

GENERAL TERMS AND CONDITIONS FOR EXTENDED SUPPORT SERVICES

1. DEFINITIONS & CONTRACT STRUCTURE

1.1 Unless the context otherwise requires, each capitalised term in the Agreement will have the meaning set out below:

Additional Man Days Order Form means the order form in Annex 2 of the Support Package.

Affiliates means in relation to a body corporate, any subsidiary, subsidiary undertaking or holding company of such body corporate, and any subsidiary or subsidiary undertaking of any such holding company for the time being.

Agreement has the meaning given in the Extended Support Services Agreement Order Form.

AVEVA means AVEVA Solutions Limited.

AVEVA Commercial Agreement means an agreement between AVEVA and the Customer which governs the use of the Product.

AVEVA Materials means all materials, equipment and tools, drawings, specifications and data supplied by AVEVA under the Agreement.

Background IPR means any Intellectual Property Rights of either party created prior to or independent of the Agreement.

Charges means the Fixed Fee, Pre-Ordered Services Fee and any other expenses and costs reasonably incurred by AVEVA in the provision of the Extended Support Services.

Confidential Information means all information (however recorded or preserved) disclosed or made available by a party or its employees, officers, representatives or advisers (together 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 including relating to: (i) the business, affairs, customers, clients, or plans, of the disclosing party or its Affiliates; and (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party or its Affiliates.

Customer means the person signing up to the Agreement.

Data Protection Legislation means (i) the Data Protection Act 1998; (ii) the Data Protection Directive (95/46/EC), and (iii) all applicable laws and regulations relating to the processing of personal data and privacy.

Extended Support Services means the Standing Support Services and the Professional Services, which AVEVA has agreed to provide to the Customer.

Extended Support Services Agreement Order Form means the order form setting out the Support Package AVEVA has agreed to provide to the Customer.

Fixed Fee means, where applicable, the monthly fee payable by the Customer in respect of the Support Package.

Foreground IPR means any Intellectual Property Rights created by, or on behalf of, AVEVA during the course of the Extended Support Services pursuant to the Agreement.

Insolvency Event: means, in respect of a party:

(a) other than for the purposes of a bona fide reconstruction or amalgamation, such party passing a resolution for its winding up, or a court of competent jurisdiction making an order for it to be wound up or dissolved, or that party being otherwise dissolved; or

(b) the appointment of an administrator of, or the making of an administration order in relation to, such party, or the appointment of a receiver or administrative receiver of, or an encumbrancer taking possession of or selling, the whole or any part of its undertaking, assets, rights or revenue; or

(c) that party entering into an arrangement, compromise or composition in satisfaction of its debts with its creditors or any class of them, or taking steps to obtain a moratorium, or making an application to a court of competent jurisdiction for protection from its creditors; or

(d) that party being unable to pay its debts, or being capable of being deemed unable to pay its debts, within the meaning of section 123 of the Insolvency Act 1986; or

(e) that party entering into any arrangement, compromise or composition in satisfaction of its debts with its creditors.

In-Put Material means all documents, information and materials provided by or on behalf of the Customer relating to the Extended Support Services.

Intellectual Property Rights: means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Man Days means an agreed period of Working Hours. The Man Days can be split over one or more calendar days.

On-site Support means any support AVEVA provides the Customer at the Customer's premises as part of the Extended Support Services.

Personal Data has the meaning set out in the Data Protection Act 1998.

Pre-Ordered Services Fee means the fee payable by the Customer to purchase a certain number of Man Days of Professional Services.

Product means the Software set out in the AVEVA Commercial Agreement.

Professional Services means the professional services described in a Statement of Work which AVEVA has agreed to provide to the Customer.

Prohibited Act: means:

(a) offering, giving or agreeing to give to any employee, agent or representative of AVEVA any gift or consideration of any kind as an inducement or reward:

(i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of the Agreement or any other agreement with AVEVA; or

(ii) for showing or not showing favour or disfavour to any person in relation to the Agreement or any other agreement with AVEVA;

(b) entering into the Agreement or any other agreement with AVEVA where a commission has been paid or has been agreed to be paid by the Customer or on its behalf, or to its knowledge, unless before the relevant agreement is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to AVEVA;

(c) committing any offence under the United Kingdom's Bribery Act 2010 and/or any applicable laws governing bribery or corruption.

Protected Information means any AVEVA products or software, designs, data or any other form of information provided by AVEVA under, or in relation to, the Agreement.

