

# AVEVA SOLUTIONS LIMITED

## AVEVA Subscription Terms

### PART A – TERMS

All defined terms used in this Agreement shall have the meaning given to them in Part B of these AVEVA Subscription Terms, or as set out in the Subscription Agreement.

#### 1. COMPLIANCE WITH THIS AGREEMENT AND APPLICABLE LAWS.

- 1.1 Client may Use the AVEVA Services only in accordance with the terms and conditions of this Agreement and in relation to its activities under this Agreement Client shall comply fully with all Applicable Laws of the country in which it is incorporated and registered and in which the AVEVA Services are to be Used.
- 1.2 Client warrants that it has not been in breach of any Applicable Laws that would affect its receipt, or AVEVA's provision of, the AVEVA Services.

#### 2. PROVISION OF THE AVEVA SERVICES AND SERVICE LEVELS.

- 2.1 AVEVA shall provide the AVEVA Services to Client for its internal business purposes only, and subject to any restrictions set out in the Subscription Agreement.
- 2.2 AVEVA will provide access to the AVEVA Services through AVEVA Connect.
- 2.3 Subject to any Service Levels set out in the Subscription Agreement, AVEVA shall use commercially reasonable endeavours to make the AVEVA Application(s) available 24 hours a day, seven days a week except for planned or emergency maintenance (and AVEVA shall use reasonable endeavours to notify Client in advance of such maintenance, such as by posting a notification on AVEVA Connect), and does not warrant that they will be un-interrupted or error-free.
- 2.4 AVEVA shall provide its standard support services in effect from time to time (or such specific support services set out in the Subscription Agreement) to Client Account Administrator(s) (and unless otherwise agreed, Client Account Administrator(s) are responsible for providing Client's internal support to Client Account Users).
- 2.5 Client acknowledges that the AVEVA Services may enable or assist it to access or purchase Third Party Content (including products and services via third-party websites) and that it does so solely at its own risk. AVEVA makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of Third Party Content. Unless prevailing Third Party Content terms apply (which may include separate fees and charges), Client's Use of Third Party Content is governed by the terms of this Agreement.

#### 3. CLIENT OBLIGATIONS.

- 3.1 In AVEVA Connect the Client Account Administrator can register for User Credentials for Client Account Users for their access to the AVEVA Services. User Credentials are personal and Client may not sell, transfer or sublicense them to any other person.
- 3.2 Client may make the SaaS Application(s) available for Use by Affiliates and Permitted Third Parties only to the extent expressly permitted in the Subscription Agreement, provided that Client shall be liable for their acts and omissions and any non-compliance with the terms of this Agreement.
- 3.3 Client is solely responsible for its Use of the AVEVA Services and shall:
- (a) make all Client Users aware of the terms of this Agreement;
  - (b) be liable for the Fees for the number of Client Users who the Client Account Administrator has registered to Use the AVEVA Services;
  - (c) not allow any User Credentials to be used by more than one individual Client User unless it has been reassigned in its entirety to another individual, in which case the prior Client Users shall no longer have any right to Use the AVEVA Services;
  - (d) ensure that its Use of the AVEVA Services and provision of any Client Content or Client Submissions will not violate any Policy or Applicable Law;
  - (e) provide AVEVA with such co-operation as required by AVEVA to provide the AVEVA Services;
  - (f) be responsible for all activities of Client Users and any use of Client's User Credentials and shall ensure that its User Credentials are kept confidential and secure. AVEVA shall not be responsible for any unauthorized access through Client's User Credentials;
  - (g) obtain and shall maintain all necessary licences, consents, and permissions necessary for Client Content; and
  - (h) be solely responsible for (i) any Client Submissions and Client Content, including the legality, reliability, integrity, accuracy and quality of Client Submissions and Client Content, and (ii) procuring and maintaining any systems, network connections and telecommunications links necessary to access the AVEVA Services or use any API.
- 3.4 Client shall use all reasonable endeavours to prevent any unauthorised Use of the AVEVA Services and, in the event of it becoming aware of any such unauthorised Use, shall promptly notify AVEVA.
- 3.5 AVEVA shall be permitted to audit Client's Use of the AVEVA Services through the functionality of AVEVA Connect.

#### 4. CHANGES IN AVEVA SERVICES.

- 4.1 AVEVA may update, revise or discontinue the functionality of AVEVA Content or Third Party Content at any time (including implementing updates, fixes and patches), and Client will be provided with access to

such updated or revised functionality as it is made available to other AVEVA clients in accordance with Client's subscription.

