a legacy model used primarily to support installations that are being upgraded from SimManager R3.x and for large environments (100+ users) under special approval. The following provides a description of the Client Access license used in a “Network Client License”-based implementation.

A Client Access license (sometimes referred to as concurrent or floating) allows multiple users to utilize the same license, but not simultaneously. When a user logs into SimManager, a Client Access license is checked out from the license server. When the user logs out, or when the Web server terminates its session due to inactivity, the Client Access license is released and is available for use by another user. The maximum number of users who can log into the SimManager portal simultaneously is equivalent to the total number of SimManager Client Access licenses.

Note: The network Client Access license authorizes a maximum number of simultaneous or concurrent users, which is equivalent to the number of Client Access licenses. An authorized user is permitted to login and run multiple sessions of SimManager, however, each session will consume an additional Client Access license. When individual users consume multiple licenses, it may result in denied access to other users if all licenses have been consumed.

Installation

During the installation process of SimManager, you will be presented the option to select either a "Named User License Model" or a "Network Client License Model (legacy)". To use the “Network Client License Model”, this option must be selected during installation. Refer to the SimManager Installation Guide and the SimManager Administration Guide for more information.

Named User Licenses

The following provides a description of the various user license types for a “Named User”-based implementation:

1. A SimManager Full Client license for each user who will be creating data and executing actions within SimManager
2. A SimManager Limited Client license for each user who will be viewing/accessing data within SimManager

SimManager Full Client License

A Full Client License enables a user in SimManager complete access to data/actions. The user privileges can be further controlled by the authorization layer within SimManager based on the user’s role and access to projects. Each user activated by the SimManager administrator will consume one license, independently of how the user is logged in and how many sessions the user has open (e.g. from the web client or other thick client). The license will only be released when the user is made inactive by the SimManager administrator. Even if the user logs out of SimManager, the license will NOT be released.

SimManager Limited Client License

A Limited Client License enables a user in SimManager read-only access to the data and only limited actions in the system (e.g. change password, search). The user privileges can be further controlled by the authorization layer within SimManager based on the user’s role and access to projects. Each user activated by the SimManager administrator will consume one license, independently of how the user is logged in and how many sessions the user has open (e.g. from the web client or other thick client). The license will only be released when the user is made inactive by the SimManager administrator. Even if the user logs out of SimManager, the license will NOT be released.

Active vs. Inactive Users

Within the Administration Workspace of SimManager, the system administration can assign either a Full Client License or a Limited Client License to each user. In addition, each user can be given the status of Active "true" (Active) or Active "false" (Inactive). Only active users in the system will be assigned an actual user license based on their assigned license type, Full Client or Limited Client. Additionally, only the maximum number of

available licenses of either license type can be assigned to users. For example, if there are 20 users registered in SimManager and there are 5 Full Client Licenses and 5 Limited Client Licenses, then there can only be 5 Active Full Client users and 5 Active Limited Client users. All other attempts to assign the other 10 users an Active status will fail, until one of the 5 Active Full or 5 Active Limited clients are made Inactive.

Additionally, there is a minimum of one (1) required SuperUser in the system. By default, "SimMan", is the SuperUser defined in the out of the box configuration, but this user can be replaced by another designated SuperUser and "SimMan" can be made Inactive, thus releasing its Full Client License.

During initial setup of SimManager and the assignment of Active status and the License Type to each user, the "License Checked Out" status may indicate "false" to a user who has been assigned both Active status and a specific license type. If this is the case, the user has been assigned a license but it has not been checked out from the license server yet and only upon login by the user, will the "License Checked Out" status change from "false" to "true". When the user logs out, the "License Checked Out" status will remain "true", indicating a license remains checked out and allocated to that user. The license will only be released if the user is made Inactive or the SimManager server is shut down.

Installation

During the installation process of SimManager, you will be presented the option to select either a "Named User License Model" or a "Network Client License Model (legacy)". For both production and development instances of SimManager you will select "Named User License Model". After installation is complete, the users can then be administered from the SimManager web user interface. Refer to the SimManager Installation Guide and to the SimManager Administration Guide for more information.