Rate Card means the document setting out AVEVA's current standard charges, a copy of which is appended to Appendix 1 of the Extended Support Services Agreement Order Form, as amended from time to time in accordance with clause 6.8.

Service Period means, in respect of the Standing Support Services, the period set out in the Extended Support Services Agreement Order Form which shall renew automatically on an annual basis in accordance with clause 13.1.

Software means any software licensed by AVEVA to the Customer.

Solution means any customisation relating to the Software made by AVEVA for the Customer including (but not limited to) all configurations, scripts, tools, utilities, reports, templates and interfaces relating to the Software, excluding however:

- (a) the Software itself or any customisation of its source code;
- (b) any patch, bug fix, update or upgrade to the Software; and
- (c) any third party software.

Standing Support Services means the support services provided by AVEVA to the Customer in accordance with the Support Package.

Statement of Work or SoW means a statement of work substantially in the form of Annex 1 of the Support Package.

Support Package means the relevant support package option for the Standing Support Services the Customer has chosen the details of which are set out in Appendix 2 to the Extended Support Services Agreement Order Form.

Terms and Conditions means these terms and conditions.

Working Hours means between 09:00 and 17:00 (GMT), on every day (except public holidays), that is not a Saturday or Sunday, unless otherwise provided for in the Extended Support Services Agreement Order Form.

1.2 Unless expressly stated otherwise, the rules of interpretation set out below will apply in the Agreement:

- (a) "**includes**" and "**including**" mean without limitation;
- (b) a party means a party to the Agreement and includes its permitted assignees and/or the successors;
- (c) a person includes any person, individual, company, firm, corporation, government, state or agency of a state or any undertaking (whether or not having separate legal personality and irrespective of the jurisdiction in or under the law of which it was incorporated or exists);
- (d) a statute or statutory instrument, or any of their provisions, is to be construed as a reference to that statute or statutory instrument or such provision as the same may have been or may hereafter be amended or re-enacted;

(e) words denoting the singular include the plural and vice versa and words denoting any gender include all genders; and

(f) references to clauses are to clauses in these Terms and Conditions.

1.3 The index to and the headings in these Terms and Conditions are for information only and are to be ignored in construing the same.

1.4 In the event there is any conflict between the terms set out in these Terms and Conditions, the Extended Support Services Agreement Order Form, any Statement of Work and any Additional Man Days Order Form, the order of priority shall be: (1) these Terms and Conditions; (2) the Extended Support Services Agreement Order Form; (3) any Statement of Work; and (4) any Additional Man Days Order Form.

1.5 These Terms and Conditions shall govern and be incorporated in every contract between AVEVA and the Customer in respect of the Extended Support Services and shall prevail over any terms and conditions contained or referred to in any documentation submitted by the Customer, including any purchase order, or previously submitted by AVEVA or in correspondence or elsewhere or implied by trade custom, practice or course of dealing.

2. EXTENDED SUPPORT SERVICES

2.1 AVEVA will use reasonable endeavours to provide the Customer with the Extended Support Services for the Service Period in accordance with the Agreement.

3. PROFESSIONAL SERVICES

3.1 The Customer may request Professional Services by completing a SoW in the form of the template set out in Annex 1 of the Support Package. Upon AVEVA confirming its acceptance of such request by countersigning the SoW, the SoW shall become legally binding and form part of the Agreement.

4. AVEVA OBLIGATIONS

4.1 AVEVA shall provide the Extended Support Services with reasonable skill and care and any other service standards specifically set out in the Agreement.

4.2 AVEVA shall, where providing On-site Support, use reasonable endeavours to observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises and that have been communicated to it under clause 5.1 (d), provided that it shall not be liable under the Agreement if, as a result of such observation, it is in breach of any of its obligations under the Agreement.

4.3 To the extent the Customer is provided a designated named support contact as part of the Extended Support Services, and such individual needs to be re-assigned or is unavailable for reasons beyond AVEVA's control, AVEVA will use all reasonable endeavours to assign a suitably qualified and experienced individual to the Customer as soon as reasonably practicable.

