

**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 25.1 (Anti-Bribery).
- 1.5 **"Application Name Space"** means a system of unique application objects (representing physical, logical, or graphical entities) that interact or are used with the Software.
- 1.6 **"Authorized Applications"** will have the meaning set forth in Section 19.10.2(i) or Section 19.10.3(iii) as applicable.
- 1.7 **"AVEVA Discrete Lean Management Line"** means a software object configured with software information management and data collection functionality for utilization data, OEE or work order execution, in a single software database instance.
- 1.8 **"AVEVA Discrete Lean Management Line Count"** means the number of Lines to be configured in Discrete Lean Management. This should be the biggest number among the number of utilization data object, OEE object and work order execution object.
- 1.9 **"AVEVA Indemnities"** has the meaning set forth in Section 22.3 (Indemnification by You).
- 1.10 **"Bug Fix"** has the meaning set forth in Section 10.2.3 (Bug Fixes).
- 1.11 **"Capacity"** means a specific licensed size criteria as described on the License Certificate and may include, among other measurements, unit counts, the number of Data Sources, Equipment counts, I/O Counts, Platform Counts, Session Counts, Tag Counts and Site Counts.

- 1.12 **“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.
- 1.13 **“Client”** means a Device accessing or utilizing, directly or indirectly, Server Software.
- 1.14 **“Client Access License”** or **“CAL”** means a usage license required for each Client that runs, accesses or utilizes, directly or indirectly, Software (or other specified services) running on a Server.
- 1.15 **“Client Connection”** means a usage license required for a Client. For the avoidance of doubt, one Client will require multiple Client Connections (including the corresponding licenses) if the Client access, or utilizes, directly or indirectly, multiple instances of Software.
- 1.16 **“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.
- 1.17 **“Concurrent User Logins”** means the number of concurrent user login connections to a designated system at a given time.
- 1.18 **“Confidential Information”** has the meaning set forth in Section 6.1 (Confidential Information).
- 1.19 **“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.
- 1.20 **“Core”** means one unit of a physical or virtual processor as detected by the operating system.
- 1.21 **“Credits”** means electronic credits purchased by You that are then redeemed against Your chosen Software allowing use of such Software for the Software Term.
- 1.22 **“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.
- 1.23 **“Data Sources”** means configurable data connectors used to connect to external data stores that are being monitored, processed, or utilized by the Software.
- 1.24 **“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.
- 1.25 **“Device”** means any physical or virtual environment, node, Server, computer, or other digital workstation, edge device, electronic, cellular or smartphone, handheld computer, tablet PC, or computing equipment that runs, accesses, or utilizes the services of the Software.
- 1.26 **“Disclosing Party”** has the meaning set forth in Section 6.1 (Confidential Information).
- 1.27 **“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.
- 1.28 **“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.
- 1.29 **“Enterprise License”** means a license model that permits use of specified Software for a number of Customer’s employees throughout Customer’s organization and sites. An Enterprise License enables Customer to standardize all Customer sites on the specified Software.
- 1.30 **“Equipment”** means any physical asset, subcomponent or grouping for use by Software for which a functional requirement has been established.
- 1.31 **“Equipment Count”** means the number of Equipment.
- 1.32 **“Equipment/Segment”** means a software object configured with software information management and data collection functionality in a single software database instance.
- 1.33 **“Excess Usage”** has the meaning set forth in Section 2.7 (Credit Based Subscription Model).
- 1.34 **“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.
- 1.35 **“Facility”** means the location(s) where the Software is installed.
- 1.36 **“Fixed Intelligence Model”** means the predefined “Energy Performance Intelligence Model” is not

