

**NOTICE: THIS END USER LICENSE AGREEMENT (THIS “EULA”) IS BETWEEN THE RECIPIENT OF THE SOFTWARE (“YOU” OR CUSTOMER) AND AVEVA SOFTWARE, LLC (“AVEVA”) (COLLECTIVELY, THE “PARTIES” AND EACH, A “PARTY”). PLEASE READ THESE TERMS CAREFULLY BEFORE DOWNLOADING, INSTALLING, ACCESSING, OR USING THE SOFTWARE OR CLICKING “I AGREE”.**

**IF YOU CLICK THE “I AGREE” BUTTON OR DOWNLOAD, INSTALL, ACCESS, OR IN ANY WAY USE THE SOFTWARE: (1) YOU HAVE THE CAPACITY AND AUTHORITY TO BIND YOURSELF AND/OR THE ENTITY ON WHOSE BEHALF YOU ARE ACTING, AS THE CASE MAY BE, TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, AND; (2) THAT YOU HAVE READ ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, UNDERSTAND THEM, AND AGREE THEY ARE BINDING UPON YOURSELF AND/OR THE ENTITY ON WHOSE BEHALF YOU ARE ACTING, AS THE CASE MAY BE.**

**IF YOU DO NOT AGREE TO THIS EULA, DO NOT CLICK “I AGREE” AND DO NOT USE THE SOFTWARE. YOU MUST THEN PROMPTLY DELETE OR UNINSTALL (AS APPLICABLE) THE LICENSE FILES AND SOFTWARE FROM YOUR COMPUTER AND RETURN THE SOFTWARE AND ALL OTHER ITEMS (INCLUDING DOCUMENTATION AND PACKAGING) WITHIN THIRTY (30) DAYS OF PURCHASE TO AVEVA VIA AN INTERNATIONALLY RECOGNIZED COURIER SERVICE (E.G., FEDEX, UPS, ETC.).**

**IF A SYSTEM INTEGRATOR, CONTRACTOR, CONSULTANT, OR ANY OTHER PARTY INSTALLS OR USES THE SOFTWARE ON YOUR BEHALF PRIOR TO YOUR USE OF THE SOFTWARE, SUCH PARTY WILL BE DEEMED TO BE YOUR AGENT ACTING ON YOUR BEHALF, AND YOU WILL BE DEEMED TO HAVE ACCEPTED THIS AGREEMENT AS IF YOU HAD DOWNLOADED, INSTALLED, OR USED THE SOFTWARE YOURSELF.**

**1. Definitions.**

- 1.1 **“Account Administrator”** means the employees, officers, representatives, or advisers of a Party set out in the Order Form, which, in the management of the Software, has the exclusive right to grant access or use to any users of the Software on behalf of You.
- 1.2 **“Affiliates”** means as to any entity, any other entity that, directly or indirectly, Controls, is Controlled by or is under common Control with such entity. To avoid misunderstanding, for AVEVA “Affiliates” means any direct or indirect wholly-owned subsidiary of AVEVA Group plc. For the avoidance of doubt, the term “Affiliate” shall exclude Schneider Electric S.A. and all of its subsidiaries.
- 1.3 **“Agreement”** means (a) this EULA; (b) any and all Order Forms; (c) any Addendum and all Addenda referenced in an Order Form; (d) any and all applicable Schedules referenced in an Order Form; and (e) any and all internal policy documents or support manuals referenced in this Agreement or any Order Forms, Addenda, or Schedules.
- 1.4 **“Anti-Bribery Laws”** has the meaning set forth in Section 23.1 (Anti-Bribery).
- 1.5 **“AVEVA Indemnitees”** has the meaning set forth in Section 20.3 (Indemnification by You).
- 1.6 **“Bug Fix”** has the meaning set forth in Section 10.2.3 (Bug Fixes).
- 1.7 **“CFP User Guide”** means the Customer FIRST Program User Guide provided by AVEVA. A “CFP User Guide” may not be provided or available to Customer for all Support.
- 1.8 **“Compliance Monitoring”** means the monitoring of Your and third-parties’ compliance with any license and usage restrictions for AVEVA’s software products (and those software products of its Affiliates) by legally permissible means, which may be effectuated by a security mechanism included in the Software. The Compliance Monitoring may include the detection, collection, transmission and processing of data and personal data by AVEVA, including but not limited to IP addresses, Email Domain and WIFI geolocation, if an illegal copy is detected.
- 1.9 **“Confidential Information”** has the meaning set forth in Section 6.1 (Confidential Information).
- 1.10 **“Control”** means with respect to any entity, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities (or other ownership interest), by contract or otherwise.
- 1.11 **“Credits”** means electronic credits purchased by You that are then redeemed against Your chosen Software allowing use of such Software for the Software Term.

- 1.12 **“Damages”** means any and all losses, damages, judgments, costs and expenses in connection with a Claim, including a Party’s attorneys’ fees and court costs.
- 1.13 **“Day”** means a 24-hour period of time commencing at 00:00 (12:00 a.m.) and continuing until 23:59 (11:59 p.m.) in the time zone where the Designated Server hosting the relevant Software resides, or the remaining portion of such period when a License Key that is measured in whole or in part in a number of Days is effective for use on the day it is generated and generation occurs at a time other than 12:00 a.m.
- 1.14 **“Delivery”** means: (a) the date of availability with respect to digital downloads of the Software; (b) the date of receipt with respect to physical media; or (c) the date that installation of the Software is complete if performed by AVEVA or its contractors.
- 1.15 **“Designated Server”** means the server identified as the “Designated Server” in the applicable Order Form.
- 1.16 **“Disclosing Party”** has the meaning set forth in Section 6.1 (Confidential Information).
- 1.17 **“Documentation”** means any documentation provided by AVEVA for the Software, in machine-readable form, including the technical documentation, program specification and operations manual, as applicable.
- 1.18 **“Effective Date”** means the earliest to occur of the following: (a) You or its agent clicks “I Agree”; or (b) You downloads, installs, or uses any Software.
- 1.19 **“Excess Usage”** has the meaning set forth in Section 2.8 (Credit Based Subscription Model).
- 1.20 **“Export Control Laws”** means any and all laws that control, restrict, or impose licensing requirements on export, re-export, transfer of or use of goods, software, technology, or services, issued or adopted by any government, state or regulatory authority of any country in which obligations under this Agreement are to be performed, or in which AVEVA or any of its Affiliates are incorporated or operate, including without limitation the United States of America, the United Kingdom, and the European Union or of any of its Member States.
- 1.21 **“Force Majeure”** has the meaning set forth in Section 24.3 (Force Majeure).
- 1.22 **“GDPR”** has the meaning set forth in Section 12.1 (No Joint Data Controllorship).
- 1.23 **“Hardware”** means all equipment, materials, spare parts, hardware, supplies, and accessories for which support has been purchased under the applicable Order Form.
- 1.24 **“High Risk Use”** has the meaning set forth in Section 2.3.4 (High Risk Use).
- 1.25 **“Hot Fix”** means unreleased Software which has not been processed through a full quality assurance cycle and which is designed to correct a specific defect in the Software.
- 1.26 **“Intellectual Property Rights”** means any patent rights, copyrights, trademarks, trade secrets, moral rights, and other proprietary or intellectual property rights worldwide.
- 1.27 **“Law”** means any and all laws and regulations applicable to or binding upon the Software, Support, or a Party in the performance of its obligations or exercise of its rights under this Agreement.
- 1.28 **“License File”** means a security mechanism relating to the Software that enables one or more components of the Software.
- 1.29 **“License Key”** means a code required to activate the Software.
- 1.30 **“License Period”** means in relation to any Software, the period for which You are permitted to Use the Software, as specified by AVEVA (including as may be set forth in an Order Form).
- 1.31 **“Licensing System”** means AVEVA’s licensing management software that is software separate from AVEVA’s production software and is required for AVEVA’s production software to run.
- 1.32 **“Log Agent”** means the tool within AVEVA’s Licensing System that is responsible for collating non-personal information solely regarding the use of AVEVA’s production software installed on the applicable server by the customer.
- 1.33 **“Month”** means a period of time commencing at 00:00 (12:00 a.m.) on the first day of a calendar month and terminating at 23:59 (11:59 p.m.) on the final day of the same calendar month, based on the local time zone where the Designated Server hosting the relevant Software resides.
- 1.34 **“Nonqualified Products”** means any hardware or software product other than the Software.
- 1.35 **“Normal Workday”** or **“Normal Working Hours”** means 9:00 a.m. to 5:00 p.m. on any business day in the location where on-site Support is being performed (excluding any public holidays in such location where such on-site Support is being performed).
- 1.36 **“Notice File”** means the notice file within (or included with) the Software.
- 1.37 **“Order Form”** means the document issued by AVEVA or an authorized AVEVA distributor or authorized AVEVA reseller in hard or electronic copy which, among other things, may identify (a) the particular Software ordered by or for You, (b) the location of the designated Device(s) or Named Users, (c) the duration or term of the Software license granted to You, (d) the license fees and any applicable Support

ness owed by You and/or (e) the payment schedule means any order form entered into by the Parties pursuant to which AVEVA provides Software and certain Support to You in accordance with this Agreement. If AVEVA, an authorized AVEVA distributor, or authorized AVEVA reseller has not issued You an Order Form in connection with Your order of any Software and/or receiving of any Support, references to “as described in the Order Form,” “pursuant to the Order Form,” “as set forth in the applicable Order Form,” etc. throughout this EULA do not apply to You.

- 1.38 **“Overtime Rates”** means (i) for any on-site Support performed on a public holiday in the location where such on-site Support is being performed, twice (2x) the standard rate, (ii) for the first twenty (20) hours of on-site Support performed outside of Normal Working Hours during a calendar week (other than those performed on public holiday), one and one-half times (1.5x) the standard rate, and (iii) for all on-site Support performed outside of Normal Working Hours during a calendar week in excess of twenty (20) hours (other than that performed on public holiday), twice (2x) the standard rate.
- 1.39 **“Pre-Existing Intellectual Property”** means Intellectual Property Rights created or developed by or on behalf of You prior to the Effective Date of this Agreement, not developed specifically for AVEVA or in contemplation of this Agreement.
- 1.40 **“Pre-Production Release”** means Software that has not completed AVEVA’s formal release requirements and includes beta software, Hot Fixes and SUPs.
- 1.41 **“Receiving Party”** has the meaning set forth in Section 6.1 (Confidential Information).
- 1.42 **“Redundant”** means, in connection with a runtime license for the AVEVA Pipeline Integrity Monitor Software that is bundled with other Software, a configuration in which AVEVA’s Pipeline Integrity Monitor Software is installed on multiple servers forming part of the System, with one (1) server being the “hot” or operational server, and other the server(s) acting as a standby. Only one (1) copy of the AVEVA Pipeline Integrity Monitor software will be accessed by the licensed server, as specified in the Order Form, as a “Runtime Primary” and all others will be considered “Runtime Adders”.
- 1.43 **“Remote Support Service”** means the use of remote data links from AVEVA to Customer’s System to render the Support to Customer.
- 1.44 **“Sanctions Laws”** means any economic, financial, trade or other, sanction, restriction, embargo, import or export ban, prohibition on transfer of funds or assets or on performing services, or equivalent measure imposed by any government, state or regulatory authority of any country in which obligations under this Agreement are to be performed, or in which AVEVA or any of its Affiliates are incorporated or operate, including without limitation the United States of America, the United Kingdom, and the European Union or of any of its Member States.
- 1.45 **“Seats”** or **“Seat”** means the ezXOS, ES stations and non-XOS computers (if any), described in the Order Form with access to the RealTime Services, Historical Services and applications software installed on the servers forming part of the System.
- 1.46 **“SimSci Token”** means a token under AVEVA’s SimSci token-based security structure. The value of a “Token” as it relates to the Software will be as specified in the Order Form.
- 1.47 **“Site(s)”** means those locations at which the Software will run or be stored as backup as listed in the Order Form.
- 1.48 **“Software”** means the software products (in object code (machine-readable) format only) licensed to You by AVEVA pursuant to an Order Form, including any new releases, updates, or versions that AVEVA may make available.
- 1.49 **“Software Schedule”** means the AVEVA Software Schedule Engineering (Including SimSci and Process Optimization).
- 1.50 **“Software Term”** means the initial term and any subsequent renewal term(s) for the Software, as set forth in the applicable Order Form.
- 1.51 **“Streamlined Rules”** has the meaning set forth in Section 24.10 (Binding Arbitration).
- 1.52 **“SUP”** (Single User Product) means modifications to the Software made for a specific licensee.
- 1.53 **“Support”** means the support services described in this Agreement.
- 1.54 **“Supported Software”** means Software for which Support was purchased. Supported Software may contain certain Third-Party Products that are embedded or added into the Software. For the avoidance of doubt, any such Third-Party Products are subject to the terms and conditions of the third-party vendor, including but not limited to warranties, licenses, indemnities, limitation of liability, prices and changes thereto.