5. CUSTOMER OBLIGATIONS

5.1 The Customer shall:

(a) co-operate fully with AVEVA in all matters relating to the Extended Support Services and appoint a representative in relation to the Extended Support Services, who shall have the authority to bind the Customer on matters relating to the Extended Support Services;

(b) provide, for AVEVA, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access (including remote access, where applicable) to the Customer's premises, office accommodation, data, systems, personnel and facilities as reasonably requested by AVEVA;

- (c) provide, in a timely manner, such In-put Material and other information as AVEVA may reasonably require, and ensure that it is accurate in all material respects;
- (d) inform AVEVA of all health and safety rules and regulations and any other reasonable security requirements that apply at the relevant Customer's premises;
- (e) obtain prior to commencement of the Extended Support Services and maintain all necessary licences and consents and comply with all relevant legislation in relation to the receipt of Extended Support Services and the use of In-put Material by AVEVA.

5.2 If AVEVA's performance of its obligations under the Agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, such delay or non-performance shall be excused and AVEVA shall not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly therefrom.

5.3 The Customer shall be liable to pay to AVEVA, on demand, all reasonable costs, charges or losses sustained or incurred by AVEVA that arise directly or indirectly from the Customer's fraud, negligence, wilful misconduct, failure to perform or delay in the performance of any of its obligations under the Agreement, or from any breach of the terms of this Agreement, subject to AVEVA confirming such costs, charges and losses to the Customer in writing.

5.4 The Customer shall not, without the prior written consent of AVEVA, at any time from the date of the Agreement to the expiry of six months after the last date of the supply of the Extended Support Services, solicit or entice away from AVEVA or employ or attempt to employ any person who is, or has been, engaged as an employee of AVEVA in the provision of the Extended Support Services. Any consent given by AVEVA in accordance with this clause 5.4 shall be subject to the Customer paying to AVEVA a sum equivalent to 20% of the first twelve-month remuneration the Customer agrees to pay to such previous AVEVA employee.

6. CHARGES AND PAYMENT

6.1 In consideration of the provision of the Extended Support Services by AVEVA, the Customer shall pay the Charges.

6.2 If the Extended Support Services Agreement Order Form provides for Extended Support Services to be performed subject to the payment of a Fixed Fee, payment of the Fixed Fee will constitute advance payment for the Standing Support Services and a credit for the number of Man Days included as part of the relevant Standing Support Services as set out in that Extended Support Services Agreement Order Form ("**Additional Services Credit**"). The Customer may use any unused Additional Services Credit in consideration for the provision of On-site Support by AVEVA during Working Hours, provided that any Additional Services Credit shall expire if not used within twelve months. AVEVA shall invoice the Customer monthly in advance for any Fixed Fee.

6.3 If the Extended Support Services Agreement Order Form or any Additional Man Days Order Form includes a Pre-Ordered Services Fee, the Customer shall pay the relevant amount within 30 days of the signing of such document and the Customer shall be credited with the relevant number of Man Days ("**Pre-Ordered Services Credit**"). The Customer may use any unused Pre-Ordered Services Credit in consideration for the provision of Professional Services by AVEVA during Working Hours.

6.4 Any time spent providing the Professional Services in excess of any Pre-Ordered Services Credit, or in excess of any Additional Services Credit, shall be chargeable on a time and materials basis in accordance with the Rate Card, unless otherwise expressly agreed in writing. AVEVA shall ensure that each individual that provides Professional Services on site or On-site Support completes time sheets recording all time spent on such activities, which AVEVA shall use to report Customer's utilisation of any Pre-Ordered Services Credit or Additional Services Credit, as applicable, and to calculate any other Charges payable in respect of activities performed on a time and materials basis.

6.5 50% of time spent travelling to any Customer premises other those set out in the Extended Support Services Agreement Order Form or any Additional Man Days Order Form shall be deemed chargeable to the Customer, unless the Rate Card provides otherwise.

6.6 The Customer shall pay all Charges, plus VAT, to AVEVA without deduction or set-off.

6.7 All Charges exclude the cost of hotel, subsistence, travel and any other ancillary expenses reasonably incurred by the individuals whom AVEVA engages in connection with the Extended Support Services, the cost of any materials and the cost of services reasonably and properly provided by third parties and required by AVEVA for the supply of the Extended Support Services. Such costs and expenses shall be invoiced by AVEVA at cost; and VAT.

6.8 AVEVA may review and increase the Rate Card and any Fixed Fee, provided that such amounts cannot be increased more than once in any 12 month period and that the amount of any increase is not more than the increase in the UK Retail Price Index as published by the Office for National Statistics (or its successor from time to time). AVEVA shall give the Customer written notice of any such increase three months before the proposed date of that increase.