- permitted to be modified.
- 1.37 “**Force Majeure**” has the meaning set forth in Section 26.3 (Force Majeure).
- 1.38 “**GDPR**” has the meaning set forth in Section 12.1 (No Joint Data Controllership).
- 1.39 “**Hardware**” means all equipment, materials, spare parts, hardware, supplies, and accessories for which support has been purchased under the applicable Order Form.
- 1.40 “**High Risk Use**” has the meaning set forth in Section 2.3.4 (High Risk Use).
- 1.41 “**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.
- 1.42 “**Intellectual Property Rights**” means any patent rights, copyrights, trademarks, trade secrets, moral rights, and other proprietary or intellectual property rights worldwide.
- 1.43 “**Intelligence Model**” means the collection of data sources, dimensions, and measures objects, which defined how source data will be transformed into Intelligence Data Store.
- 1.44 “**I/O Count**” means the maximum number of unique external data points that the Software is licensed to monitor at any given time.
- 1.45 “**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.
- 1.46 “**License Certificate**” means a document included with the Software that may provide, among other things, specific information regarding Capacity, name of specified licensee and location where the Software is licensed for use, Device identification and Named Users (as applicable).
- 1.47 “**License File**” means a component of the Software that enables one or more components of the Software (for example, authorization keys) and may also specify, as applicable, (a) the location of the designated Device(s), (b) the Named User(s), (c) the Intelligence Model, (d) the location for authorized use of the Software or of the users, and (e) the Customer. The License File may also specify the Capacity for the Software. Certain components of the Software may be licensed under the Agreement without a License File. If a License File is used, Customer’s license of the Software will be subject to any restrictions set forth in the License File.
- 1.48 “**License Key**” means a code required to activate the Software.
- 1.49 “**License Unit**” means a unit of measurement used to determine the number of Reporting Points purchased by Customer that Customer will use to collect information about its assets.
- 1.50 “**Megawatt Unit**” means a unit of electrical power equal to one million watts.
- 1.51 “**Named Device**” means a specified, individual Device.
- 1.52 “**Named User**” means a specified, individual person and is unique to the individual. A Named User is not a particular logon name, a group, an organization, part of a company or organization, or any other non-person entity.
- 1.53 “**Nonqualified Products**” means any hardware or software product other than the Software.
- 1.54 “**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).
- 1.55 “**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 fees 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.
- 1.56 “**Open Intelligence Model**” means the predefined “Energy Performance Intelligence Model” is open for modification to bring in more dimensions and measures.
- 1.57 “**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.

- 1.58 **“Per Core Use”** means Server Software licensing wherein a separate license is required for each core that resides on a single Server.
- 1.59 **“Per Device Use”** also called “Per Seat Use” means Device licensing as specified in the Order Form, License File, or License Certificate wherein a Device is licensed to access or utilizes the services of the Server Software on an unlimited number of Servers running the Server Software. Customer must purchase a Per Device (“Per Seat”) License for each Device licensed for Per Device Use. This type of license is installed locally on the Device.
- 1.60 **“Per Named Device”** means Server Software licensed wherein one Named Device is licensed to access or utilize the services of the Server Software on an unlimited number of Servers running the Server Software.
- 1.61 **“Per Named User”** means Server Software licensed wherein one Named User using any Device is licensed to access or utilizes the services of the Server Software on an unlimited number of Servers running the Server Software.
- 1.62 **“Per Server Use”** also called “concurrent use” means Software licensing wherein the Software may be installed on an unlimited number of Devices provided however that the number of Devices utilizing the services of the Software residing on a single Server is limited by the number of Per Server access licenses purchased as defined in the Order Form, License File, or License Certificate.
- 1.63 **“Per Session Count Use”** means Server licensing used in a Remote Desktop Server Edition technology environment wherein the number of Devices accessing or utilizing the services of the Software residing on a single Server at a given point in time is limited by the number of Sessions specified in the license purchased as defined in the Order Form, License File, or License Certificate. Per Session Count Use applies to Remote Desktop Server Edition technology.
- 1.64 **“Platform”** means Software that is required in order for a Device to operate with Application Server Software.
- 1.65 **“Platform Count”** means the number of Devices that are licensed to host the Platform.
- 1.66 **“Power Generation Unit”** means a group of equipment converting mechanical or renewable energy into a rated capacity of electric energy (electricity) as per design standards.
- 1.67 **“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.
- 1.68 **“Pre-Production Release”** means Software that has not completed AVEVA’s formal release requirements and includes beta software, Hot Fixes and SUPs.
- 1.69 **“Receiving Party”** has the meaning set forth in Section 6.1 (Confidential Information).
- 1.70 **“Remote Support Service”** means the use of remote data links from AVEVA to Customer's System to render the Support to Customer.
- 1.71 **“Replaced License”** means a License File and/or License Certificate that has been replaced or superseded by another License File and/or License Certificate for the purpose of direct substitution.
- 1.72 **“Reporting Point”** means an item that manages how and when data is captured from Customer’s data sources. Client applications retrieve data from the reporting point based upon module selection and filter conditions.
- 1.73 **“Repository”** means a logical or physical database or means of grouping and/or storing workflows.
- 1.74 **“Runtime Report”** means a discrete report active in the Software.
- 1.75 **“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.
- 1.76 **“Seats”** means the ezXOS, ES stations and non-XOS computers (if any), described in Order Form with access to the RealTime Services, Historical Services and applications software installed on the servers forming part of the System.
- 1.77 **“Server”** means any Device that hosts Server Software and can be run, accessed, or used by another Device.
- 1.78 **“Server Software”** means those components of, or programs in, the Software that provide services on a

Device called a Server on which services may be run, accessed or used by another Device.