- 1.55 **“Support Term”** means (i) for Support that is included for Software at no additional cost, the Software Term for such Software, and (ii) for Support that is not included for Software at no additional cost, the initial term and any subsequent renewal term(s) for the Support as set forth in the applicable Order Form.
- 1.56 **“Supporting Hardware”** means any dongles or other physical devices supplied by AVEVA to You for use with Software.
- 1.57 **“System”** means the system as identified and described in the Order Form and consisting of the Designated Server and work stations as shown in the system configuration diagram in the Order Form.
- 1.58 **“System Manager”** means the individual(s) responsible for maintaining the integrity of the System.
- 1.59 **“Tax”** or **“Taxes”** has the meaning set forth in Section 3.2 (Taxes).
- 1.60 **“Third-Party Products”** means products (including any software-as-a-service or cloud service products) and software of a third party that are supplied by AVEVA or incorporated by AVEVA into its Software.
- 1.61 **“Token”** (a) for purposes of the CALM model, means a notional unit that provides access to the Software when redeemed through creation of a License Key, and (b) for purposes of the Usage Based Licensing Model, means the virtual Tokens purchased by You which may be redeemed to create a License File allowing access and Use of the Software for the Token Access Period.
- 1.62 **“Token Access Period”** for purposes of the Usage Based Licensing Model, means the period of twelve (12) hours during which a User may access multiple instances of each of AVEVA’s Software product from one workstation as listed on the Order Form. The User may log in and out of such AVEVA Software product at-will for the entire Token Access Period. Each Token Access Period requires redemption of the number of Tokens shown for each Software product in the Token Weighting Table. If You desire the Software to be used by multiple Users, it must purchase a Token Access Period for each User.
- 1.63 **“Token Weighting Table”** means the “Token Weighting Table” included in the applicable Order Form.
- 1.64 **“Top-Up Credits”** means the additional Credits purchased by You at any time other than on a renewal term.
- 1.65 **“Top-Up Tokens”** means additional Tokens purchased at any time other than on an anniversary of the Order Form.
- 1.66 **“Trade Controls”** has the meaning set forth in Section 23.2 (Trade Control).
- 1.67 **“Trial Software”** means Software that has been licensed to You either: (i) solely for the purposes of evaluation; or (ii) that is supplied for the purposes of training, beta testing, academic or other non-commercial use.
- 1.68 **“Use”** means utilization of the Software by copying, transmitting, or loading the same into the temporary memory (RAM) or installing into the permanent memory (e.g. hard disk, DVD ROM or other storage device) of Your hardware for the processing of the system instructions or statements contained in such Software, subject to any limitations set forth in an applicable Software Schedule or Order Form.
- 1.69 **“User”** means a single user running one (1) or more instances of the licensed Software from a single workstation. If a User is running more than one (1) instances of the licensed Software from a single workstation, multiple licenses will be consumed by such User.
- 1.70 **“U.S. Person Requirement”** has the meaning set forth in Section 10.5 (U.S. Person Requirement).
- 1.71 **“Updates”** means any upgrades, updates, enhancements, improvements, or modifications to the Software generally made available by AVEVA as part of any support services but does not include any new version of the Software that may be separately offered by AVEVA.
- 1.72 **“Website”** for purposes of the CALM model, means the website operated by AVEVA at <https://connect.aveva.com/> which allows You to view the number of unused Tokens available for redemption and to manage and create its CALM-generated License Keys.
- 1.73 **“Work Product”** means any art, discovery, improvement, deliverable, process, customization, report, documentation, invention, modification, enhancement, product, software or other item developed, created, or provided in connection with the Support, whether or not copyrightable or patentable, inclusive of all related know-how, trade secrets, and any other tangible or intangible technical material or information delivered by AVEVA to You or any of Your Affiliates under this Agreement.
- 1.74 **“Your Content”** means all software, data (including personal data), information, text, images, audio, video, photographs, non-AVEVA or third-party applications, and other content and material, in any format, provided by You, any of Your users, or on behalf of You that is stored in, or run on or through, the Software and Support.
- 1.75 **“\$”** shall mean lawful money of the United States.

## 2. **USE OF PRODUCTS, GRANT OF LICENSE AND LICENSE RESTRICTIONS.**

2.1 **Right to Use.** Subject to Your compliance with all terms and conditions of this Agreement (including payment of all applicable fees), AVEVA will deliver and make the Software listed in the applicable Order Form available to You and, if expressly stated in the applicable Order Form, Your named Affiliate(s).

2.2 **Grant of License.** In consideration of full payment of the fees for the Software and subject to Your compliance with its obligations under this Agreement, AVEVA grants to You a personal, non-transferable, non-exclusive, non-sublicensable, limited license to Use the Software described in the Order Form for the Software Term and in accordance with the license model identified in such Order Form and subject to any restrictions set forth for such Software (including any Order Forms or applicable Schedule). The Software may only be used for purposes of Your ordinary internal business purposes by the particular user(s), in the particular location(s), on the particular device(s) and/or on the particular system(s) for which You licensed such Software, as those user(s), location(s), device(s) and/or system(s) are identified in the applicable Software Schedule or Order Form. If the Order Form fails to state a duration/term of the license granted under this Agreement then such duration/term shall be deemed to be one (1) year from the effective date of the Order Form applicable to the Software. For the avoidance of doubt, You shall not permit any third parties (except those that are expressly identified as permitted user(s) in an Order Form) to access or use the Software without AVEVA's prior written consent and You shall be liable for any third-party usage, whether or not such usage has been authorized.

2.3 **License Restrictions.**

2.3.1 **Copy Restrictions.** Copyright laws and international treaties protect the Software, including the Documentation. Unauthorized copying of the Software, the Documentation or any part thereof, is expressly prohibited. You shall reproduce all titles, trademarks, and copyright and restricted rights notices in all copies of the Software.

2.3.2 **Use Restrictions.** This Agreement only gives You some rights to use the Software as expressly permitted in this Agreement and AVEVA and its licensors reserve all other rights. You do not acquire any rights, express or implied, other than those expressly granted in this Agreement. Unless applicable Law gives You more rights despite this limitation, You may use the Software only as expressly permitted in this Agreement. In doing so, You agree that it will comply with any technical limitations in the Software that only allow You to use the Software in certain ways. You agree that it will not, nor will You permit others to:

- (i) reverse engineer, reproduce, decompile, recompile, disassemble, merge, modify, adapt or translate the Software or Documentation or any component thereof, or create derivative works based on the Software or Documentation, except and only to the extent that (a) applicable Law expressly permits, despite this limitation, (b) AVEVA gives it prior written consent, or (c) the Documentation accompanying the Software expressly permits;
- (ii) incorporate the Software into any other software program not provided by AVEVA, except (a) for incorporation of such Software with application program interfaces that AVEVA makes publicly available for such Software or (b) to the extent permitted to customize the Software in accordance with the accompanying Documentation;
- (iii) remove, obliterate, destroy, minimize, block or modify any logos, trademarks, copyright, digital watermarks, or other notices of AVEVA or its licensors that are included in the Software, except as may be permitted when using application program interfaces that AVEVA makes publicly available for such Software;
- (iv) work around any technical limitations in the Software;
- (v) make more copies of the Software or Documentation than as allowed in this Agreement or by applicable Law, despite this limitation;
- (vi) publish (or otherwise make available) the Software, including any application programming interfaces included in the Software, or any programs or materials resulting from the Software (excluding Your Content), for others to copy;
- (vii) transfer, sublicense, rent, lease, sell, lend, distribute, outsource, permit timesharing or service bureau use of, commercially exploit, make available, or assign the Software or any part thereof to any other person or entity (except as expressly permitted by this Agreement);
- (viii) transfer the Software to another location or to other equipment without the prior written consent of AVEVA (except as otherwise expressly permitted pursuant to this Agreement);

- (ix) use the Software to store or transmit infringing, libelous, or otherwise unlawful or tortious material (or to store or transmit material in violation of Law or third-party privacy rights);
- (x) use the Software in a way intended to avoid incurring fees or exceed usage limitations;
- (xi) use the Software to build or support, directly or indirectly, products or services competitive to the Software or any other products or services of AVEVA;
- (xii) perform any benchmark testing or any of the following security testing of the Software without AVEVA's prior written consent, which will not be unreasonably withheld: network discovery, port and service identification, vulnerability scanning, password cracking, remote access testing, or penetration testing; or
- (xiii) Only data collection failover deployments may run in parallel with the primary data collection deployment without an explicit license.
  - a. All other copies of Software running in parallel with the primary deployment must be explicitly licensed.
  - b. For example, Software that is copied for backup purposes may not be used for training, testing, as a hot standby nor as a caching server. The Software may only be used to recover from a failure.

2.3.3 Return or Destruction of Software. Upon termination or expiration of the Software Term, You shall destroy or return at AVEVA's discretion to AVEVA the Software (regardless of the media or device upon which such Software is fixed) and any related software install kits, licenses, or licensing management software. In addition to any other remedies available to AVEVA, if You file for bankruptcy, becomes insolvent, or makes an assignment or novation for the benefit of creditors, then You automatically and without further action grants to AVEVA the right to require You to return or destroy the Software.

2.3.4 High Risk Use. The Software is not fault-tolerant and is not guaranteed to be error free or to operate uninterrupted. Unless AVEVA gives its prior written consent and is consulted regarding the specific deployment, system set-up and Software support plan, You have no right to use (and must not use) the Software in any application or situation where the failure of the Software could lead to death or serious bodily injury of any person, or to severe physical or environmental damage ("High Risk Use"). High Risk Use does not include utilization of the Software for administrative purposes, to store configuration data, engineering and/or configuration tools, or other applications, the failure of which would not result in death, personal injury, or severe physical or environmental damage.

2.3.5 Industry and Categorical Restrictions. **THE FOLLOWING CLAUSE APPLIES ONLY TO AVEVA'S BOCAD AND FABTROL SOFTWARE.** You shall not use the Software in connection with aircraft or other modes of human mass transportation, nuclear or chemical facilities, or medical life support devices unless You have provided full details of such proposed use to AVEVA and has received prior written approval for such use from AVEVA.

2.4 Installation of Software. Except as otherwise stated in an applicable Order Form, You will be responsible for installing the Software on Your information technology devices (e.g., hard disks and processing units) at Your designated locations in accordance with any installation restrictions set forth in the applicable Order Form.

2.5 Updates for Software. If AVEVA releases any Updates to the Software (including, but not limited to, any error corrections or patches), then You shall install such Updates as soon as reasonably practicable and in no event more than seven (7) calendar days after receiving notice that such Updates have been issued to correct infringement or misappropriation of a third-party's Intellectual Property Rights.

2.6 Life Cycle for Software. AVEVA reserves the right to "end of life" any Software in accordance with its then-current end of life policy, which is located at [www.aveva.com/policies/eol/en](http://www.aveva.com/policies/eol/en).

2.7 Credit Based Subscription Model. If the Software has been subscribed to on a credit based subscription model basis, then Your use of the Software shall be limited to and shall not exceed the number of Credits set forth in the Order Form. You will purchase Credits at the start of the initial term and on each renewal term of the Software Term. Your rights to use such Credits will expire on the initial term and any renewal term on which the Credits were purchased. Where You purchases Top-up Credits, such Top-up Credits will be purchased at the agreed rate and will expire at the end of the initial term or renewal term, as applicable. AVEVA may, but is not required to send notifications to the Account Administrator in connection with the following events:

- One (1) month before Your projected usage will have consumed all remaining Credits.
- One (1) week before Your projected usage will have consumed all remaining Credits.
- When all credits have been consumed.

Where Your use of the Software exceeds the number of Credits or Top-Up Credits purchased (“Excess Usage”), AVEVA reserves the right to deny use of the Software. AVEVA reserves the right to charge You for Excess Usage at a rate equal to forty percent (40%) of the applicable fees for such Software. Notwithstanding Section 3 (Payments), if You owe AVEVA any unpaid fees or have any issued and outstanding invoice(s), You shall pay the full amount of such unpaid fees and/or invoice(s) to AVEVA prior to purchasing Top-up Credits.