6.9 The Customer shall pay each invoice submitted to it by AVEVA within 30 days of receipt, in full and in cleared funds, to a bank account nominated in writing by AVEVA.

6.10 Without prejudice to any other right or remedy that AVEVA may have, if the Customer fails to pay AVEVA on the due date, AVEVA may:

(a) charge interest on such sum from the due date for payment at the annual rate of 2% above LIBOR and the Customer shall pay the interest immediately on demand. Such interest shall accrue on a daily basis and be compounded quarterly. AVEVA reserves the right to claim statutory interest under the Late Payment of Commercial Debts (Interest) Act 1998; and

(b) suspend all Extended Support Services until payment has been made in full.

7. INTELLECTUAL PROPERTY RIGHTS

7.1 All Background IPR belonging to either party shall remain the sole property of that party. The Customer grants to AVEVA a non-exclusive, non-transferable, revocable, royalty free licence to use its Background IPR solely for the purpose of providing the Extended Support Services.

7.2 All Foreground IPR shall belong to AVEVA. To the extent the Customer has specifically requested the development of such Foreground IPR as part of the Extended Support Services as evidenced in writing, AVEVA grants the Customer a non-transferable, non-sub-licencable, royalty-free licence to the Foreground IPR for the term of the Agreement.

7.3 The licensing of any Background IPR owned by AVEVA, or its licensees, to the Customer shall be dealt with under a separate agreement.

7.4 AVEVA warrants that it shall not infringe any third party's Intellectual Property Rights in delivering the Extended Support Services to the Customer, provided, however, that it shall have no liability to the extent any infringement arises from the: use of any software or materials, access to systems and/or designs or instructions provided by or on behalf of the Customer, or any breach of the Agreement by or negligence of the Customer.

8. CONFIDENTIALITY

8.1 Each party shall keep in strict confidence all Confidential Information relating to the other party.

8.2 Each party may disclose such Confidential Information to its employees, officers, representatives, advisers, agents or subcontractors who need to know such information as may be required for the purposes of

carrying out the such party's obligations under the Agreement; and as may be required by law, court order or any governmental or regulatory authority.

8.3 Each party shall ensure that its employees, officers, representatives, advisers, agents or subcontractors to whom it discloses such Confidential Information comply with this clause 8.

8.4 Each party shall not use any such Confidential Information for any purpose other than to perform its obligations under the Agreement.

8.5 All AVEVA Materials supplied to the Customer shall, at all times, be and remain as between AVEVA and the Customer the exclusive property of AVEVA, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to AVEVA, and shall not be disposed of or used other than in accordance with AVEVA's written instructions or authorisation.

9. DATA PROTECTION

9.1 In so far as AVEVA processes any Personal Data on behalf of the Customer, AVEVA shall:

(a) process the Personal Data, only for the purposes of performing and monitoring the Agreement and in accordance with the Customer's written instructions;

(b) not otherwise modify, the Personal Data or disclose any of the Personal Data to any third party unless specifically authorised in writing by the Customer; and

(c) comply with the provisions of the Seventh Data Protection Principle, implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing, accidental loss, destruction, damage, alteration or disclosure.

9.2 The parties shall comply at all times with the applicable Data Protection Legislation.

10. EXPORT

10.1 The Customer acknowledges that:

(a) any Protected Information;

(b) any data or information derived from, or generated by, the use of Protected Information; or

(c) any products, including software, incorporating any Protected Information, may be subject to export control and import laws and regulations and sanctions. The Customer shall not export, re-export, disclose, distribute or transfer, directly or indirectly, or use any of the products, information or data referred to in this clause 10.1. in breach of any applicable laws, regulations or sanctions ("**Export Control Laws**"), including without limitation, the Export Control Laws of the United Kingdom, the European Union, the United States and the country in which the products, information, or data is located.

10.2 Each party undertakes:

(a) to contractually oblige any third party to whom it exports, re-exports, discloses, distributes or transfers any information set out in clause 10.1 above, to provide an undertaking to it on substantially the same terms as those contained with this clause 10.2 and procure compliance with such undertaking;

(b) if requested, to provide the other party with any reasonable assistance, at the reasonable cost of the requesting party, to enable the requesting party to perform any activity required for the purpose of compliance with any Export Control Laws; and

(c) to comply with the requirements of all applicable export licences obtained and the Customer agrees that it shall not do or omit to do anything which would or could give rise to any non-compliance, revocation,

suspension, additional constraints or limitations or non-renewal (where renewal is required) of any applicable export licences.