- 1.79 “**Session Count**” means the number of licensed AVEVA-based, Microsoft Remote Desktop Client (RDC) sessions.
- 1.80 “**Site License**” means a license model that permits use of specified Software for a number of Customer’s employees at a specific Site.
- 1.81 “**Site(s)**” means those locations at which the Software will run or be stored as backup as listed in the Order Form.
- 1.82 “**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.
- 1.83 “**Software Schedule**” means the AVEVA Software Schedule PO APM MC (Excluding Process Optimization and Unified Supply Chain).
- 1.84 “**Software Term**” means the initial term and any subsequent renewal term(s) for the Software, as set forth in the applicable Order Form.
- 1.85 “**Streamlined Rules**” has the meaning set forth in Section 26.10 (Binding Arbitration).
- 1.86 “**SUP**” (Single User Product) means modifications to the Software made for a specific licensee.
- 1.87 “**Support**” means the support services described in this Agreement.
- 1.88 “**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.
- 1.89 “**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.
- 1.90 “**Supporting Hardware**” means any dongles or other physical devices supplied by AVEVA to You for use with Software.
- 1.91 “**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
- 1.92 “**System Manager**” means the individual(s) responsible for maintaining the integrity of the System.
- 1.93 “**Tag**” means a representation of an internal or external data value or calculation result.
- 1.94 “**Tag Count**” means the number of internal or external data points or calculations resulting from the Tags that are being monitored, processed, or utilized by the Software.
- 1.95 “**Tax**” or “**Taxes**” has the meaning set forth in Section 3.2 (Taxes).
- 1.96 “**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.
- 1.97 “**Toolkit Software**” means Software designated by AVEVA on the Order Form and/or License File as a “toolkit” AVEVA software product and that may include compiled computer code and portions of source code that may be used by Customer to extend the functionality of the Software.
- 1.98 “**Top-Up Credits**” means the additional Credits purchased by You at any time other than on a renewal term.
- 1.99 “**Trade Controls**” has the meaning set forth in Section 25.2 (Trade Control).
- 1.100 “**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.
- 1.101 “**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.
- 1.102 “**U.S. Person Requirement**” has the meaning set forth in Section 10.5 (U.S. Person Requirement).
- 1.103 “**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.
- 1.104 “**Water Flow Rate**” means the total water flow rate in cubic meters per hour in the scope of the Aquis Hydraulic model.

- 1.105 **“Wind River Marketplace”** will have the meaning set forth in Section 19.9.2(i).
- 1.106 **“Wind River”** will have the meaning set forth in Section 19.9.2(i).
- 1.107 **“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.
- 1.108 **“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.
- 1.109 **“\$”** 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 **Copying of License File.** Unless specifically authorized in writing by AVEVA, copying of a License File using virtualization technology is prohibited.
- 13.2 **Installation Limitations.** The media upon which the Software resides may contain multiple copies of some of the components of the Software, each of which is compatible with different microprocessor architectures or different underlying operating systems. Customer may install the Software for use only with one architecture and one operating system at any given time, consistent with the restrictions in the Agreement (including any License File, License Certificate or Order Form).
- 13.3 **Replaced License Restrictions.** License Files and/or License Certificates may be replaced for various purposes as agreed to by AVEVA and Customer. A Replaced License must be removed from any Device and its original License File, license CD, and/or License Certificate must be destroyed or archived and clearly marked as "Inactivated" so that it cannot be used. The act of replacement includes:
- 13.3.1. **Version Upgrades** – when an earlier or lower numbered version license is replaced by a newer or higher numbered version license. For example, a Software X license with version 6.0 is replaced with a Software X license with a version 6.5;
- 13.3.2. **Functional Upgrades** – when a license with certain Capacity and functionality is replaced by a license with greater Capacity or different functionality. For example, an InTouch 3000 Tag Count license is replaced by an InTouch 60000 Tag Count license; or an AVEVA Historian, formerly Wonderware license is replaced by an AVEVA System Platform, formerly Wonderware license;
- 13.3.3. **Lost/Stolen/Failed Keys** – when a license key is lost, stolen, or fails and a replacement license key is provided. If a lost/stolen key is found/recovered, it must be destroyed; or
- 13.3.4. **Keyed License to Keyless License** – when a License File locked to a hardware key/dongle is replaced by a License File only or visa-versa.
- 13.4 **OI Gateway Software Restrictions.** OI Gateway Software is an application that acts as a communications protocol converter in a single computer. OI Gateway Software may be licensed to Customer under the Agreement without a separate License File or License Certificate to link AVEVA application software to clients and data sources that communicate using the following protocols: OPC (OLE for Process Control), SuiteLink, DDE/FastDDE, as well as AVEVA System Platform, formerly Wonderware and InTouch data