### **3. Payments.**

This Section 3 applies to You only if You are purchasing Software or Support directly from AVEVA; that is, where AVEVA has issued You an Order Form, and not where an authorized AVEVA distributor or an authorized AVEVA reseller has issued You an Order Form.

3.1 Late Payments. You shall pay a late charge of 1.5% per month on all payments which are not paid when due.

3.2 Taxes. Fees and other charges described in the Agreement do not include Taxes. Unless otherwise agreed in the applicable Order Form, You will pay all sales, use, value-added, gross receipt, or other similar taxes (“Tax” or “Taxes”) imposed by applicable Law based on the Software and Support that You ordered, except for taxes based on AVEVA’s income. If AVEVA is required to pay such Taxes (other than taxes based on AVEVA’s income), You shall reimburse AVEVA for all such amounts. Subscription licenses are sold as Software and not Support and AVEVA will bill and Customer will pay to AVEVA Tax as such. If You are required by applicable Law to make any Tax withholding from amounts paid or payable to AVEVA under this Agreement, (a) the amount paid or payable shall be increased to the extent necessary to ensure that AVEVA receives a net amount equal to the amount that it would have received had no Taxes been withheld and (b) You shall provide proof of such withholding to AVEVA. If You are exempt from paying Taxes, You shall provide AVEVA with written evidence of a valid Tax exemption. In addition, You shall, on at least an annual basis and upon reasonable request from AVEVA, update or re-confirm such Tax-exempt status. AVEVA reserves the right to invoice You for applicable Taxes if You fail to maintain or update written evidence of such Tax-exempt status or exemption with AVEVA.

3.3 You will provide proof of any exemption from Taxes to AVEVA at least fifteen (15) business days before the due date for paying an invoice. If AVEVA does not collect the required Taxes from You but is subsequently required to remit the Taxes to any taxing authority, You will promptly reimburse AVEVA for all such Taxes, including all accrued penalties and interest charges if the failure to timely collect and remit was not due to the fault of AVEVA.

3.4 Each Party is responsible for its own income taxes or taxes based on gross revenues or gross receipts.

3.5 Non-Refundable Fees. You acknowledge and agree that orders placed by You for Software and Support will be non-cancellable and the fees paid are non-refundable unless otherwise expressly stated in this Agreement.

### **4. RECORD KEEPING, AUDIT, VERIFICATION, EXCESS USE AND COMPLIANCE MONITORING.**

4.1 Record Keeping. During the Software Term and for a period of two (2) years thereafter, You shall maintain complete and accurate records documenting the location and use of the Software in a manner sufficient to permit AVEVA to conduct an audit in accordance with Section 4.2 of this Agreement.

4.2 Audit Right. During the Software Term and for a period of two (2) years thereafter, AVEVA shall be permitted to audit and/or shall be permitted to have its designee audit (at least once annually and in accordance with AVEVA’s standard procedures, which may include on-site and/or remote audits of facilities, systems, records, and personnel) the usage of the Software and Your compliance with this Agreement. AVEVA will conduct any such audit during regular business hours. You shall cooperate reasonably in the conduct of such audits. Any reasonable and actual costs incurred by AVEVA for such audit shall be paid by You if the audit results indicate usage in excess of the licensed quantities or levels by at least five percent (5%), underpayment of any fees by at least five percent (5%), or breach of this Agreement.

- 4.3 **Compliance Certificate.** Within thirty (30) days of receipt of AVEVA's written request, You shall provide AVEVA with a signed certification of compliance with the Software licensing conditions; provided, however, that AVEVA shall not request more than one compliance certificate annually.
- 4.4 **Excess Use.** If Your use of any Software exceeds the permitted usage metrics, then You will be subject to additional fees for such excess usage at AVEVA's then-current rates. You will execute an additional Order Form or amendment to the applicable Order Form for such additional usage and the fees for such additional usage will accrue from the date the excess usage began (together with an interest rate of one and one-half percent (1.5%) per month or partial month from the date such excess usage began until payment). The assessment of additional fees shall be without prejudice to AVEVA's other rights and remedies with respect to such excess usage.
- 4.5 **Compliance Monitoring.** AVEVA may conduct Compliance Monitoring and You consents to such Compliance Monitoring. AVEVA reserves the right to use a hardware lock device, license administration software, and/or a license authorization key to control access to the Software. You may not take any steps to avoid or defeat the purpose of any such measures. Use of any Software without any required lock device or authorization key provided by AVEVA is prohibited. For the avoidance of doubt, You shall be solely responsible for its failure to comply with any license and usage restrictions for AVEVA's software products.

## **5. INTELLECTUAL PROPERTY RIGHTS.**

- 5.1 **AVEVA Ownership of Intellectual Property Rights.** All Intellectual Property Rights in and to the Work Product, Software, Support, including techniques, knowledge or processes associated with design contributions, related knowledge or processes, and any and all updates, upgrades, modifications, enhancements, and derivative works of the foregoing, regardless of whether or not solely created by AVEVA or jointly with the You, shall belong to, and vest in, AVEVA or, as applicable, its licensors. All rights not expressly granted to You are reserved to AVEVA or, as applicable, its licensors.
- 5.2 **Rights to You Content.** You retain all right, title, and interest in and to Your Content. During the Term, You hereby grants to AVEVA and its Affiliates a global, royalty-free, irrevocable, sub-licensable, non-exclusive license to use, copy, distribute, modify, display, and perform Your Content as necessary for AVEVA to perform its obligations under this Agreement.
- 5.3 **Non-Assertion of Rights.** You covenant, on behalf of itself and its successors and assigns, not to assert against AVEVA, its Affiliates or licensors, any rights, or any Claims of any rights, in any Software, Documentation or Support, and You hereby voluntarily waive any right to demand from AVEVA, its Affiliates or licensors any rights to any Software, Documentation or Support, except the rights that are expressly granted to You under this Agreement.
- 5.4 **Suggestions and Residual Knowledge.** In compliance with the applicable confidentiality obligations, AVEVA shall have all right, title and interest, including, all Intellectual Property Rights, in and to, and the unrestricted royalty-free right to use and incorporate into the Software, Documentation, and Support, any and all suggestions, enhancement requests, recommendations, and/or other feedback provided by You, relating to the Software, Documentation, and/or Support. Furthermore, You acknowledge and agrees that AVEVA is free to use its general knowledge, skills and experience, and any ideas, concepts, know-how and techniques, related to or derived from the performance of its obligations under this Agreement.
- 5.5 **AVEVA Trademarks.** Unless otherwise expressly stated in this Agreement, AVEVA retains all goodwill in and You have no rights in any trade name, trademark, service mark, logo or other designation owned by AVEVA, whether registered or unregistered, including the following: AVEVA, the AVEVA logo, Wonderware and InTouch ("AVEVA Marks"). You shall not (a) claim any right, title or interest in any AVEVA Mark; (b) register, seek to register, or cause to be registered any AVEVA Mark, other than in AVEVA's name and at AVEVA's specific request; (c) adopt and use any trademark, service mark, trade name, logo or designation that might be confusingly similar to any AVEVA Mark; (d) attach any other trademark, service mark, trade name, logo or designation to the Software, Documentation, or Support; (e) adapt or remove AVEVA Marks from the Software, Documentation, or Support; or (f) use any AVEVA Mark in connection with products other than the Software or Support.
- 5.6 **AVEVA Ownership of Work Product.** AVEVA owns all Intellectual Property Rights in and to the Work Product, including techniques, knowledge or processes associated with the Work Product, regardless whether or not solely created by AVEVA or jointly with You. You shall execute and ensure its third parties and Affiliates execute, at AVEVA's expense, any and all such documentation to secure AVEVA's rights in



such Work Product. For the avoidance of doubt, You and AVEVA agree and acknowledge that no Work Product will be considered “work made for hire” under the Copyright Act of 1976, 17 U.S.C. § 101 et seq., or any similar legislation of any other jurisdiction.

- 5.7 Your License to Joint Work Products. You hereby grants to AVEVA a non-exclusive, worldwide, royalty free, perpetual license to use the jointly created Work Product in accordance with this Section 5 (Intellectual Property Rights).
- 5.8 AVEVA’s License to Work Products. Subject to Your compliance with all terms and conditions of this Agreement (including payment of all applicable fees), AVEVA hereby grants to You a personal, non-exclusive, non-transferable, limited, revocable, license during the term of the Order Form (or such longer period if expressly set forth in an Order Form) to use any Work Product provided to You solely for Your internal business operations to support Your authorized usage of the Software in accordance with the terms of this Agreement.
- 5.9 Your Pre-Existing Intellectual Property. You shall own the Pre-Existing Intellectual Property and have all right, title, and interest in and to the Pre-Existing Intellectual Property. During the term of the applicable Order Form, You grant to AVEVA and its Affiliates a global, royalty-free, irrevocable, sub-licensable, non-exclusive license to use, copy, distribute, modify, display, and perform the Pre-Existing Intellectual Property as necessary for AVEVA to perform its obligations under this Agreement.
- 5.10 Data Collection and Ownership. Notwithstanding anything to the contrary contained in this Agreement, You authorize AVEVA to collect, use, disclose, and modify in perpetuity information or data (including, but not limited to, general usage information and measurements) that is provided by You in connection with the use or receipt of the Software or Support (or generated or created in the course of AVEVA providing the Software or Support) for the purposes of developing, improving, optimizing, and delivering Software or Support. AVEVA may not share any collected data that includes Your Confidential Information with a third party except (a) in accordance with Section 6 (Confidentiality); or (b) to the extent the collected data is aggregated and anonymized such that You cannot be identified. Upon collection, AVEVA shall be the owner of such data.

## **6. CONFIDENTIALITY.**

- 6.1 Confidential Information. From time to time, either Party (the “Disclosing Party”) may disclose or make available to the other Party (the “Receiving Party”) Confidential Information of or in the possession of the Disclosing Party in connection with this Agreement. The term “Confidential Information” means any and all information in any form that Disclosing Party provides to Receiving Party in the course of this Agreement and that either (a) has been marked as confidential; or (b) is of such nature that a reasonable person would consider confidential under like circumstances. For the avoidance of doubt, Confidential Information includes any and all (i) Software and Support and any information pertaining to such Software and Support (including any user manuals, mathematical techniques, correlations, concepts, designs, specifications, listings, and other Documentation, whether or not embedded on a device or another form of media); (ii) confidential or proprietary information of a third party that is in the possession of the Disclosing Party; (iii) software or other materials which include Intellectual Property Rights You develop that references AVEVA’s Confidential Information; and (iv) the terms and conditions of this Agreement. Notwithstanding the foregoing, Confidential Information shall not include any information, however designated, that the Receiving Party can show (A) is or has become generally available to the public without breach of this Agreement by the Receiving Party, (B) became known to the Receiving Party prior to disclosure to the Receiving Party by the Disclosing Party, (C) was received from a third party without breach of any nondisclosure obligations to the Disclosing Party or otherwise in violation of the Disclosing Party’s rights, (D) was developed by the Receiving Party independently of any Confidential Information received from the Disclosing Party, or (E) is considered personal data as further described in Section 12 (Data Protection).
- 6.2 Confidentiality Obligations. Each Party (or third party whose Confidential Information has been disclosed) retains ownership of its Confidential Information. Each Party shall (a) protect the Confidential Information received from the Disclosing Party in the same manner as it protects the confidentiality of its own proprietary and confidential materials but in no event with less than reasonable care; and (b) use the Confidential Information received from the Disclosing Party solely for the purpose of this Agreement. Upon termination of this Agreement or upon written request submitted by the Disclosing Party, whichever comes first, the Receiving Party shall return or destroy, at the Disclosing Party’s choice, all of the Disclosing Party’s

Confidential Information; provided, however, that AVEVA may retain Your Confidential Information during the pendency of a dispute or litigation between the Parties. Notwithstanding the foregoing, neither Party shall be required to return or destroy any such Confidential Information if such return or destruction is impracticable, technically infeasible or contrary to either Party's bona fide existing document retention policies. Except with respect to its Affiliates, employees, contractors, or agents who need to know Confidential Information in order to support the performance of such Party's obligations related to this Agreement, and who are contractually bound by confidentiality obligations that are at least as protective as those contained in this Agreement, neither Party shall, disclose to any person any Confidential Information received from the Disclosing Party without the Disclosing Party's prior written consent. The Receiving Party will be responsible for any breach of this Section 6 by its Affiliates, employees, contractors, and agents and any third party to whom it discloses Confidential Information in accordance with this Section 6. For Confidential Information that does not constitute a "trade secret" under applicable Law, these confidentiality obligations will expire three (3) years after the termination or expiration of this Agreement. For Confidential Information that constitutes a "trade secret" under applicable Law, these confidentiality obligations will continue until such information ceases to constitute a "trade secret" under such applicable Law. Notwithstanding anything to the contrary in this Section 6, the Receiving Party may disclose Confidential Information pursuant to an order of a court or governmental agency; provided, that, if permitted by applicable Law, the Receiving Party shall first notify the Disclosing Party of such order and afford the Disclosing Party the opportunity to seek a protective order relating to such disclosure.