- 4.2 AVEVA may discontinue any SaaS Application(s) or change or remove any Functionality from time to time. AVEVA will provide (a) at least six (6) months' prior notice to Client Account Administrator(s) if AVEVA decides to discontinue a SaaS Application or (b) at least three (3) months' prior notice to the Client Account Administrator(s) if AVEVA decides to discontinue any material Functionality, except that AVEVA will not be obligated to provide such notice pursuant to (a) or (b) if the discontinuation or change is necessary to (i) address a Force Majeure Event on a temporary basis, (ii) respond to a Claim, (iii) comply with Applicable Law, or (iv) where AVEVA's licensors have provided a shorter or no notice to AVEVA.
- 4.3 AVEVA may change or discontinue any application programming interface (API) from time to time. For any change or discontinuation of an API that is not also a change or discontinuation of a SaaS Application or Functionality as per clause 4.2, AVEVA will continue supporting the previous version of such API for six (6) months after the change or discontinuation, except if doing so could result in (a) a Claim, or (b) commercially unreasonable efforts, or (c) AVEVA breaching Applicable Laws.
- 4.4 AVEVA may change, discontinue, or add Service Levels from time to time, but will provide ninety (90) days advance notice to Client before materially changing any Service Level.
- 4.5 If Client reasonably determines that any change or discontinuation under this clause 5 has a material adverse impact on its rights under this Agreement, or its Use of the AVEVA Services, Client shall inform AVEVA in writing within 30 days of becoming aware of the change or discontinuance and, if AVEVA is unable to remediate the impact to Client's reasonable satisfaction within 30 days, Client may terminate its subscription to the relevant SaaS Application for convenience and AVEVA shall, as its sole liability, refund any pre-paid Fees to Client for the unexpired term of its subscriptions to the relevant SaaS Application.
- #### 5. DATA SECURITY AND DATA PRIVACY.
- 5.1 Subject to where the Subscription Agreement sets out a specific Region chosen by Client for hosting Client Content, AVEVA shall host and provide the AVEVA Services from such data centres (and such locations) as AVEVA may decide (including as necessary for redundancy and back-up purposes), provided that AVEVA and its licensors will implement commercially reasonable measures to secure and protect the SaaS Application(s) and any Client Content.
- 5.2 AVEVA will only use Personal Data it collects (including in any Account Information) in accordance with the AVEVA Privacy Policy, and Client consents to such usage. The AVEVA Privacy Policy does not apply to Client Content.
- 5.3 Except as requested by AVEVA to set up User Credentials or as set out in the Subscription Agreement, Client shall not upload any Personal Data as Client Content.
- 5.4 Neither AVEVA nor its licensors will access or use Client Content except as necessary to maintain or provide the AVEVA Services, as directed by Client, or as necessary to comply with the Applicable Laws or any governmental, regulatory or court order. Unless it would be in violation of the Applicable Laws or any governmental, regulatory or court order, where AVEVA has been provided with prior notice AVEVA will give Client reasonable notice of any requirement to comply with such disclosures, to allow Client to seek a protective order or other appropriate remedy.
- 5.5 As necessary to ensure compliance with this Agreement, and for preventing fraud, AVEVA and its licensors may collect and process Use Metrics and Billing Metrics and information relating to the provision of the AVEVA Services.
- #### 6. FEES AND PAYMENT TERMS.
- 6.1 Fees for Use of SaaS Application(s) are as set out in the applicable Subscription Agreement, and are stated exclusive of any Indirect Tax (which Client shall pay in addition to the Fees).
- 6.2 Unless otherwise stated in the Subscription Agreement:
- (a) AVEVA will invoice Client yearly in advance always starting with the Start Date (as set out in the Subscription Agreement) and each anniversary thereafter for any renewal; and
  - (b) Client will pay AVEVA all invoiced amounts within thirty (30) days of the date of the invoice.
- 6.3 If Client has used the AVEVA Services in excess of its subscriptions, Client shall pay such underpaid Fees and/or for such excess usage based on the Fees payable by Client.
- 6.4 Fees (if any) for any new Functionality to a SaaS Application will be effective when Client and AVEVA agree by way of amendment to this Agreement that such new Functionality shall be subscribed to by Client.
- 6.5 Unless otherwise stated in the Subscription Agreement, AVEVA may increase the Fees once every twelve (12) months by providing not less than sixty (60) days' advance notice prior to the next anniversary of the subscription term. If an increase in Fees exceeds ten percent (10%) as compared to the previous twelve (12) month-period Fees, Client may terminate this Agreement for convenience with not less than thirty (30) days' notice to the effective date of the increase.
- 6.6 AVEVA may elect to charge Client interest on all late payments at the rate of two (2) percentage-points above LIBOR per month, compounded