Add-on Module Licensing

SimManager offers additional add-on modules for use with SimManager, which provide access to features not required by every SimManager user. These modules are separately licensed within SimManager, which are separately purchased for use with a SimManager portal. Add-On Modules can be accessed by either a "Named User License Model" or a "Network Client License Model (legacy)", but Add-On Modules are named user license only. In order for a user to have access to a module, they will need to be granted access to the module via a Module Administrative action. When the user is assigned to the module, a license will be checked out for that user granting them permission to access the module. When the user is removed, the license will be available to be assigned to another user.

Two examples of add-on modules available as of the date of this document are given below.

Report Generator

The Report generates formal reports in HTML, PDF, PowerPoint or Word format from SimManager-stored objects. Reports may be saved as templates which can be auto-executed as part of a multi-step process.

Simulation Generator

The Simulation Generator is used to define the assembly of load case-specific simulations. An analyst can build up FE models based on a flexible definition of the structure of models, load cases, assembly, analysis, and post-processing methods. Any number of analysis runs can be started at once after changing one or more sub-models.

SimManager Development Portal Package

The Development Portal Package is to be used for development and testing of a SimManager Portal in a non-production environment. The Development Portal Package consists of Portal and Concurrent Process licenses with client access controlled by Full Client and Limited Client licenses, as described under "Named User Licenses."

All licenses must be established on a non-production license server separate from the production license server. The Development Portal Package licenses cannot be used or combined with standard licenses that are being used for a production SimManager Portal.

Note: A Development Portal Package may be required for each stage of a non-production SimManager Portal. Some companies may have a multi-stage development environment that includes development, test and pre-production prior to enabling SimManager in production. Each stage of SimManager prior to production may require a separate Development Portal Package if it is to be run simultaneously with other non-production versions of SimManager. Additionally, each developer of a SimManager Portal may require a Development Portal Package. Please consult with your account manager to appropriately plan the required number of Developer Portal Packages.

SimManager Concurrent Process License

A Concurrent Process License enables the execution of remote, concurrent processes from SimManager. The running of these jobs is controlled through a SimManager queuing interface. Remote jobs may be executed by a component called Action Runner that provides the communication to and from SimManager or by directly queuing jobs on remote compute resources. While users in SimManager can initiate an unlimited number of requests, only a controlled amount of remote processes can execute (run) at any given point in time. The following remote process will check out a concurrent process license:

- Assemble SimActivity delivered as part of the product
- Solve SimActivity delivered as part of the product
- PostProcess SimActivity delivered as part of the product
- Remote Actions generated by Custom Action Builder
- Remote Actions that are registered by the Customer that were not part of the delivered product. These may include, but not limited to
 - Remote Data enrichments scripts
 - Remote Template actions
 - Custom SimActivities that run remote
- In future, other specific remote actions or processes maybe licensed as SimManager Concurrent Process Licnese

If the maximum number of processes has reached the limit, the next remote process is "queued" internal to SimManager. SimManager will periodically check the remote process that are executing. When the count of executing processes drops below the maximum allowed, the next process in the queue will be executed. The internal SimManager queue will follow a first in, first out (FIFO) queue model.

The above actions should be configured in conjunction with a queue (or multiple queues) that manage how many "jobs" can be run concurrently. This can be controlled at deployment time by an appropriate setup of the job-submission system that defines the number of queues as Concurrent Process licenses are available.

Third Party Software

The SimManager software may be accompanied by or contain certain third party software, including open source software (collectively, "Third Party Software"), for which MSC is required to pass-through to its licensees certain additional terms and conditions and/or notices. Such required Third Party Software terms and conditions and/or notices are provided at <http://www.mssoftware.com/thirdpartysoftware> or any other successor site designated by MSC. Customer agrees to be bound by and comply with the applicable Third Party Software terms and conditions, if any. Hardcopies of the Third Party Software terms and conditions may be printed from the foregoing site. **THIRD PARTY SOFTWARE IS PROVIDED "AS-IS," WITHOUT WARRANTIES OR LIABILITY OF ANY KIND BY MSC.**