6.3 Unauthorized Access. You must immediately notify AVEVA in writing if any third party gains unauthorized access to AVEVA's proprietary materials, Intellectual Property Rights or Confidential Information. You will use Your best efforts to prevent such unauthorized access.

6.4 Press Releases and Client List Reference. Neither Party shall issue any press release concerning the other Party's work or this Agreement without the other Party's consent. Notwithstanding the foregoing, AVEVA may identify You as a client of AVEVA and use Your name and logo and release an announcement regarding the award of this Agreement and AVEVA is hereby granted a license for the term of this Agreement to use Your name and logo for this purpose, as well as in AVEVA's marketing literature and customer lists, from time to time as needed. AVEVA may generally describe the nature of the work in AVEVA's promotional materials, presentations, case studies, qualification statements, and proposals to current and prospective clients.

## 7. SUPPORTING HARDWARE.

You must use any Supporting Hardware in accordance with AVEVA's instructions. AVEVA reserves the right to withdraw or change any Supporting Hardware in its sole discretion and at any time.

## 8. GOVERNMENT CONTRACTS.

If the Software is licensed for use in the performance of a U.S. Government prime contract or subcontract, You agree that, consistent with FAR 12.211 and 12.212, commercial computer software, computer software documentation and technical data for commercial items are licensed under AVEVA's standard commercial license. The Software was developed at private expense and is licensed as "commercial computer software" as defined under FAR 2.101.

## 9. SUPPORT – ALL SOFTWARE EXCEPT PI OR PI-RELATED SOFTWARE (CUSTOMER FIRST PROGRAM).

This Section 9 applies to Support for all Software other than Support for PI or PI-related Software.

9.1 Incorporation. This Agreement incorporates by reference the CFP User Guide.

9.2 Support Term. Subject to Customer's payment of all applicable fees (including, but not limited to, any license fees for the Software and any fees for the Support), AVEVA will provide the Support during the Support Term. If additional Supported Software or Hardware are purchased, licensed, or leased by Customer during the Support Term, then AVEVA may require that Customer obtain Support for such additional Supported Software or Hardware either (a) with a term prorated to expire at the same time as the Support Term or (b) for a different specified term. If Support is not included with the Software and Customer has not purchased Support, then AVEVA shall not provide to Customer any Support.

- 9.3 **Expense Reimbursement.** Except as otherwise agreed in writing by Customer and AVEVA, Customer shall reimburse AVEVA for expenses incurred by AVEVA to perform the Support, including but not limited to travel and living expenses.
- 9.4 **Version Upgrade.** The software version upgrade entitlement is a benefit to customers that enroll in the Support (Standard, Premium and Elite levels) and are currently licensing the most current version of software (or another preferred minimum version level). If Customer is running a non-current or non-preferred version of the Supported Software, Customer must first purchase an upgrade to the current or preferred version to access this benefit in a new agreement. AVEVA may offer incentives for Customer to purchase version upgrades.
- 9.5 **Non-Refundable Support Fee.** Customer acknowledges and agrees that any fees paid for Support (if any) will be non-refundable and that such fees must be paid for the full Support Term in accordance with the payment schedule set forth in the applicable Order Form.
- 9.6 **Support Reinstatement for Lapsed Enrollment.** If a lapse in enrollment in the Support occurs, then Customer may be assessed AVEVA's then current reinstatement fee. The amount of the reinstatement fee may increase the longer the enrollment has lapsed.
- 9.7 **Support Program Levels.** The Customer FIRST Program portfolio offers a wide choice of offerings to meet Customer's business requirements. Specific program level benefits are described in the CFP User Guide.
- 9.8 **Scope of Support.** AVEVA provides Support in accordance with the AVEVA lifecycle support policy applicable to the Supported Software and Hardware. The applicable AVEVA lifecycle policy is published on the AVEVA brand support websites and may be referenced in the CFP User Guide. Although AVEVA and its "Certified Support Providers" (which are third parties retained by AVEVA to provide Support to Customer, including but not limited to authorized distributors and other support providers) may attempt to resolve issues arising in earlier AVEVA hardware or software versions, they do not have any obligation to do so under any support level in the Support unless extended support for retired versions is available and purchased on a product by product basis.
- 9.9 **Support Exclusions.**
- 9.9.1. Unless otherwise agreed in writing by AVEVA, AVEVA does **NOT** provide Support for Third-Party Products, including but not limited to Crystal Reports. If AVEVA does provide support services for Third-Party Products, AVEVA's support services for such Third-Party Products shall be rendered "AS-IS" and without warranty of any kind and such support services shall be for an additional fee at AVEVA's then-current service rates.
- 9.9.2. Customer shall be responsible for payment for AVEVA equipment and materials if Customer's employees, agents, consultants or contractors working on AVEVA equipment or materials causes malfunction or failure of such equipment or materials. If such an event occurs, AVEVA equipment and materials will be billed to Customer at the then-current rates for such equipment and materials and Customer shall also pay AVEVA for any associated services as a result of such malfunction or failure.
- 9.9.3. AVEVA and non-AVEVA system hardware and software not specifically listed in the CFP User Guide as covered under the support level purchased by Customer are **NOT** covered under the Support. Technical assistance rendered via any means of communication (including but not limited to telephone, email, texting, and web-enabled chat), remote connection and diagnosis, material, labor or other support assistance provided by AVEVA to resolve an issue involving non-listed hardware, software, or equipment is chargeable to Customer at the then-current AVEVA service rates.
- 9.9.4. AVEVA will **NOT** provide Support on AVEVA software or hardware from or repaired by a non-AVEVA-authorized agent, distributor, reseller or other third party. If any issues occur that are attributable to third-party procured material or services, all work performed by AVEVA will be subject to invoicing at the then-current AVEVA service rates.
- 9.9.5. Unless specifically purchased as an option under an Order Form and described in the CFP User Guide, planning, installation, testing, and documentation of expansions, modifications and software upgrades of custom application or Third-Party Programs are **NOT** covered by the Support.
- 9.9.6. Unless otherwise agreed in writing by AVEVA, Hardware identified as retired phase or due to become retired under the AVEVA lifecycle support policy during the Support Term will be excluded and will **NOT** be supported.

- 9.9.7. AVEVA reserves the right to discontinue Support for any Supported Software in accordance with its then-current end of life policy, which is located at [www.aveva.com/policies/eol/en](http://www.aveva.com/policies/eol/en).
- 9.9.8. AVEVA will provide support in a commercially reasonable manner. However, AVEVA support personnel may not be aware of Customer's specific business or the application of the Software. As such, Customer should exercise its own judgment in adopting any advice or recommendations from AVEVA. No specific business result is assured or guaranteed.
- 9.10 Access to Facilities and Equipment. Customer will furnish at no cost to AVEVA suitable and safe working space, storage space, adequate telephone, light, ventilation, regulated electric power, and outlets for testing purposes. These facilities will be within a reasonable distance from Hardware or Supported Software covered under the Support. AVEVA shall have full and free access to the Hardware and Supported Software in order to provide any on-site corrective Support. Customer will identify person(s) who will interface with AVEVA or other designated support center under the terms of the Agreement. Any maintenance or repair services performed on the Hardware or Supported Software by Customer or third-party personnel resulting in additional material or corrective support service requirements by AVEVA will be invoiced at then-current time and material service rates.
- 9.11 Remote Support Security. Remote Support communication will be conducted only by AVEVA trained specialists working in a secured area using authorized connectivity equipment with security and auto log-on features. Any work accomplished on a Customer system must be authorized by a Customer representative. Communication processors, routers, modems and other equipment used in conjunction with remote Support that are the property of AVEVA shall be returned to AVEVA upon termination or expiration of the Support Term.
- 9.12 On-Site Support.
- 9.12.1 Support or travel in excess of a Normal Workday shall be invoiced at the Overtime Rate.
- 9.12.2 Unless otherwise agreed in writing by AVEVA and Customer, all on-site Support will be billed to Customer at the then-current AVEVA service rates. Customer agrees that a minimum of four (4) hours will be charged by AVEVA where hourly rates are applicable and a minimum of one (1) day will be charged by AVEVA where daily rates are applicable for service and travel time.
- 9.12.3 When shift work other than the Normal Workday is required, the Overtime Rate shall apply.
- 9.12.4 Support time committed in advance by AVEVA on the basis of pre-specified number of days shall not be deemed to include overtime or shift work. If overtime or shift work is required on such commitments, the pre-specified time so committed in advance shall be appropriately reduced.
- 9.12.5 Unless the AVEVA representative has been released from the job site, or has completed his assignment, Customer will pay AVEVA charges computed as if the AVEVA representative was working a normal work week (five Normal Workdays), regardless of whether or not the representative is prevented from working due to delays beyond his control.
- 9.12.6 Release from the job site shall entitle the representative to return to his point of origin, with travel time and expenses chargeable to Customer.
- 9.12.7 Standby time is defined as that time during which an AVEVA representative is requested to remain in readiness and available for Support commencing at the convenience of Customer. Such time shall be considered as time worked, whether or not the representative is at the job site, and Customer will be billed accordingly. If standby time is outside of Normal Working Hours, the Overtime Rate will apply. Standby time will be added to time actually worked for the computation of overtime charges, etc.
- 9.12.8 AVEVA representatives reserve the right to refuse to work under hazardous conditions. All staging and rigging required for access to equipment to be serviced shall be erected by and at the expenses of Customer or third parties and shall comply with reasonable safety requirements, which Customer will provide to AVEVA at least five (5) business days in advance of AVEVA coming on site. AVEVA representatives shall comply with all reasonable policies, procedures, and rules given to such representatives in writing. However, any protective clothing or equipment, except the standard safety hat, required by Customer regulations shall be provided by Customer at Customer's sole cost. Additionally, AVEVA reserves the right in its sole discretion to remove or replace representatives performing on-site Support.

- 9.12.9 AVEVA representatives are authorized to act only in a consulting capacity and are not authorized or licensed to operate equipment. All responsibility for operating equipment shall rest with Customer or third parties.
- 9.12.10 Unless otherwise agreed in writing by AVEVA, all parts identified as requiring replacement during a non-warranty related service call shall be invoiced at AVEVA's then-current list prices.
- 9.13 Support for Brands. All Software licenses and Hardware for a given AVEVA brand (including but not limited to Avantis, Citect, SimSci, Wonderware, OASys DNA and SimSuite Pipeline) at a participating site must be covered under the Support during the entire license term.
- 9.14 Customer Approval. If the Support requires AVEVA or its representatives to update, modify, or otherwise interact with Customer's sensitive or critical systems, equipment, software, or programs, then Customer, at AVEVA's request, must approve any updates, modifications, or interactions with such systems, equipment, software, or programs.

**10. SUPPORT – PI AND PI-RELATED SOFTWARE ONLY (SOFTWARE RELIANCE PROGRAM).**

This Section 10 applies to Support for PI or PI-related Software only.