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- quarterly, from the due date until payment, whether before or after judgement.
- 7. TAX.**
- 7.1 Each Party will be responsible, as required under Applicable Law, for their own assessment and payment of all taxes and other governmental fees and charges (and any penalties, interest, and other additions thereto) that are imposed on that Party with respect to this Agreement.
- 7.2 Client will provide such information required by AVEVA to determine whether AVEVA is obligated to collect Indirect Taxes from Client. AVEVA will not collect any Indirect Tax if Client furnishes AVEVA with a properly completed and valid exemption certificate or a direct payment permit certificate for which AVEVA is able to claim an available exemption from such Indirect Tax.
- 7.3 All amounts payable by Client under this Agreement will be paid to AVEVA without setoff or counterclaim and without any deduction or withholding (for taxes or otherwise), and Client will pay such additional amounts as are necessary so that the net amount received by AVEVA is equal to the amount due and payable under this Agreement without such withholding or deduction. AVEVA will provide Client with such tax forms as are reasonably requested in order to reduce or eliminate the amount of any withholding or deduction for taxes in respect of payments made under this Agreement.
- 8. SUSPENSION.**
- 8.1 AVEVA may suspend Client's and/or any individual Client User's right to Use all or part of the AVEVA Services immediately upon notice to Client (and Client and/or Client Users must immediately cease Access the same) if (a) Client fails to pay any Fees or Indirect Tax when they become due, (b) there is a Change of Control of Client or any Affiliate or Permitted Third Party who uses the AVEVA Services, or (c) in AVEVA's reasonable opinion, Client's Use of the AVEVA Services (i) poses a security risk or adversely impacts AVEVA's or its licensor's systems or the AVEVA Services, (ii) is in breach of Applicable Laws, including Trade Control Laws, or (iii) is in breach of this Agreement.
- 8.2 AVEVA will use commercially reasonable efforts to restore Client's rights to Use the suspended AVEVA Services as soon as possible after Client has resolved the problem giving rise to the suspension.
- 8.3 If AVEVA suspends Client's right to Use any of the AVEVA Services, Client remains responsible for all Fees during the period of suspension; and Client will not be entitled to any refund for any period of suspension.
- 9. TERM, TERMINATION, EFFECT OF TERMINATION.**
- 9.1 This Agreement will remain in effect for the Subscription Term set out in the Subscription Agreement, or until terminated by either party in accordance with its terms.
- 9.2 Either Party may terminate this Agreement immediately if the other Party is in material breach of this Agreement and either (a) such breach is irremediable, or (b) such breach is remediable and remains uncured for a period of thirty (30) days from receipt of notice by the other Party.
- 9.3 AVEVA may also terminate this Agreement if (a) Client fails to pay any Fees or Indirect Tax when they become due, (b) AVEVA has exercised the right to suspend the AVEVA Services and Client has not cured the cause of the suspension within thirty (30) days from receipt of notice by AVEVA, or (c) there is a Change of Control of Client.
- 9.4 Upon the Termination Date (a) except as provided in clause 10, all of Client's rights, permissions and licences to the terminated AVEVA Services will immediately terminate and Client will immediately cease Use of the AVEVA Services and shall return or, if instructed by AVEVA, destroy all AVEVA Content and Confidential Information in Client's possession (except for AVEVA Content that is publicly available), and (b) the following clauses: 6, 7, this 9.4, 10, 12 - 15, 17, 19, 23 and 25 and Part B, and any other clause intended to apply or come into effect will continue to apply in accordance with their terms.
- 10. REMOVAL OF CLIENT CONTENT.**
- During the thirty (30) days following the Termination Date, AVEVA will not take action to remove any Client Content as a result of the termination. In addition, during the thirty (30) days following the Termination Date, AVEVA will allow Client to retrieve any remaining Client Content from the SaaS Application(s), unless the same would be (a) prohibited by Applicable Laws, or (b) Client has not paid all Fees due under this Agreement. For any Use of the AVEVA Services pursuant to this clause 10 during the thirty (30) days following the Termination Date, the terms of this Agreement will continue to apply. At the expiry of this thirty (30) day period, Client will no longer be able to access or retrieve such Client Content.
- 11. INTELLECTUAL AND OTHER PROPRIETARY RIGHTS.**
- 11.1 Client or Client's licensors own all right, title, and interest in and to Client Content. Client hereby grants AVEVA a limited, revocable, non-exclusive, non-sublicensable (except to AVEVA's subcontractors who provide services connected with the AVEVA Services), non-transferrable license to access, use and host the Client Content during the Term to provide the AVEVA Services.