10.3 The Customer represents that neither the Customer nor any of its principals, officers, or directors, or any person or entity known to the Customer to be directly involved in the Agreement as agent, customer, end-user, consultant or otherwise is designated by the United Nations or is listed on any of the United States government restricted parties lists, including the U.S. Department of Treasury List of Specially Designated Nationals or the U.S. Department of Commerce Denied Parties List or Entity List, or on any comparable list maintained by the European Union or any of its Member States or any other country. The Customer shall immediately notify AVEVA in writing if any person or entity is, or becomes, designated or listed.

10.4 AVEVA may suspend the provision of any of the Extended Support Services or terminate the Agreement immediately on written notice to Customer where AVEVA reasonably suspects that Customer has breached, or is likely to breach, clauses 10.1, 10.2 or 10.3 of these Terms and Conditions, or that Customer's actions will result in AVEVA being in breach of any Export Control Laws.

10.5 The Customer shall indemnify and hold harmless AVEVA from and against any claims, liabilities, proceedings, actions, fines, losses, damages and associated costs and expenses (including legal fees) arising out of or relating to a breach of this clause 10.

11. ANTI-BRIBERY LEGISLATION

11.1 The Customer shall not:

(a) offer or agree to give any person working for or engaged by AVEVA any gift or other consideration, which could act as an inducement or a reward for any act or failure to act connected to the Agreement, or any other agreement between the Customer and AVEVA; nor

(b) enter into the Agreement if it has knowledge that, in connection with it, any money has been, or will be, paid to any person working for or engaged by AVEVA by or for the Customer, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to AVEVA's legal department at the address below before execution of the Agreement. FAO: AVEVA legal Department, High Cross, Madingley Road, Cambridge CB3 0HBH UK

11.2 If the Customer (including any employee, contractor or agent, whether or not acting with the Customer's knowledge) breaches:

(a) clause 11.1; or

(b) the United Kingdom's Bribery Act 2010 or any other applicable acts governing bribery or corruption, AVEVA may terminate the Agreement by written notice with immediate effect.

11.3 Notwithstanding clause 14, any dispute relating to:

(a) the interpretation of clause 11.1 to clause 11.2 inclusive; or

(b) the amount or value of any gift, consideration or commission, shall be determined by AVEVA applying its reasonable discretion.

11.4 The Customer warrants that in entering into the Agreement it has not committed any Prohibited Act.

11.5 If the Customer or any contractor (or anyone employed by or acting on behalf of any of them) or any of its or their agents commits any Prohibited Act, then AVEVA shall be entitled to act in accordance with clause 11.5 (a) to clause 11.5 (f) below:

(a) If a Prohibited Act is committed by the Customer or by an employee not acting independently of the Customer, then AVEVA may terminate the Agreement immediately by giving notice to the Customer.

(b) If the Prohibited Act is committed by an employee of the Customer acting independently of the Customer, then AVEVA may give notice to the Customer of termination and the Agreement will terminate, unless within 30 days of receipt of such notice the Customer terminates the employee's employment.

(c) If the Prohibited Act is committed by a contractor, then AVEVA may give notice to the Customer of termination and the Agreement will terminate, unless within 30 days of receipt of such notice the Customer terminates the contractor.

(d) If the Prohibited Act is committed by an employee of a contractor acting independently of that contractor and of the Customer, then AVEVA may give notice to the Customer of termination and the Agreement will terminate, unless within 30 days of receipt of such notice the contractor terminates the employee's employment.

(e) If the Prohibited Act is committed by any other person not specified in clause 11.5(a) to clause 11.5(f) above, then AVEVA may give notice to the Customer of termination and the Agreement will terminate unless within 30 days of receipt of such notice, the Customer procures the termination of such person's employment and of the appointment of their employer (where not employed by the Customer or a contractor).

(f) Any notice of termination under this clause shall specify:

- (i) the nature of the Prohibited Act;
- (ii) the identity of the party whom AVEVA believes has committed the Prohibited Act (if known); and
- (iii) the date on which the Agreement will terminate, in accordance with the applicable provision of this Clause 11.