- 10.1 Designated System Manager. As a condition to AVEVA's performance of the Software Reliance Program, Customer must designate one or more "System Manager(s)." Customer is responsible for maintaining individual(s) trained as System Manager(s).
- 10.2 Software Reliance Program.
  - 10.2.1. Technical Support. AVEVA will provide the System Manager with the contact information for the designated AVEVA Technical Support. The System Manager will be entitled to contact the AVEVA Technical Support 7 days a week, 24 hours a day to ask questions or seek advice regarding the use of the Software. AVEVA will assist the System Manager in using the Software and in identifying and providing workarounds, if possible, for problems with the Software. Such assistance may include computer communications to Customer's facilities. AVEVA will use its best efforts to respond to all Technical Support queries within four (4) hours. For the avoidance of doubt, AVEVA Technical Support will not respond to any Technical Support queries regarding Customer's use of, or issues with, ProcessPoint.
  - 10.2.2. Software Suggestions. Customer may submit suggestions to AVEVA identifying desired improvements in the Software. AVEVA retains the right to determine the final disposition of all such suggestions and Customer recognizes that AVEVA is free to use such suggestions in any manner. If AVEVA decides, in its sole judgment, to incorporate any such suggestion, it will do so by providing Customer with an Update, as described in Section 10.2.4 (Software Updates) below.
  - 10.2.3. Bug Fixes. AVEVA will use reasonable efforts to provide Customer with an avoidance procedure for and a correction of each material defect in the Software that cause the Software not to conform in all material respects with the AVEVA Documentation (a "Bug Fix").
  - 10.2.4. Software Updates. As AVEVA develops permanent solutions for known Software problems, AVEVA will, from time to time, incorporate such solutions into planned Updates to the Software, as applicable. Such Updates may also include those minor enhancements and extensions or other changes to the Software as are determined by AVEVA to be suitable to the uses made of the Software by AVEVA's licensees and are made available by AVEVA to its other licensees without additional charge. AVEVA will provide Customers whose Software Reliance Program fees are current with such Updates as they are released. AVEVA will provide Customer with such instructions and/or documentation that AVEVA considers reasonably necessary to assist in a smooth transition to use of such Updates. Use of some Updates may require Customer's agreement to additional usage terms, which shall be indicated in the accompanying documentation and on <https://www.osisoft.com/>, where appropriate. In the event AVEVA decides in its discretion to update the appropriate software reference manual or to issue release notes or other documentation corresponding to Updates, AVEVA will provide one copy of the same to Customer at no charge as they become available.
  - 10.2.5. Interface Exchanges. Customer may exchange one standard interface for another if the only difference between the two interfaces is the operating system with which the interface is compatible. These exchanges will be processed free of any licensing fees. AVEVA will have the

right to charge any shipping, handling, tariffs or other costs incurred by AVEVA related to delivering any replacement interface.

- 10.3 Remote Support Service. AVEVA will maintain compatible equipment or emulators to be able to remotely operate on Customer's System. In order to receive Remote Support Service for the Software, Customer must meet the following prerequisites:
- 10.3.1. Customer must allow an AVEVA approved third-party remote control tool or another AVEVA approved connection to the System, which, at a minimum, will accept reports, messages, and file transfers and a separate telephone line for simultaneous voice communication located with the System.
  - 10.3.2. Customer's System must be available to AVEVA when required, and AVEVA must have a logon, password, and sufficient priority to access the System when needed.
- 10.4 On-Site Assistance.
- 10.4.1 In the event that AVEVA is unable to resolve a problem with the Software through telephone assistance pursuant to Section 10.2.1 (Technical Support) above or through Remote Support Service pursuant to Section 10.3 above, the System Manager may request AVEVA to provide on-site assistance. After verifying the need for on-site assistance, including, without limitation, that Customer has complied with the terms of Section 10.3.1, AVEVA will use its best efforts, subject to the reasonable availability of its personnel, to commence travel for such on-site assistance within one (1) business day for travel of less than one thousand (1,000) miles from AVEVA's facilities, and within two (2) business days otherwise. AVEVA will render on-site assistance to Customer until resolution of the problems identified or for so long as reasonable progress is, in AVEVA's judgment, being made. AVEVA may suspend the performance of on-site assistance as required to obtain additional resources, but will resume such assistance when such resources become available.
  - 10.4.2 AVEVA's obligation with respect to on-site assistance is limited to isolating, identifying, and reporting problems associated with the Software. If problems are isolated to the Software, AVEVA will provide Customer with Bug Fixes, as available. As an interim solution, until a Bug Fix is available, AVEVA will use reasonable efforts to assist Customer in finding an avoidance procedure, if possible, which allows use of the System. Customer has sole responsibility and liability for implementation of AVEVA's recommended interim solution.
  - 10.4.3 AVEVA will invoice and Customer will pay AVEVA's out of pocket expenses incurred in providing on-site assistance. If on-site assistance is necessary because Customer has failed to allow AVEVA to provide Remote Support Service, then AVEVA will invoice and Customer will pay for the time spent by AVEVA personnel in connection with providing such on-site assistance, in accordance with AVEVA's then-current custom software services rates. The origin of any problems associated with the Software will not affect any amounts invoiced for on-site services, even if such problems are caused by Nonqualified Products.
- 10.5 U.S. Person Requirement. Notwithstanding the foregoing, if Customer is required to restrict access to its technology, information or premises to only U.S. citizens and/or permanent residents by applicable U.S. laws and regulations ("U.S. Person Requirement"), then Customer agrees to:
- 10.5.1 inform AVEVA of such U.S. Person Requirement when initiating a Technical Support request pursuant to Section 10.2.1 (Technical Support) above or Remote Support Service request pursuant to Section 10.3 (Remote Support Service) above;
  - 10.5.2 inform AVEVA of the U.S. Person Requirement when initiating an on-site assistance request pursuant to Section 10.4 (On-Site Assistance) above; and
  - 10.5.3 accept that due to the U.S. Person Requirement, Technical Support and Remote Support Service are available only on business days between 7am and 6pm Pacific Standard Time, and that on-site assistance may be delayed.
- 10.6 Subscription Term. Unless otherwise agreed, each Software Reliance Program subscription shall be for a term of 12 months.
- 10.7 Support for Brands. All Software licenses for a given OS/soft brand at a participating site must be covered under the Support during the entire license term.
- 10.8 Conditions to the Software Reliance Program. All Software Reliance Program Support to be rendered by AVEVA hereunder are subject to the following conditions:

- 10.8.1. Nonqualified Products. AVEVA shall have no obligations or responsibilities of any kind hereunder with respect to Nonqualified Products. Nonqualified Products shall also include any custom application programs or other software developed by AVEVA for Customer. If the performance by AVEVA of the Software Reliance Program is made more difficult or impaired because of Nonqualified Products, AVEVA shall so notify Customer, and Customer will immediately remove the Nonqualified Product at its own risk and expense during any efforts to render services under this Agreement. Customer shall be solely responsible for the compatibility and functioning of Nonqualified Products with the Software or remote application.
- 10.8.2. System Versions. All Customer System hardware and software must be maintained at the revision level deemed necessary by AVEVA for proper operation of the Software.
- 10.8.3. Backup Procedures. Customer is solely responsible for maintaining a procedure external to the Software for reconstruction of lost or altered files, data, or programs to the extent deemed necessary by Customer and for actually reconstructing any lost or altered files, data or programs.
- 10.8.4. Operator Procedures. Customer shall at all times follow routine operator procedures as specified in AVEVA operating manuals or other operating manuals for the Software.
- 10.8.5. Licensee Representative. A designated representative of Customer shall be present at all times AVEVA is performing Support on Customer's premises or the premises of Customer's client. AVEVA personnel will not enter or remain at Customer's premises or the premises of Customer's client in the absence of such Customer representative.
- 10.8.6. Isolation. Customer is solely responsible for ensuring that the System is isolated from any process links or anything else that could cause harm before requesting or receiving Remote Support Service or on-site assistance.

## **11. TERMINATION AND SUSPENSION OF SUPPORT SERVICES.**

- 11.1 Additional Termination Rights. AVEVA may terminate the Support and the Order Form under which such Support is provided if:
  - 11.1.1. Customer has breached any of its material obligations under any agreement relating to the Supported Software or Hardware and Customer has not cured such breach within thirty (30) days of receipt of a notice of breach or default from AVEVA; or
  - 11.1.2. Customer uses the Support other than for its own internal business purposes or uses the Support to provide similar services related to the Supported Software or Hardware to any third party.
- 11.2 Suspension of Support. Without prejudice to other remedies available by Law, AVEVA reserves the right to suspend the Support if Customer does not comply with its obligations under the Agreement.

## **12. DATA PROTECTION.**

- 12.1 No Joint Data Controllership. The Parties agree that in connection with any processing of personal data shared by You with AVEVA in connection with the performance of this Agreement, for the purposes of the General Data Protection Regulation (EU) 2016/679 ("GDPR") (including as it applies in the United Kingdom) and other applicable data protection laws, AVEVA will act for all purposes as an independent data controller, and no joint controllership (or equivalent concept) over any such personal data arises as between AVEVA and You. In the event that, in any respect, AVEVA and You are determined to be joint data controllers in respect of any such data by any court in the UK or the EEA, or by any government authority with responsibility for data privacy, or an equivalent finding is made by a competent court or authority elsewhere: (a) each Party shall comply with all applicable Laws relating to data privacy and protection in connection with all such personal data, and shall provide, upon request of the other Party, all information necessary to demonstrate such compliance; and (b) each data controller shall indemnify the other Party in full and keep the other Party indemnified in respect of any and all Damages incurred by the other Party or for which that data controller becomes liable as a result of the failure by that data controller to comply with its obligations as data controller under the applicable Laws relating to data privacy and protection. The Parties further agree that AVEVA does not, save as otherwise specifically agreed in writing, act as Your data processor.
- 12.2 Your Content. You shall obtain all rights related to Your Content required in connection with the performance, receipt or use of the Software and hereby grants all necessary rights and permissions to enable AVEVA, its Affiliates, its subcontractors, and (where relevant) its sub-processors to use, copy, and process Your Content using the Software or to fulfil AVEVA's obligations under this Agreement, including, without

limitation, making necessary disclosures and obtaining all licenses, permits, approvals, or consents required in connection with any personal data or regulated content in Your Content. You are solely responsible for the accuracy, quality, integrity, legality, reliability, and appropriateness of Your Content. You are responsible for any use by You or Your users of the Software in a manner that is inconsistent with this Agreement. To the extent You disclose or transmit Your Content to a third party (including by allowing a third party to access Your Content as a user), AVEVA is no longer responsible for the security, integrity or confidentiality of such content outside of AVEVA's control. You will collect and maintain all personal data contained in Your Content in compliance with applicable data privacy and protection Laws (including the GDPR).

- 12.3 **Security**. You are responsible for any security vulnerabilities, and the consequences of such vulnerabilities, arising from Your Content, including any viruses, Trojan horses, worms or other harmful programming routines contained in Your Content. You are solely responsible for determining the suitability of the Software for Your business processes and for complying with all applicable legal requirements regarding Your Content and its use of the Software. You will provide reasonable assistance required in connection with the provision of the Software and any Support. You acknowledge and agree that Your reasonable assistance is a necessary precondition for AVEVA's correct performance of its obligations under this Agreement. You bear all consequences and costs resulting from breach of its duties.

### **13. ADDITIONAL TERMS AND RESTRICTIONS.**

- 13.1 **Designated Systems**. You must operate the Software on the System operating under supported versions of the Microsoft Windows environment with hardware configuration and software compatible with the current release of the Software.
- 13.2 **Notice File**. You will comply with the terms and conditions contained in any and all Notice Files.
- 13.3 **Product Sales Codes**. You acknowledge and agree that AVEVA may vary, amend, modify, or delete any product sales codes assigned to the Software for identification and/or inventory purposes.
- 13.4 **Additional Restrictions**. You will not transfer the Software to another Site or System without AVEVA's prior written consent.
- 13.5 The Software may only be used in the Site.
- 13.6 **AVEVA Trademarks**. AVEVA retains all goodwill in and You have no rights in any trademark owned by AVEVA, whether registered or unregistered, including the following: AVEVA, the AVEVA logo, Bocad and FabTrol. A list of AVEVA trademarks can be found at <https://www.aveva.com/en/legal/trademarks/>.

### **14. NEW FEATURE, FUNCTIONALITY, OR CAPABILITY.**

If AVEVA creates any new feature, functionality, or capability for the Software, then AVEVA may make such new feature, functionality, or capability available to You. AVEVA reserves the right to charge an incremental license fee for any such feature, functionality, or capability (and impose additional terms and also may require that You have purchased Support during the entire Software Term).

### **15. PROGRAMS AND DATA FILES.**

If permitted by the Documentation, certain of AVEVA's software products may allow You to write and integrate its subroutines, customizations, and component library data files. You acknowledge and agree that from time to time AVEVA may create new versions of the Software (including as part of any Updates) and such new versions may not be compatible with Your subroutines and data file structures previously created. You agree and acknowledge that AVEVA will have no responsibility for any incompatibilities and You accept that it may occur.

### **16. LICENSE MODEL SPECIFIC PROVISIONS.**

If any of the below license models are specified as applicable to the Software in the Order Form, then the terms and conditions set forth below relating to such license model will also apply to the Software. Not all types of license models are available to all of AVEVA's software products, some are software specific, in some case licensing mechanisms need to be combined for the better solution to customer needs:

- 16.1 **Initial/Annual**. If You license the Software on an "Initial/Annual" basis, then the license will be on a per Seat basis for the Software Term and You will be required to pay an initial license fee and applicable term license fee(s), each as set forth in the applicable Order Form.
- 16.2 **Rental**. If You license the Software on a "rental" basis, then the license will be on a per Seat basis for the



Software Term and You will be required to pay the license fees during the Software Term as set forth in the applicable Order Form. For clarity, the “rental” model involves a license for a specified number of months without automatic renewal.