- 11.2 AVEVA, or its licensors retain all rights, title, and interest in and to the AVEVA Services and all related technology and Intellectual Property Rights therein. Except as provided in this clause 7, Client obtains no rights under this Agreement to the AVEVA Services, including (but not limited to) any Intellectual Property Rights in the AVEVA Services.
- 11.3 Subject to the terms of this Agreement, AVEVA grants Client a limited, revocable, non-exclusive, non-sublicensable (except as specifically provided otherwise in this Agreement), non-transferrable license to Use the AVEVA Services during the Term solely in accordance with the terms of this Agreement.
- 11.4 Client Submissions will be governed by the terms of the Apache License, Version 2.0, unless Client requests and AVEVA consents in writing to another license supported by AVEVA.
- 11.5 Neither Client nor any Client User may use the AVEVA Services in any manner or for any purpose other than as expressly permitted by this Agreement. Neither Client nor any Client User may, or may attempt to (a) except as may be allowed by any Applicable Law which is incapable of exclusion by agreement between the Parties, (i) modify, alter, tamper with, repair, or otherwise create derivative works of AVEVA Services, or (ii) reverse-engineer, disassemble, or decompile the AVEVA Services or apply any other process or procedure to derive the source code of any software included in the AVEVA Services, (b) access or use the AVEVA Services in any way intended to avoid incurring Fees or exceeding usage limits, (c) resell or sublicense the AVEVA Services, (d) access all or any part of the AVEVA Services to build a product or service which competes with the AVEVA Services, or (e) attempt to access and use the underlying infrastructure supporting the AVEVA Services for any purposes.
- 11.6 Client will not assert, nor will Client authorize, assist, or encourage any third party to assert any claim regarding AVEVA Services.
- 11.7 If Client elects to provide any Suggestion to AVEVA or its Affiliates, AVEVA and its Affiliates will be entitled to use the Suggestion without restriction. Client hereby irrevocably assigns to AVEVA all right, title, and interest in and to the Suggestion.
- 12. IP INDEMNITY.**
- 12.1 AVEVA will indemnify and keep indemnified Client against any damages, losses, costs or expenses that are awarded by a competent court to be paid by Client to a third party in respect of a successful Claim that the SaaS Application(s) or any AVEVA Content infringes the Intellectual Property Rights of a third party, provided that Client:
- (a) has not done, permitted or suffered to be done anything which has caused or contributed to such Claim (including use of the infringing services in breach of this Agreement);
- (b) notifies AVEVA within seven (7) days of instigation of any such Claim;
- (c) give's AVEVA and such other third parties as AVEVA shall direct, (i) immediate and complete control of all negotiations and defence of such Claim, and (ii) all reasonable assistance with the conduct or settlement of any such Claim; and
- (d) does not make any admission as to liability or compromise or agree to settle any Claim without AVEVA's prior written consent, or otherwise prejudice AVEVA or any third party's defence of any Claim.
- 12.2 If there is, or AVEVA believes there may be, an infringement or Claim under clause 12.1, AVEVA shall have the right in its absolute discretion to:
- (a) procure the right of Client to continue using the infringing services in accordance with the terms of this Agreement;
- (b) make such alterations, modifications or adjustments to the infringing services so that it becomes non-infringing, or replace it with non-infringing services; or
- (c) terminate this Agreement in respect of the infringing services and provide a pro-rata refund to Client of the Fees paid in advance and in respect of the terminated services.
- 13. CONFIDENTIALITY.**
- 13.1 Each Party undertakes that it shall not at any time during the Term, and for a period of five years thereafter, disclose any Confidential Information of the other Party, except as permitted by clause 9.2.
- 13.2 Each Party may disclose the other party's Confidential Information: (a) to its employees, officers, Representatives who need to know such information for the purposes of carrying out the receiving Party's obligations under this Agreement; (b) as may be required by the Applicable Law or any governmental, regulatory or court order; and (c) in the case of AVEVA, for the purposes of assisting AVEVA to ensure Client's compliance with this Agreement. Each Party shall ensure that its employees, officers, Representatives to whom it discloses the other Party's Confidential Information keep such Confidential Information secure and confidential and do not disclose it to any other part in compliance with this clause.
- 13.3 No Party shall use or permit the use of the other Party's Confidential Information for any purpose other than to perform its obligations under this Agreement.
- 13.4 AVEVA and its Affiliates shall be entitled to state in the public domain that Client is a customer of AVEVA.
- 14. EXPORT CONTROLS.**
- 14.1 Client acknowledges and agrees that (a) Trade Control Laws govern the provision of access to and Use of the AVEVA Services, (b) it shall not Use or transfer, directly or indirectly, any AVEVA Services in breach of such Trade Control Laws or permit it to be used or accessed in any way for a