12. LIABILITY

12.1 Nothing in the Agreement limits or excludes the liability of AVEVA:

- (a) for death or personal injury resulting from its negligence; or
 - (b) for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by AVEVA; or
 - (c) for any liability incurred by the Customer as a result of any breach by AVEVA of the clause as to title or the warranty as to quiet possession implied by section 2 of the Supply of Goods and Services Act 1982; or
 - (d) to the extent otherwise not permitted by law;
- and the other provisions of the Agreement shall be construed accordingly,

12.2 Subject to clause 12.1, this clause 12 sets out the entire liability of AVEVA (including any liability for the acts or omissions of its employees, agents, consultants and subcontractors) arising from or in connection with the Extended Support Services or otherwise the subject matter of the Agreement, including arising from or in connection with:

- (a) any breach of the Agreement, including any deliberate breach of the Agreement, by AVEVA, or its employees, agents or subcontractors;
- (b) any use made by the Customer of the Extended Support Services; and
- (c) any representation, statement or tortious act or omission (including negligence) or other liability arising under or in connection with the Agreement.

12.3 Subject to clause 12.1, all warranties, conditions, representations and other terms of any kind whatsoever implied by statute, common law or otherwise are, to the fullest extent permitted by law, excluded from the Agreement.

12.4 Subject to clause 12.1, AVEVA shall not have any liability, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or for any indirect or consequential loss (including but not limited to loss of corruption of data or information) arising under or in connection with the Agreement.

12.5 Subject to clause 12.1, AVEVA's total liability for events arising from or in connection with the Extended Support Services or otherwise the subject matter of the Agreement, (howsoever arising, whether in contract, tort (including negligence or breach of statutory duty) or otherwise) during the initially agreed Service Period shall be limited to the Charges paid by the Customer for the Extended Support Services in that period; and in any 12 month period commencing on the first annual renewal of the Service Period or any anniversary thereof, to the Charges paid by the Customer during such 12 month period.

13. TERMINATION

13.1 The Agreement shall be in effect for the Service Period which shall automatically extend for subsequent 12-month periods, unless terminated earlier pursuant to clauses 10.4, 11, 13.2, 13.3, 13.4 and 15.3 or terminated by either party with three months' prior written notice expiring at the end of the Service Period or any subsequent 12-month period.

13.2 AVEVA shall be entitled to terminate the Agreement immediately on written notice if:

- (a) the Customer fails to pay any amount due under the Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
- (b) the Customer commits a material breach of the Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of it being notified in writing of the breach;
- (c) the Customer suffers an Insolvency Event; or
- (d) there is a change of control of the Customer (as defined in section 574 of the Capital Allowances Act 2001);
- (e) in any other circumstances specifically set out in the Agreement.

13.3 The Customer shall be entitled to terminate the Agreement immediately on written notice and reclaim any unconsumed Pre-Ordered Service Fee if:

- (a) AVEVA commits a material breach of the Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of it being notified in writing of the breach;
- (b) AVEVA suffers an Insolvency Event.

13.4 The Agreement will automatically terminate upon termination of the AVEVA Commercial Agreement, and – where AVEVA and the Customers are parties to more than one AVEVA Commercial Agreement – upon termination of the last AVEVA Commercial Agreement in force and effect.

13.5 On termination of the Agreement by AVEVA for any reason:

- (a) the Customer shall immediately pay to AVEVA all of AVEVA's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, AVEVA may submit an invoice, which shall be payable immediately on receipt;
- (b) the Customer shall, immediately cease use and, within a reasonable time, return all AVEVA Materials. If the Customer fails to do so, then AVEVA may enter the Customer's premises and take possession of them. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping.

13.6 Safe as specifically provided for otherwise in clause 13.6, upon termination, the accrued rights, remedies, obligations and liabilities of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination.

13.7 In the event that at the date of termination of the Agreement for any reason, the Customer continues to hold any unused Additional Services Credit or Pre-Ordered Services Credit (jointly "**Credit**"), such Credit shall lapse and the Customer shall not be entitled to any refund of Charge in relation to such unused Credit.

13.8 Clauses which expressly or by implication have effect after termination shall continue in full force and effect, including the following clauses: clause 7 (Intellectual Property Rights), clause 8 (Confidentiality and AVEVA's Property), clause 12 (Limitation of Liability), clause 14 (Dispute resolution), clause 16 (Notices), clause 10 (Export) and clause 23 (Governing Law and Jurisdiction).