16.3 Client Activated License Management Model (CALM).

16.3.1 Website Access. Within a reasonable period following execution of the Order Form, AVEVA will provide You with access to the Website, which will be configured with the number of Tokens set forth in the Order Form. You may redeem the Tokens to create a License Key enabling Use of the licensed Software for a given period of time at the exchange rate established for the Software in this Agreement.

16.3.2 Assigned Token Value. The assigned Token value represents the use of the Software by a single User for a certain period of time. This period of time is called the “License Access Unit” (“LAU”), which may occur as a Day or a Month, or a combination of Days and Months as determined to be most efficient based on the data You provide on the Website. When creating a License Key for Software for a given period, AVEVA combines LAUs in the most cost-effective manner. The Token cost for any product is calculated as follows: number of Tokens per License Access Unit for the relevant Software, as specified in the Order Form x number of such LAUs within the relevant License Period as specified by You or calculated in accordance with this Section 16.3.2 x number of “Simultaneous Users” as specified by You.

16.3.3 Registration of Users. You will register its “Designated Users” at AVEVA’s website and these Users will be the only Users authorized to call off Tokens.

16.3.4 Client Activated License Management System. The below terms and conditions apply to AVEVA’s provision of the “Client Activated License Management System”:

- (i) A valid License Key is necessary in order to use the Software. You are responsible for generating all required License Keys by redeeming Tokens via the Website.
- (ii) You must notify AVEVA of the details of all required servers. You will not be able to generate a License Key in relation to a particular server until AVEVA has received and entered the relevant details on the Website.
- (iii) You may redeem Tokens against the Software. When generating License Keys, You must specify the following information: (a) the required server; (b) the relevant Software; (c) the required LAUs or the effective and end dates if choosing to enter dates; (d) the required quantity of consecutive LAUs or the required end date of the License Period (which will not be a date after the expiration of the Order Form) for the relevant License Period, as appropriate; and (e) the required number of “Simultaneous Users.”
- (iv) You will be provided with a License Key only following: (a) correct entry of all necessary information; and (b) deduction from Your total Tokens of the appropriate number of Tokens calculated in accordance with this Agreement. You will not be provided with a License Key for the Software if it has insufficient Tokens.
- (v) If any amounts are due and payable pursuant to this Agreement, You will not be entitled to generate License Keys for a License Period extending beyond a period of sixty (60) days from the relevant due date for such payment until such time as the relevant payment is received in full by AVEVA.
- (vi) You may not generate a License Key with a Month LAU within the final month of the term of the Order Form.
- (vii) Each License Key will expire at midnight on the last day of the relevant License Period and You will not be able to use the Software thereafter unless a further appropriate License Key is generated.
- (viii) Unless otherwise agreed, You will not be entitled to any refund of Tokens in the event that You have generated a License Key in error.
- (ix) AVEVA will use commercially reasonable efforts to ensure that the Website is available for use by You to generate License Keys and that You receive generated License Keys by email. You acknowledge and agrees that AVEVA cannot guarantee that the Website will be available at all times or that You will receive all emails containing License Keys.
- (x) If You continue to hold Tokens on the date of termination or expiration of the applicable Order Form, such Tokens will expire and You will not be entitled to redeem the Tokens against any

Software or to receive any refund of fees or any credit against any fees in relation to such unused Tokens.

16.4 Usage Based Licensing Model (UBL).

16.4.1 Purchase and Use of Tokens.

- (i) Under the Usage Based Licensing Model, You purchase Tokens that may be exchanged for use of the Software for the duration of a Token Access Period. The exchange rate will be set forth in the “Token Weighting Table” set forth in the Order Form.
- (ii) You will purchase Tokens on the date of the Order Form and on each anniversary thereafter. Except in relation to any ‘carry-over’ agreement recorded in writing, Your right to use such Tokens will expire on the anniversary following the purchased date of the Tokens.
- (iii) If You purchase Top-Up Tokens, such Top-Up Tokens may be purchased at the Fee per Top-Up Token established in the Order Form. Except on advance written agreement with AVEVA, Top-Up Tokens will expire on the anniversary of the Order Form immediately following the purchase date.
- (iv) Where Your use of the Software exhausts and exceeds its available Tokens, AVEVA may charge at its standard rates for the extra use.

16.4.2 Recording Use of Tokens.

- (i) The AVEVA Licensing System on the Designated Server running Software contains a Log Agent for the purposes of recording Your use of the Software to assist in the calculation of Token expenditure. The Log Agent will automatically send daily Usage Logs to AVEVA containing encrypted details of this use. You acknowledge the presence of such Usage Logs and will comply with such procedures as AVEVA may request to enable the Log Agent to function correctly.
- (ii) In the event of an error in the operation of the Log Agent, You will allow AVEVA immediate access to the Log Agent for the purposes of restoring its functionality, and will comply with any request made by AVEVA to allow AVEVA to monitor Your usage during the error including, without limitation, manually sending the Usage Logs to AVEVA. A breach of Section 13.4.2(i) or this Section 13.4.2(ii) will be deemed to be a material breach of this Agreement and AVEVA will have the right to immediately terminate this Agreement.
- (iii) In the event that You do not send AVEVA the Usage Log, or if the Usage Log is or appears to be corrupt, AVEVA reserves the right to estimate the number of Tokens used by You taking into account Your Token commitment and usage to date.
- (iv) The Parties acknowledge that the data transmitted by the Log Agent may include personal data relating to Your employees. Prior to such data being transmitted, You will anonymize it so that any personal data included in the transmitted data is anonymized. You hereby indemnify and will keep indemnified AVEVA against any damages that are awarded to be paid to any such third party in respect of a claim and any losses, costs and expenses resulting from Your breach of this Section 13.4.2(iv).

16.5 Simulation and Optimization Special Licensing Modes. Simulation and optimization software products have special licensing models not available for other software products.

16.5.1 SimSci Network License. If You licensed the Software on a “SimSci Network license basis”, then the license will be for computers networked to a Designated Server to use up to the number of concurrent instances of Software specified in an Order Form. The Network License requires that You obtain a License File for the Designated Server and install such License File on the Designated Server.

16.5.2 SimSci Node-Lock License. If You licensed the Software on a “SimSci Network License” then the license is to be used as one local instance of the Software on the Designated Server, all as specified in the Order Form. A Node-Lock License requires that You obtain a License File for the licensed computer and install such License File on the licensed computer.

16.5.3 SimSci Token License.

- (i) If You licensed the Software on a “SimSci Token Licenses” then the license will be for computers networked to the Designated Server up to the number of concurrent SimSci tokens of software specified on the Order Form. This is a licensing methodology where Your usage of Software on a computer networked to the Designated Server is determined by the number

of unused SimSci Tokens available to You. You will be permitted to use an instance of Software on a computer networked to the Designated Server if You have a sufficient number of unused SimSci Tokens (with the requisite maximum concurrent SimSci Token amount for such Software set forth in the Order Form). When You use an instance of Software, the SimSci Tokens required for such use will be deemed used and unavailable for further usage until You exit such instance of Software. Once You exit such instance of Software, the previously used SimSci Tokens will be deemed available again for further use. A SimSci Token License may permit You to use multiple Software offerings (or multiple Software instances) concurrently if You have sufficient SimSci Tokens. All SimSci Token Licenses will require You to obtain a License File for the Designated Server and to install such License File on the Designated Server, which Designated Server will only permit Your computers connected to such server to access the Software in accordance with the SimSci Token License requirements and in accordance with any other requirements or restrictions set forth in the Order Form. For illustrative purposes, if You purchased seventy (70) SimSci Tokens and Software A requires twenty (20) SimSci Tokens per instance, Software B requires fifty (50) SimSci Tokens per instance, and Software C requires seventy (70) SimSci Tokens per instance, then You could (a) use three (3) concurrent instances of Software A (and sixty (60) SimSci Tokens would be deemed used with ten (10) SimSci Tokens still available for use), (b) use one (1) instance of Software A and one (1) instance of Software B (and seventy (70) SimSci Tokens would be deemed used with zero (0) Tokens still available for use), or (c) use one (1) instance of Software C (and seventy (70) SimSci Tokens would be deemed used with zero (0) SimSci Tokens still available for use). For the avoidance of doubt, once You in this example exits an instance of used Software, then the previously used SimSci Token amount is deemed available for Your further use (e.g., if You exited one (1) instance of Software A, twenty (20) SimSci Tokens would become available for further use).

- (ii) The SimSci Token system will allow You unlimited interchange use of the Software. SimSci Tokens will be allocated according to Your real-time use of the Software. SimSci Tokens will not limit use of the Software either jointly or individually; however, overall concurrent use by You of any Software may not exceed the total number of SimSci Tokens available to You under this Agreement.
- (iii) Usage Log. For audit and reporting purposes, at the end of each calendar quarter, You will provide AVEVA a copy of the usage log generated through the SimSci Token system (the "Usage Log"). The Usage Log will be delivered to AVEVA electronically by the tenth (10th) day of the month following the end of each calendar quarter and addressed to: AVEVA Software, LLC, 26561 Rancho Parkway South, Suite 100, Lake Forest, CA 92630, [SimSciTokens@aveva.com](mailto:SimSciTokens@aveva.com)
- (iv) USB Key License. "USB Key License" is a hardware device that contains a License File to enable the Software. A USB Key will only be used by You in one computer at a time and will only permit access to one local instance of the Software on such computer. This license methodology will only be available in certain renewals.

## 16.6 AVEVA Pipeline Simulation.

### 16.6.1 Software License.

- (i) Your license allows You to install and use AVEVA Pipeline Simulation Software solely on the System described in the Order Form for Your ordinary internal business, under the terms and conditions herein.
- (ii) In addition to any other license restrictions set forth in this Agreement for the Software, Your license of the Software will be limited to the number of computers or work stations set forth in the applicable Order Form.

### 16.6.2 License Restrictions.

- (i) You will not copy the Software except to copy it onto the System and to make copies solely for backup purposes (with the inclusion of AVEVA's copyright and/or proprietary notice). However, You may make copies of the documentation provided to You by AVEVA with the Software provided that such copies are for internal use only and include all of AVEVA's copyright and/or proprietary notices. You will keep accurate records of the number and

location of each copy and will ensure that no copies of the Software are removed to anywhere other than a Site.

- (ii) This License granted by AVEVA to You is a server license. AVEVA's Pipeline Simulation Services software will be installed on the Designated Server forming part of the System in the configuration as shown in the Order Form (i.e. single or Redundant). The AVEVA Pipeline Simulation Services, Historical Services and application Software may be accessed by the Designated Server (virtual or physical) specified in the Order Form.
- (iii) You have the right to transfer, with AVEVA's prior written consent (such consent not to be unreasonably withheld), use of the Software to a location other than a Site by sending prior written notice of the new location. Once such transfer has been made, the new location will become included in the definition of "Site(s)".
- (iv) You will not use the Software for acquisition or processing of data on behalf of any Third Party outside Your permitted ordinary internal business use without the consent of AVEVA.

## 17. **ADDITIONAL SOFTWARE MAINTENANCE SPECIFIC TERMS.**

*The below terms and conditions will apply to the Software listed in this Section 17 in addition to (and not in lieu of) any other terms and conditions set forth in this Agreement. If any terms in this Agreement that are not included in this Section 17 conflict with the terms contained in this Section 17, then the conflicting terms in this Section 17 will govern.*

### 17.1 **AVEVA Process Simulation, AVEVA PRO/II Simulation, AVEVA Dynamic Simulation, AVEVA APC and Optimization Software.**

17.1.1 If You license any AVEVA Process Simulation, AVEVA PRO/II Simulation, AVEVA Dynamic Simulation, AVEVA APC or Optimization Software, You must also purchase Support during the entire Software Term for such Software licensed for less than twenty (20) years.

17.1.2 If You license any AVEVA Dynamic Simulation, AVEVA APC or Optimization Software for a license term of twenty (20) years or more, then You must also purchase Support during the first (1<sup>st</sup>) year of such license term for such Software (and any additional Support will be optional).