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- prohibited purpose including, without limitation, nuclear, chemical or biological weapons proliferation or development of missile technology, and (c) if, at the request of Client, a specific Region is agreed between the Parties, the election of the specific Region is the sole responsibility of Client.
- 14.2 Client shall indemnify, defend and hold AVEVA harmless in respect of any breach by Client of this clause 10.
- 14.3 If AVEVA suspects or becomes aware that Client has or is reasonably likely to be in breach of, or that its actions may result in AVEVA being in breach of, Trade Control Laws, without limitation to any other right or remedy available to it AVEVA shall be entitled to suspend or terminate this Agreement.
- 15. CLIENT INDEMNIFICATION.**
- 15.1 Client will defend, indemnify, and hold harmless AVEVA, its Affiliates and licensors, and each of their respective employees, officers, directors, and representatives from and against any Losses arising out of or relating to any third party Claim concerning: (a) Client's use of the AVEVA Services other than authorised by this Agreement; (b) violation of Applicable Laws by Client, Client Content or Client Submissions; (c) alleged infringement or misappropriation of any third party rights (including Intellectual Property Rights) by Client, Client Content or Client Submissions; or (d) a dispute between Client and any Client User.
- 15.2 AVEVA will provide written notice to Client of any such Claim within a reasonable period of time. AVEVA may participate in the defence of the Claim at its own expense and Client may settle the Claim as Client deems appropriate, provided that Client obtains AVEVA's prior written consent before entering into any settlement.
- 16. WARRANTIES AND DISCLAIMER.**
- 16.1 Subject to clauses 16.3 to 16.5, AVEVA warrants to Client that (a) the SaaS Application(s) will perform substantially in accordance with their Documentation and any Service Levels, and (b) AVEVA will exercise reasonable skill and care in its provision of the AVEVA Services in accordance with the terms of this Agreement.
- 16.2 Client accepts that Use of Third Party Content is provided free of charge and is provided "As Is" without any warranty, and the functionality of any Third Party Content may be amended by AVEVA from time to time.
- 16.3 Client accepts that AVEVA is not responsible for any delays, delivery failures, non-conformity or any other loss or damage resulting from (a) the transfer of data over communications networks and facilities, including the internet, and that the AVEVA Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities, (b) any misuse of the AVEVA Services by Client, and (c) any failure of Client to comply with the terms of this Agreement.
- 16.4 Except to the extent prohibited by Applicable Law, AVEVA makes no representations or warranties of any kind (a) whether express, implied, statutory or otherwise, regarding the AVEVA Services, and disclaims all warranties, terms, conditions and undertakings, including in respect of merchantability, satisfactory quality, fitness for a particular purpose, non-infringement or quiet enjoyment, (b) arising out of any course of dealing or usage or trade practice, (c) that the AVEVA Services will be un-interrupted, error-free or free of harmful components, and (d) that any content, including Client Content or Third Party Content, will be secure or not otherwise lost or damaged.
- 16.5 If AVEVA is in breach of the warranty at clause 16.1, Client must notify AVEVA within 90 days of becoming aware and Client's sole and exclusive remedy shall be for AVEVA at its option to (a) promptly correct any such material non-conformance, or provide Client with an alternative means of accomplishing the desired performance, and/or (b) provide a pro-rata refund to Client of the Fees paid in respect of the period of non-conformity of the AVEVA Service(s), and/or (c) terminate the relevant AVEVA Service(s) and provide a pro-rata refund to Client of the Fees paid in advance and in respect of the terminated AVEVA Service(s).
- 17. LIMITATION OF LIABILITY.**
- 17.1 Nothing in this Agreement shall limit or exclude either Party's liability for: (a) death or personal injury caused by its or its employees or agents negligence, (b) fraud, (c) Client's payment obligations in respect of Fees or Indirect Tax due, or liability arising under clauses 14 or 15, (d) liability under clause 13, or (e) any other liability which cannot be limited or excluded by law.
- 17.2 Subject to clause 17.1, neither Party will be liable to the other Party under any cause of action or theory of liability, even if a Party has been advised of the possibility of such damages for any (a) indirect, incidental, special, consequential or exemplary damages, (b) loss of profits, loss of revenues, loss of customers, opportunities or goodwill, (c) temporary unavailability of all or parts of the AVEVA Services, (d) investments, expenditures or commitments related to Use of the AVEVA Services (other than the Fees), or (e) cost of procurement of substitute goods or substitute services.