14. DISPUTE RESOLUTION

14.1 It is the intention of the parties to settle amicably by negotiation all disagreements and differences of opinion on matters of performance, procedure and management arising out of the Agreement. Accordingly, it is agreed that to the extent permissible under applicable law, the procedure set out in this clause 14 shall be followed before the serving of written notice terminating the Agreement or submitting to the jurisdiction of the Courts.

14.2 If any disagreement or difference of opinion arises out of the Agreement, the matter shall be disposed of as follows:

(a) representatives from either party shall meet to attempt resolution. Should they not meet within 14 days of the date on which either party proposes in writing to convene a meeting to resolve the matter, or should they not be able to resolve the matter with 14 days of first meeting; then

(b) the matter shall promptly be referred by either party to a senior employee of each of the Customer and AVEVA for immediate resolution.

14.3 If, within 14 days of the matter first having been referred to the senior employees no agreement has been reached as to the matter in dispute, the dispute resolution process set out in clauses 14.1 and 14.2 shall be deemed to have been exhausted in respect of the matter in dispute, and each party shall be free to pursue the rights granted to it by the Agreement in respect of such matter without further reference to the dispute resolution process.

14.4 For the avoidance of doubt, nothing in the Agreement shall prevent either party from suspending its performance under the Agreement and from seeking injunctive relief in the case of any breach or threatened breach of law and in particular of clause 10, or any breach or threatened breach by the other of any obligation of confidentiality or any infringement by the other of the first-named party's Intellectual Property Rights.

15 FORCE MAJEURE

15.1 AVEVA shall not be liable for failure to perform, or delay in performing, any of its obligations under the Agreement to the extent the performance of such obligations is delayed or prevented by an event beyond its reasonable control (a "**Force Majeure Event**").

15.2 AVEVA shall notify the Customer of the occurrence of a Force Majeure Event and shall use reasonable endeavours to continue to perform its obligations hereunder for the duration of such Force Majeure Event.

15.3 AVEVA shall have the right to terminate the Agreement without cause if a Force Majeure Event continues for a period of a continuous period of 30 days.

16. NOTICES

16.1 Any notice required to be given under the Agreement, shall be in writing and shall be delivered by hand, or sent by pre-paid first-class post or recorded delivery or by commercial courier, to each party required to receive the notice at its address set out in the Extended Support Services Order Form or as otherwise specified by the relevant party by notice in writing to each other party.

16.2 Any notice shall be deemed to have been duly received:

- (a) if delivered by hand, when left at the address and for the contact referred to in the Agreement; or
- (b) if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second working day after posting; or
- (c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

16.3 All notices to AVEVA shall be copied to legal.notices@aveva.com.

17. WAIVER

No failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

18. SEVERANCE

18.1 If any court or competent authority finds that any provision of the Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Agreement shall not be affected.

18.2 In the event that any such deletion materially affects the Agreement then the parties shall negotiate in good faith with a view to agreeing a substitute provision which is, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.

19. VARIATION

No variation to the terms of the Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

20. THIRD PARTY RIGHTS

No person other than a party to the Agreement, and their respective successors and permitted assigns, shall have any rights to enforce any term of the Agreement and the Contracts (Rights of Third Parties) Act 1999 shall not apply.

21. ASSIGNMENT

21.1 Neither party may assign, transfer, mortgage, charge, subcontract, declare a trust of or deal in any other manner with any or all of its rights and obligations under the Agreement without the prior written consent of the other, except that AVEVA may assign the Agreement to its Affiliates.

21.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

22. PUBLICITY

AVEVA and its Affiliates shall be entitled to state in the public domain that the Customer is a customer of AVEVA's.

23. LAW AND JURISDICTION

23.1 The Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

23.2 Subject to clause 14, each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims).

24. NON-RELIANCE

24.1 Each party acknowledges that, in entering into the Agreement, it has not relied on, and shall have no right or remedy (save in the case of fraud) in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in the Agreement.

25. LANGUAGE

25.1 The Agreement is drafted in the English language. If the Agreement is translated into any other language, the English language text shall prevail.

25.2 Any notice given under or in connection with the Agreement shall be in the English language. All other documents provided under or in connection with the Agreement shall be in the English language, or accompanied by a certified English translation.

26. NO PARTNERSHIP

Nothing in the Agreement and no action taken by the parties pursuant to the Agreement shall constitute or be deemed to constitute a partnership, association, joint venture or other cooperative entity or relationship of employer and employee.