### 17.2 **AVEVA Dynamic Simulation.** If You license any AVEVA Dynamic Simulation Software for a license term of twenty (20) years or more and such AVEVA Dynamic Simulation Software was included as part of professional services performed by AVEVA, then Your usage of such AVEVA Dynamic Simulation Software pursuant to such license will only be used for the purpose set forth in the applicable Order Form. Without obtaining AVEVA's prior written consent, You are prohibited from using such AVEVA Dynamic Simulation Software for any other purpose.

## 18. **LIMITED WARRANTIES AND DISCLAIMERS.**

### 18.1 **Limited Software Warranty.** AVEVA warrants for a period of ninety (90) days following Delivery of the Software that the Software will be free from material error that would substantially affect Your Use of the Software. During the warranty period and without charge to You, AVEVA may: (i) replace defective media and/or (ii) use commercially reasonable efforts to provide modifications or fixes with respect to any material error in the Software in a reasonably timely manner (or provide You with alternative Software that does not contain the material error). However, if AVEVA is unable to make the Software operate as warranted and does not provide You with alternative Software, then AVEVA will refund the unused portion of the license fees paid to AVEVA for the defective Software and the license for such defective Software will terminate. This is Your sole and exclusive remedy for a breach of this warranty. Notwithstanding the foregoing, this warranty shall not apply if such material error was caused or arises from: (i) Your installation of the Software or misuse of the Software; (ii) modification or repair to the Software other than as expressly permitted by this Agreement; (iii) use or maintenance of the Software in a manner or environment inconsistent with the Documentation; (iv) anything You provide or design including configurations, instructions, or specifications; or (v) the combination of the Software with a product, software, service, or technology not authorized by AVEVA.

### 18.2 **Limited Support Warranty.** AVEVA will perform the Support in a professional manner and warranted for a period of ninety (90) days from the date of Support. AVEVA warrants that any parts for Hardware which are supplied while performing Support under the Agreement, will be free from material defects for a period of ninety (90) days following Delivery of such parts. Additionally, AVEVA warrants that any Supported Software

upgrades, patches, service packs, quick fix, quick custom, or corrective fixes which are supplied while performing Support under the Agreement, will be free from material defects for a period of ninety (90) days following Delivery of such Supported Software upgrades, patches, service packs, quick fix, quick custom or corrective fixes. For any breach of these warranties, Customer's exclusive remedy, and AVEVA's entire liability, shall be the reperformance of the Support or repair or replacement of such parts, Supported Software upgrades, patches, service packs, quick fix, quick custom, or corrective fixes.

18.3 Pre-Production Releases and Trial Software. As an accommodation to You, AVEVA may provide You from time to time a Pre-Production Release of the Software or Trial Software. All such Pre-Production Releases and Trial Software are provided strictly on an "as-is" basis and for internal, non-commercial purposes and AVEVA disclaims all warranties, express or implied, for all Pre-Production Releases and Trial Software (including the warranty set forth in Section 18.1 (Limited Software Warranty) or Section 18.2 (Limited Support Warranty) above). If AVEVA provides You with Trial Software, You may not use the Trial Software for more than thirty (30) days from the date of delivery of the license file for such Trial Software and must delete such Trial Software following such thirty (30) day period (and such license to use the Trial Software shall cease).

18.4 Disclaimer of All Other Warranties. EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS AGREEMENT (INCLUDING ANY APPLICABLE SCHEDULES AND/OR ANY APPLICABLE ADDENDA), AVEVA AND ITS LICENSORS DISCLAIM ALL OTHER WARRANTIES, REPRESENTATIONS, OR STATEMENTS, WHETHER EXPRESS, IMPLIED OR STATUTORY INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE EXCEPT TO THE EXTENT THAT ANY WARRANTIES IMPLIED BY LAW CANNOT BE VALIDLY WAIVED. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY AVEVA, ITS DEALERS, DISTRIBUTORS OR AGENTS OR EMPLOYEES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THE WARRANTIES SET FORTH IN THIS AGREEMENT AND YOU MAY NOT RELY ON ANY SUCH INFORMATION OR ADVICE. AVEVA DOES NOT WARRANT THAT THE SOFTWARE OR SUPPORT WILL MEET YOUR REQUIREMENTS, THAT THE SOFTWARE OR SUPPORT WILL OPERATE IN COMBINATIONS OTHER THAN AS SPECIFIED IN AVEVA'S DOCUMENTATION (INCLUDING ANY APPLICABLE SCHEDULES AND/OR ANY APPLICABLE ADDENDA), THAT THE OPERATION OF THE SOFTWARE AND SUPPORT WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT THE SOFTWARE OR SUPPORT WILL PROTECT AGAINST ALL POSSIBLE SECURITY THREATS, INTERNET THREATS OR OTHER THREATS OR INTERRUPTIONS. THE SOFTWARE AND SUPPORT ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS AND MAY BE SUBJECT TO TRANSMISSION ERRORS, DELIVERY FAILURES, DELAYS AND OTHER LIMITATIONS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. FOR THE AVOIDANCE OF DOUBT, AVEVA DISCLAIMS ALL LIABILITY FOR INFRINGEMENT CLAIMS OF ANY KIND ARISING FROM: (A) ANY YOU USE OF AVEVA SOFTWARE BEYOND THE SCOPE OF THIS AGREEMENT; (B) YOUR USE OF AVEVA SOFTWARE IN COMBINATION WITH ANY SOFTWARE NOT DEVELOPED BY AVEVA, TO THE EXTENT THE CLAIM IS SUCH COMBINED USE; (C) YOUR FAILURE TO USE UPDATED OR MODIFIED VERSIONS OF AVEVA SOFTWARE PROVIDED OR MADE AVAILABLE BY AVEVA WITHOUT ADDITIONAL CHARGE; OR (D) AVEVA'S COMPLIANCE WITH DESIGNS OR SPECIFICATIONS OF A PUBLISHED STANDARD OR AS PROVIDED BY YOU.

## **19. LIMITATION OF LIABILITY.**

19.1 CONSEQUENTIAL DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, IN NO EVENT SHALL AVEVA BE LIABLE FOR (A) ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, SPECIAL, PUNITIVE OR SIMILAR DAMAGES OR (B) LOSS OF BUSINESS, PROFITS, SAVINGS, OR REVENUE, LOSS, CORRUPTION OR DESTRUCTION OF DATA, BUSINESS INTERRUPTION, OR DOWNTIME, IN EACH CASE ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF THE CAUSE OF ACTION OR BASIS OF LIABILITY (WHETHER IN CONTRACT, TORT, INDEMNITY, STRICT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY), AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

19.2 Damages Cap. Subject to Section 19.3 (Exceptions), the aggregate liability of AVEVA to You for any loss or Damage arising under or in relation to this Agreement, regardless of the basis of liability (whether arising

out of liability under breach of contract (including under any indemnity), tort (including but not limited to negligence), misrepresentation, breach of statutory duty, breach of warranty or Claims by third parties arising from any breach of this Agreement) shall not exceed the fees paid by You pursuant to the applicable Order Form for the specific Software or Support giving rise to such liability in the twelve (12) month period preceding the date of the incident giving rise to the Claim. The provisions of this Section 19 (Limitation of Liability) allocate the risks between AVEVA and You, and AVEVA's pricing reflects this allocation of risk and the limitation of liability specified herein. However, if You have paid no fees under the terms of an Order Form in the twelve (12) month period preceding the date of the incident giving rise to the Claim, the aggregate liability of AVEVA to You for such Claim shall not exceed \$5,000.

- 19.3 **Exceptions.** Notwithstanding the foregoing, the limitations on amounts of Damages set forth in Section 19.2 (Damages Cap) shall not apply to AVEVA's intentional misconduct, fraud, or fraudulent misrepresentation, or to the extent prohibited by applicable Law. For the avoidance of doubt, nothing in this Section 19 (Limitation of Liability) shall preclude AVEVA's recovery of Damages from You if You or any of Your Affiliates: (a) use any Software or Service beyond the scope of this Agreement; (b) infringe on or misappropriate any of AVEVA's Intellectual Property Rights; or (c) is in breach of Section 23 (Compliance with Laws) of this Agreement.

## **20. INDEMNIFICATION.**

- 20.1 **Indemnification by AVEVA.** AVEVA shall defend and indemnify You against Claims brought against You by any third party alleging that Your use of the Software in accordance with the terms and conditions of this Agreement, constitutes an infringement of a patent or copyright, or misappropriation of a trade secret of a third party AVEVA will pay Damages finally awarded to the third party (or the amount of any settlement AVEVA enters into) with respect to such Claims. This obligation of AVEVA shall not apply if the alleged infringement or misappropriation results from: (a) use of the Software in conjunction or combination with any other software, services, or any product, data, item, or apparatus that AVEVA did not provide to You or Your Affiliates (including any Third-Party Products); (b) anything You or Your Affiliates provide or design including configurations, instructions, or specifications (including any Software that were provided pursuant to Your designs, drawings, or specifications); (c) a modification of the Software other than with AVEVA's prior written consent; (d) You or Your Affiliates' failure to use the latest release or version of the Software (including any corrections or enhancements) where such use would have prevented the infringement or misappropriation Claim; (e) You or Your Affiliates' use, storage, distribution, reproduction, or maintenance not permitted by this Agreement; or (f) You or Your Affiliates' breach of Section 23 (Compliance with Laws) of this Agreement. If AVEVA believes, in its reasonable opinion, that a Claim under this Section 20.1 (Indemnification by AVEVA) could or is likely to be made, AVEVA may, after consultation with You, cease to offer or deliver such Software without being in breach of this Agreement.

- 20.2 **Infringement Remedies.** In the event a Claim under Section 20.1 (Indemnification by AVEVA) is made and such Software is held to infringe a third-party's patent or copyright, or misappropriate a trade secret, then AVEVA may, at its sole option and expense: (a) procure for You the right to continue using the Software under the terms of this Agreement or (b) replace or modify the Software to be non-infringing without a material decrease in functionality. If these options are not reasonably available, AVEVA or You may terminate this Agreement upon written notice to the other and You shall immediately cease using or shall return the infringing Software and AVEVA shall refund You the unamortized portion of the license fees (or any applicable Support fees) paid for such Software based on a straight-line three (3) year depreciation from the date You received the Software. The provisions of this Section 20.2 state the sole, exclusive, and entire liability of AVEVA to You, and is Your sole remedy, with respect to third-party Claims covered by Section 20.1 (Indemnification by AVEVA).

- 20.3 **Indemnification by You.** You shall defend and indemnify AVEVA and its Affiliates (and each of their licensors), and each of their respective officers, directors, contractors, agents, and employees ("AVEVA Indemnitees") against Claims brought against AVEVA Indemnitees by any third party arising from or related to: (a) You or Your Affiliates' (i) breach of this Agreement; (ii) use of the Software or Support in violation of any applicable Law; (iii) use of the Software or Support in connection with any High Risk Use; or (iv) failure to (A) provide the details and/or (B) receive the prior written approvals as specified in Section 2.3.5 (Industry and Categorical Restrictions); (b) Your Content; (c) an allegation that any material provided by You or Your Affiliates violates, infringes, or misappropriates the Intellectual Property Rights of a third party; (d) AVEVA's

use of or access to You or Your Affiliates' software, machines, equipment, systems, information technology environment, or premises in connection with the provision of the Support; and (e) You or Your Affiliates' breach of this Agreement. For the avoidance of doubt, the foregoing shall apply regardless of whether such Damage is caused by the conduct of You and/or its named users or by the conduct of a third party using Your access credentials.

- 20.4 **Indemnification Requirements.** The indemnification obligations under this Section 20 (Indemnification) are conditioned on: (a) the Party against whom a third-party Claim is brought timely notifying the other Party in writing of any such Claim, provided however that a Party's failure to provide or delay in providing such notice shall not relieve a Party of its obligations under this Section 20 (Indemnification) except to the extent such failure or delay prejudices the defense; (b) the Party who is obligated to defend a Claim having the right to fully control the defense of such Claim; (c) the Party against whom a third-party Claim is brought reasonably cooperating in the defense of such Claim; and (d) Your compliance with AVEVA's direction to cease any use of the Software which in AVEVA's reasonable opinion, is likely to constitute an infringement or misappropriation. Any settlement of any Claim shall not include a financial or specific performance obligation on or admission of liability by the Party against whom the Claim is brought, provided however that AVEVA may settle any Claim on a basis requiring AVEVA to substitute for the Software any alternative substantially equivalent non-infringing products. AVEVA shall not be responsible for any settlement made without its consent. The Party against whom a third-party Claim is brought may appear, at its own expense, through counsel reasonably acceptable to the Party obligated to defend Claims. Neither Party shall undertake any action in response to any infringement or misappropriation, or alleged infringement or misappropriation that is prejudicial to the other Party's rights.