- 17.3 Subject to clause 17.1 and 17.2, the aggregate liability of either Party arising under or in connection with this Agreement in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise shall be capped at the greater of (a) the Fees paid by Client under this Agreement for the SaaS Application which gave rise to the liability during the twelve (12) months before the liability arose, or (b) ten thousand Great Britain Pounds (GBP £10,000).
- 17.4 The limitations and exclusions in this clause 19 shall apply to the fullest extent permitted by law.
- 17.5 The limitations and exclusions in this clause 17 shall apply to the fullest extent permitted by law.
- 18. ASSIGNMENT.**  
Client may not assign this Agreement or give or transfer an interest in it to another person.
- 19. NOTICE.**
- 19.1 Except as otherwise set forth in clause 15.3, to give notice to a Party under this Agreement, a Party must send such notice in writing (in English) to the other Party by personal delivery, overnight courier or registered or certified mail. Notices must be sent to the address of the other Party listed in the Subscription Agreement, or such other address as a Party may subsequently designate in a notice to the other Party.
- 19.2 Notices provided by personal delivery will be effective immediately. Notices provided by overnight courier will be effective after they are sent on the next business day of the recipient Party. Notices provided by registered or certified mail will be effective after they are sent on the third (3<sup>rd</sup>) business days of the recipient Party.
- 19.3 AVEVA may provide immediate notice to Client under clauses 2.3, 4 or 8 by (a) sending a message to the email address then associated with at least one Client Account Administrator, or (b) posting a notice on AVEVA Connect.
- 20. COUNTERPARTS AND AMENDMENTS.**
- 20.1 This Agreement may be executed in counterparts, each of which (including signature pages) will be deemed an original, but all of which together will constitute one and the same document.
- 20.2 Any electronic signature (or other means of effecting a digital acceptance) shall constitute the signature and entry into this Agreement and/or the documents that form this Agreement.
- 20.3 Save as expressly set out in this Agreement, no modification or amendment of any portion of this Agreement will be effective unless in writing and signed by the Parties to this Agreement.
- 20.4 This Agreement is drafted in the English language. If this Agreement is translated into any other language, the English language text shall prevail.
- 21. THIRD PARTY RIGHTS.**  
Except as set forth in clause 11, no person other than a Party to this Agreement, and their respective successors and permitted assigns, shall have any rights to enforce any term of this Agreement.
- 22. ENTIRE AGREEMENT.**
- 22.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter (and shall supersede the terms of any purchase order or other ordering document not emitted by AVEVA, and no terms included in any such purchase order or other ordering document not emitted by AVEVA shall apply).
- 22.2 Each Party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Nothing in this clause 18 shall limit or exclude any liability for fraud.
- 23. SEVERABILITY AND WAIVERS AND FORCE MAJEURE.**
- 23.1 If any portion of this Agreement is held to be invalid or unenforceable, the remaining portions of this Agreement will remain in full force and effect and any invalid or unenforceable portions will be interpreted to effect and intent of the original portion. If such construction is not possible, the invalid or unenforceable portion will be severed from this Agreement but the rest of the Agreement will remain in full force and effect.
- 23.2 The failure by either Party to enforce any provision of this Agreement will not constitute a present or future waiver of such provision nor limit such Party's right to enforce such provision at a later time. All waivers by a Party must be provided in a notice to be effective.
- 23.3 Except for any payment obligation, neither Party will be liable for any delay or failure to perform any obligation under this Agreement where the delay or failure results from a Force Majeure Event.
- 24. INDEPENDENT CONTRACTORS.**  
AVEVA and Client are independent contractors and this Agreement will not be construed to create a partnership, joint venture, agency, or employment relationship. Neither Party, nor any of their respective Affiliates, is an agent of the other for any purpose or has the authority to bind the other.
- 25. GOVERNING LAW, JURISDICTION.**  
The Parties agree that this Agreement and any dispute or claim arising out of or in connection with this Agreement (including non-contractual disputes or claims) shall be (a) subject to the laws of England and Wales, and (b)

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subject to the exclusive jurisdiction of the English courts. Notwithstanding the foregoing, either Party may seek injunctive relief in any state, federal, or national court of competent jurisdiction for any actual or alleged infringement of such Party's, its Affiliates' or any third party's Intellectual Property Rights or other proprietary rights.

### PART B – INTERPRETATION AND DEFINITIONS

#### 1. INTERPRETATION.

- 1.1 Clause, annex and paragraph headings shall not affect the interpretation of this Agreement.
- 1.2 Unless the context otherwise requires, words in the singular shall include the plural and in the plural, shall include the singular and a reference to one gender shall include a reference to the other genders.
- 1.3 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and a reference to a statute or statutory provision shall include all subordinate legislation made under that statute or statutory provision.
- 1.4 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.5 Any words following the terms "including", "include", "in particular", "for example" or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

#### 2. DEFINITIONS.

- 2.1 **Acceptable Use Policy:** the policy as is available at <https://connect.aveva.com/AcceptableUsePolicy.html>, or as annexed to this Agreement, and as may be updated by AVEVA from time to time.
- 2.2 **Account Information:** any information about Client, its Affiliates, Permitted Third Parties and Client Users which Client or any Client User provides to AVEVA in connection with the creation or administration of their accounts, (including, but not limited to Usage Credentials, Use Metrics and such personal data as is communicated to AVEVA and associated with a Client User Account).
- 2.3 **Affiliate:** in respect of a Party, a Party's subsidiary undertaking(s) or parent undertaking(s), or subsidiary undertaking(s) of parent undertaking(s), each being interpreted in accordance with section 1162 of the Companies Act 2006.
- 2.4 **Agreement:** together the Subscription Agreement, these AVEVA Subscription Terms and the Policies.
- 2.5 **API:** any application programming interface made available by AVEVA.
- 2.6 **Applicable Laws:** all applicable laws, statutes, regulations, subordinate legislation, bye-laws, common law and legally binding codes of practice, each to the extent that they apply to a Party's rights or obligations under this Agreement.
- 2.7 **AVEVA Connect:** AVEVA's SaaS based management and access platform available at <https://connect.aveva.com> (as may be updated by AVEVA from time to time).
- 2.8 **AVEVA Content:** Content as AVEVA makes available in connection with AVEVA Services (including Documentation, APIs; sample code; software libraries; command line tools; proofs of concept, templates, and other related technology). AVEVA Content does not include Third Party Content.
- 2.9 **AVEVA Services:** the provision of the SaaS Application(s), AVEVA Content, support and related services, and Third Party Content.
- 2.10 **Billing Metrics:** any information collected, processed or stored by or on behalf of AVEVA for the purposes of computing the Fees under this Agreement.
- 2.11 **Change of Control:** means the change of control of a party in accordance with within the meaning of section 1124 of the Corporation Tax Act 2010.
- 2.12 **Claim:** any allegation, claim, litigation or proceedings, or any loss of license rights related to third party intellectual property rights.
- 2.13 **Client Account Administrator:** the Representative(s) set out in the Connect Agreement which – in the management of AVEVA Connect and SaaS Applications – has the exclusive right to grant Use to Client Account Users of the AVEVA Services on behalf of Client.
- 2.14 **Client Account User:** any director or employee of Client (and any Affiliate or Permitted Third Party who is specifically permitted access to the SaaS Application(s)) who is permitted to Use the AVEVA Services.
- 2.15 **Client Content:** any Content submitted or uploaded in connection with the Use of the AVEVA Services (such as engineering data).
- 2.16 **Client Submission:** Content which Client posts or otherwise submits to community opened areas, or developer or blog forums.
- 2.17 **Client Users:** Client Account Administrator accounts and Client Account User accounts.
- 2.18 **Confidential Information:** all information (however recorded or preserved) disclosed by a party or its Affiliates or its Representatives to the other Party and that Party's Representatives concerning: any information that would be regarded as confidential by a reasonable business person relating to: (i) the business, affairs, customers, clients, pricing and plans, of the disclosing party; and (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party (or of any member of the group of companies to which the disclosing party belongs).