## **21. TERMINATION.**

- 21.1 **Termination.** This Agreement and the license granted hereunder may be terminated by AVEVA in its sole discretion if You breach any provision of this Agreement including but not limited to the failure to pay in full the license fees (and any applicable Support fees) when due and fail to cure such breach within thirty (30) days of receipt of AVEVA's notice to cure such breach.
- 21.2 **Termination for Financial Deterioration.** Either Party may terminate this Agreement immediately if the other Party files for bankruptcy, ceases or threatens to cease carrying on business, becomes insolvent, or makes an appointment, assignment or novation for the benefit of creditors.
- 21.3 **Effect of Termination.** Upon termination of this Agreement or the license granted hereunder, You will cease using the Software, will delete the Software, including the License File(s), from Your computer and will either return to AVEVA or destroy the Software, including the License File(s), Documentation, packaging and all copies thereof. If You elect to destroy the Software then You will certify in writing to AVEVA the destruction of the Software. Termination of this Agreement and return or destruction of the Software will not limit either party from pursuing other remedies available to it, including injunctive relief, nor will such termination relieve Your obligation to pay all fees and expenses that have accrued or are otherwise owed by You under this Agreement, any Order Form, and/or any purchase order from You that has been received and accepted by AVEVA.
- 21.4 **Right to Suspend.** In the event that: (a) You or any of Your Affiliates breach this Agreement; (b) AVEVA experiences or reasonably believes it will experience a security threat or system failure that endangers the integrity of AVEVA's internal systems; or (c) a Force Majeure conditions occurs, AVEVA may in its sole discretion, with or without notice, suspend, change or impose limits on Your use of the Software or Support, or any portion thereof, either temporarily or permanently, without any liability of AVEVA.

## **22. THIRD-PARTY PRODUCTS.**

Unless otherwise agreed in writing by AVEVA, if Third-Party Products are supplied by AVEVA to You, such Third-Party Products are provided on a "pass-through" basis only and are subject to the terms and conditions of the third-party vendor, including but not limited to warranties, licenses, indemnities, limitation of liability, prices and changes thereto.

## **23. COMPLIANCE WITH LAWS.**

- 23.1 **Anti-Bribery.** Each Party represents and undertakes that in connection to its entering into this Agreement and its performance of this Agreement, that it shall comply at all times with all applicable anti-bribery laws

and regulations, including the U.K. Bribery Act 2010, the U.S. Foreign Corrupt Practices Act and any local anti-bribery laws and regulations (collectively referred to as “Anti-Bribery Laws”). For the avoidance of doubt, a breach of any of the undertakings in this Section 23.1 (Anti-Bribery) by You or any of Your Affiliates shall be deemed to be a material breach of this Agreement for the purpose of Section 21.1 (Termination). Without limiting the generality of the foregoing, each Party undertakes to the other Party that:

- 23.1.1. it will not, and will ensure that its authorized representatives and associated persons will not, directly or indirectly engage in or abet any activity, practice or conduct, which would constitute a breach of or an offense under Anti-Bribery Laws;
- 23.1.2. it has and will maintain in place adequate procedures designed to prevent any authorised representatives and associated persons from undertaking any conduct that would give rise to a breach of or an offense under Anti-Bribery Laws; and
- 23.1.3. from time to time at the reasonable request of the other Party, it will confirm in writing that it has complied with its undertakings under Sections 23.1.1 and 23.1.2 and will provide any information reasonably requested by the other Party in support of such compliance.

23.2 **Trade Control.** You undertake in Your performance of this Agreement to comply with all applicable Export Control Laws and Sanctions Laws, regulations, orders, decrees and lists (collectively, “Trade Controls”), including but not limited to, the U.S. Export Administration Regulations, the U.S. Office of Foreign Asset Control Regulations, the UK Export Control Order 2008/3231 (as amended), and the EU Dual-Use Regulations 428/2009 (as amended), as well as the laws of the jurisdiction in which the Software or Support will be received and used. The Software and Support provided under this Agreement may not be used: (a) in the Crimea region, in the Donetsk’s People’s Republic and Luhansk People’s Republic regions of Ukraine, Cuba, Iran, North Korea or Syria; (b) in connection with a military end-user or military end use in Burma/Myanmar, China, Russia or Venezuela; (c) for the construction, design, development, delivery, maintenance, production, stockpiling, support, or use of: (i) nuclear, chemical or biological weapons, (ii) rocket systems, missiles, or unmanned air vehicles, (iii) unsafeguarded nuclear activities, or (iv) maritime nuclear propulsion plants, their land prototypes, or related facilities; (d) by or for the specific benefit of any individual or entity on a sanctions or export denial list maintained by the UN, US, EU, UK, or other applicable jurisdiction, or any entity 50% or more owned in the aggregate by any such party; (e) for any other use requiring a sanctions or export control authorization where such authorization has not been obtained; or (f) in any manner, that could result in AVEVA or its Affiliates being in violation of, or being subject to negative consequences under, Trade Controls. You agree that You will comply with any requirements related to the import of any Software and Support and You will not re-export or transfer any Software and Support in violation of Trade Controls.

23.3 **Breach.** For the avoidance of doubt, if AVEVA determines that, in its reasonable opinion, You or any of Your Affiliates have breached or is likely to breach Section 23.1 (Anti-Bribery) or Section 23.2 (Trade Control), that breach shall constitute a material breach of this Agreement for purposes of Section 21.1 (Termination). Additionally, AVEVA shall have the right to suspend its obligations under, or terminate, this Agreement with immediate effect in the event that AVEVA determines that, in its reasonable opinion, the continued performance of its obligations under this Agreement could result in AVEVA or its Affiliates being in violation of, or being subject to negative consequences under, Trade Controls.

## **24. MISCELLANEOUS.**

24.1 **Assignment.** This Agreement shall extend to and be binding upon the Parties to this Agreement, their successors, and assigns, provided, however, that neither Party shall assign or transfer this Agreement without the other Party’s prior written consent, which shall not be unreasonably withheld, delayed or conditioned. AVEVA may condition its consent to any such assignment on You: (a) updating the Software You has contracted for to the then-current version; and/or (b) paying AVEVA’s then-current license fees (and/or all applicable Support fees). Notwithstanding the foregoing limitation, AVEVA may assign or transfer this Agreement, in whole or in part, without obtaining the consent of You, to a parent company or subsidiary or in connection with the transfer or sale of its entire business or sale of all or substantially all of its assets, or in the event of a merger, divestiture, internal reorganization or consolidation with another company.

24.2 **Independent Contractor.** AVEVA is an independent contractor, and each Party agrees that no partnership, joint venture, agency, fiduciary, or employment relationship exists between the Parties.

24.3 **Force Majeure.** Except for Your payment obligations, neither Party shall be liable for delays caused by



conditions arising out of or caused, directly or indirectly, by circumstances beyond their reasonable control, including acts of God, earthquakes, fires, floods, wars, civil or military disturbances, acts of terrorism, sabotage, strikes, epidemics, pandemics, riots, power failures, computer failure and any such circumstances beyond their reasonable control as may cause interruption, loss or malfunction of utility, transportation, computer (hardware or software) or telephone communication service, accidents, labor disputes, acts of civil or military authority, governmental actions, or inability to obtain labor, material, equipment or transportation (“Force Majeure”); provided, however, that notice thereof is given to the other Party as soon as practicable. All such Force Majeure conditions preventing performance shall entitle the Party hindered in the performance of its obligations under this Agreement to an extension of the date of delivery of the Software or completion of the Support by a period of time equal to the period of delay incurred as a result of the Force Majeure or to any other period as the Parties may agree in writing.

- 24.4 Waiver. The waiver (whether express or implied) by either Party of a breach or default of any of the provisions of this Agreement by the other Party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either Party to exercise or avail itself of any right power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other Party.
- 24.5 Notices. All notices and other communications required or permitted under this Agreement will be in writing and delivered by confirmed transmission, by courier or overnight delivery service with written verification of receipt, or by registered or certified mail, return receipt requested, postage prepaid, and in each instance, will be deemed given upon receipt. All such notices, approvals, consents and other communications will be sent to the addresses provided in the Order Forms or to such other address as may be specified in writing by either Party to the other in accordance with this Section 24.5.
- 24.6 Invalidity and Severability. If any provision of this Agreement shall be found by any court to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the other provisions of this Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The Parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.
- 24.7 Negotiated Terms. The Parties agree that the terms and conditions of this Agreement are the result of negotiations between the Parties and that this Agreement shall not be construed in favor of or against either Party by reason of the extent to which such Party or its professional advisors participated in the preparation of this Agreement.
- 24.8 Survival of Provisions. The provisions of this Agreement that by their nature survive expiration or termination of this Agreement will survive expiration or termination of this Agreement, including, but not limited to, the following Sections of this Agreement: 1 (Definitions), 3 (Payments), 5 (Intellectual Property Rights), 6 (Confidentiality), 18 (Limited Warranties and Disclaimers), 19 (Limitation of Liability), 20.3 (Indemnification by You), 21 (Termination), 22 (Third-Party Products ), 23 (Compliance with Laws) and 24 (Miscellaneous).
- 24.9 Governing Law and Jurisdiction. The validity of this Agreement and the rights, obligations and relations of the Parties under this Agreement and in any dispute between them will be construed and determined under and in accordance with the substantive laws of the State of California, without regard to such state’s principles of conflicts of law. If a court must enter or enforce an arbitration award, if a party applies solely for preliminary or injunctive relief, or if the binding arbitration provision set forth in Section 24.10 (Binding Arbitration) is deemed invalid or ineffective, then each Party irrevocably agrees to submit to the exclusive jurisdiction of (and waives any objection to the venue of) the federal or state courts located in Orange County, California to enter or enforce such award, to determine such preliminary or injunctive relief, or to determine such Claim or matter arising out of or in connection with this Agreement, as applicable. To the extent otherwise applicable, the Parties hereto agree that the United Nations Convention on the International Sale of Goods will not apply to this Agreement.
- 24.10 Binding Arbitration. Any controversy or Claim arising out of or relating to this Agreement, including any breach of this Agreement, shall be determined by final and binding arbitration administered by JAMS under its Streamlined Arbitration Rules and Procedures (“Streamlined Rules”). The award rendered by the arbitrator shall be final, non-reviewable, and non-appealable and binding on the Parties and may be entered and enforced in any court having jurisdiction. There shall be one arbitrator agreed to by the Parties within twenty (20) days of receipt by the respondent of the request for arbitration or in default thereof appointed by

JAMS in accordance with the Streamlined Rules, which arbitrator shall have substantial experience in resolving business disputes involving similar products or support services. The place of arbitration shall be Orange County, California. The arbitrator will have no authority to award punitive, consequential, liquidated, or other Damages waived, disclaimed, or otherwise prohibited by this Agreement and the award shall not exceed the applicable limitation of liability set forth in this Agreement. Neither Party has the right to act as a class representative or participate as a member of a class with respect to any arbitrated controversy or Claim arising out of or relating to this Agreement (including any breach of this Agreement). The prevailing Party in any action or arbitration shall be entitled to recover all attorneys' fees and costs including, without limitation, arbitration fees and fees of experts.

- 24.11 Waiver of Jury Trial. Each Party waives, to the fullest extent permitted by applicable Law, any right it may have to a trial by jury in respect of any proceedings relating to this Agreement or any performance or failure to perform of any obligation under this Agreement.
- 24.12 Ethical Trading Policy. You shall comply with AVEVA's then-current ethical trading policy located at [www.aveva.com/policies/ethical/en](http://www.aveva.com/policies/ethical/en), which shall be incorporated herein by reference.
- 24.13 Third-Party Beneficiary. Except as expressly set forth in this Agreement, the Parties do not intend to create rights for any person as a third-party beneficiary of this Agreement.
- 24.14 Entire Agreement; Amendments. This Agreement constitutes the entire agreement between the Parties relating to its subject matter and supersedes all prior or contemporaneous representations, understandings or agreements whether written or oral, relating to that subject matter. This Agreement will prevail over any additional, conflicting, or inconsistent terms and conditions that may be contained in any purchase order or other document furnished by You to AVEVA. Any signed General Terms and Conditions and accompanying addenda executed between the Parties on or after 1 January 2022 will prevail over any additional, conflicting, or inconsistent terms and conditions in this Agreement, and will prevail over any purchase order or other document furnished by You to AVEVA. This Agreement may be amended or modified only by a writing that is signed by or on behalf of both Parties.

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