- 2.19 **Connect Agreement:** the AVEVA Connect Agreement entered into between the Parties, which governs Client's Use of AVEVA Connect.
- 2.20 **Content** shall mean: software, machine images and data (including, but not limited to engineering data, models, samples, libraries and standards) and any other text, audio, video or images.
- 2.21 **Documentation:** the technical documentation, program specification, operations manuals and other documentation as are available on AVEVA Connect or access from SaaS Application(s), and as may be updated by AVEVA from time to time.
- 2.22 **Fee:** the fees payable by Client to AVEVA for the Use of SaaS Applications, calculated in accordance with the Subscription Agreement.
- 2.23 **Force Majeure Event:** (a) any event of emergency or threat to the security or integrity of the AVEVA Services, or AVEVA's or AVEVA's licensors IT networks, or, (b) acts of God, labour disputes or other industrial disturbances, electrical or power outage, utilities or telecommunications failures, earthquake, storms or other elements of nature, blockages, embargoes, riots, acts or orders of government, acts of terrorism or war, or (c) any other cause beyond the respective Parties' reasonable control.
- 2.24 **Functionality:** material functionality of the SaaS Application.
- 2.25 **Indirect Tax:** applicable taxes and duties, including, without limitation, VAT, GST, excise taxes, sales and transactions taxes, and gross tax receipts.
- 2.26 **Intellectual Property Rights:** all patents, copyrights, rights in software, design rights, trademarks, service marks, trade secrets, know-how, database rights and other rights in the nature of intellectual property rights (whether registered or unregistered) and all applications for the same, anywhere in the world.
- 2.27 **Losses:** claims, damages, losses, liabilities, costs and expenses (including reasonable legal fees).
- 2.28 **Permitted Third Party:** any third party specifically listed in the Subscription Agreement and which – for the term of its permitted Use – has issued a Permitted Third Party Undertaking Letter to AVEVA if requested.
- 2.29 **Permitted Third Party Undertaking:** an undertaking that the Permitted Third Party will comply with the terms of this Agreement.
- 2.30 **Personal Data:** shall have the meaning given to it in the Privacy Policy.
- 2.31 **Policies:** AVEVA's Acceptable Use Policy and Privacy Policy, and any other policy or restrictions described on AVEVA Connect or any AVEVA Content, or incorporated into this Agreement.
- 2.32 **Privacy Policy:** the policy as is available at <https://connect.aveva.com/PrivacyPolicy.html>, or as annexed to this Agreement, and as may be updated by AVEVA from time to time.
- 2.33 **Region:** if any, the geographical territory(s) set out in Subscription Agreement in which the specified SaaS Application(s) and Client Content are hosted.
- 2.34 **Representatives:** employees, officers, representatives or advisers of each Party.
- 2.35 **SaaS Application(s):** each of the software solutions made available by AVEVA as a service to Client through AVEVA Connect, and their associated Documentation, as Client has subscribed under the Subscription Agreement.
- 2.36 **Service Level:** the service levels as offered by AVEVA with respect to a SaaS Application as set out in or referenced in the applicable Subscription Agreement.
- 2.37 **Subscription Agreement:** the relevant SaaS Subscription Agreement (including any annexes) entered into between the Parties.
- 2.38 **Suggestion:** all suggested improvements to AVEVA Connect and/or SaaS Applications which Client provides to AVEVA.
- 2.39 **Term:** the term of this Agreement, until it expires or terminates in accordance with its terms.
- 2.40 **Termination Date:** the effective date of expiry or termination of this Agreement.
- 2.41 **Third Party Content:** Content or products or services of a third party made available (or made available via hyperlinks) through the AVEVA Services.
- 2.5.1 **Trade Control Laws:** all export control and sanctions laws and regulations of the United Kingdom, the European Union, the United States and the country in which Client Uses the AVEVA Services.
- 2.42 **Use:** access and utilisation of the AVEVA Services or any (if any) Third Party Content and Documentation, including by accessing, copying or transmitting or loading Client Content (provided that Client shall not copy the whole or any part of the Documentation and shall not remove any trademark, copyright or proprietary notices from the Documentation).
- 2.43 **Use Metric:** any information as is collected, processed or stored by AVEVA, AVEVA's Affiliates, AVEVA's Representatives or licensors and which is reasonably necessary to understand, aggregate, compute, measure, or support Client's Use of the AVEVA Services.
- 2.44 **User Credentials:** the user name and password of each Client User as provided by AVEVA to Use the AVEVA Services.

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