sources. If licensed to Customer, OI Gateway Software can be used in conjunction with the Software. Use of OI Gateway Software solely with non-AVEVA products is prohibited.

- 13.5 Application Program Interface License. If any Software contains or is provided with an application program interface and Customer is expressly permitted to utilize such application program interface with other software, applications, or other interfaces pursuant to the Agreement (e.g., with AVEVA's prior written consent or if expressly permitted by the Documentation), then Customer's use of such application program interface with such other software, applications, or other interfaces will require Customer to obtain from AVEVA a separate license (e.g., the appropriate CAL or Client Connection) for such usage of the application program interface.
- 13.6 AVEVA Trademarks. AVEVA retains all goodwill in and Customer has no rights in any trademark owned by AVEVA, whether registered or unregistered, including but not limited to the following: AVEVA, the AVEVA logo, Wonderware and InTouch. A list of AVEVA trademarks can be found at <https://www.aveva.com/en/legal/trademarks/>.

#### **14. VERSION LIMITATIONS.**

The Software, and various components thereof, contain certain version numbers (such as version "6.5"). The Agreement permits Customer to install one copy of the Software, whereas (a) some Software may allow the same version number as the Software version number listed on the Order Form (or in an Update that is part of the Software licensed) on the number of computers authorized hereunder (for example, if the version number listed for a particular component of the Software is "6.5", then Customer may install a copy of that component of the Software having a "6.5" version number, but not a "6.6" version number), and (b) some Software may allow the same or lower version number as the Software version number listed on the License File or Order Form (or in an Update that is part of the Software licensed) on the number of computers authorized under the Agreement (for example, if the version number listed for a particular component of the Software is "6.5", then Customer may install a copy of that component of the Software having a "6.5" or "6.0" version number, but not a "6.6" version number).

#### **15. ADDITIONAL LICENSE PROVISIONS.**

- 15.1 Per Server/Concurrent Use Basis. If the Software has been licensed on a Per Server/Concurrent Use basis, then the following additional terms and conditions will apply:
- 15.1.1. If Customer has licensed the Software on a Per Server/Concurrent Use basis, then the Software may be installed on a single Server that will be the designated Device under the Agreement, and the maximum number of Devices that may access or utilize the services of the Server Software at a given point in time is limited by the number of concurrent sessions specified in the License File. The services of the Server Software are considered to be accessed or utilized when there is a direct or indirect connection between a Device and the Server Software running on the Server (regardless whether the Server Software is accessed or utilized using the Device Software, Third-Party Products or an application developed by Customer). For the avoidance of doubt, one Device will require multiple concurrent sessions (and corresponding licenses) if the Device accesses or utilizes, directly or indirectly, concurrent sessions of the services of the Server Software.
- 15.2 Per Device Use Basis. If the Server Software has been licensed on a Per Device Use basis, then the following additional terms and conditions will apply:
- 15.2.1. If the Server Software is licensed on a Per Device Use basis, then a separate CAL must be purchased for each specific Device that accesses or utilizes Server Software (which may access or utilize the services of the Server Software on any number of Servers running the Server Software) and each Per Device CAL must be dedicated to a single Device. For the avoidance of doubt, one Device will require multiple CALs if the Device accesses or utilizes, directly or indirectly, concurrent sessions of the Server Software.
- 15.3 Per Named User Basis. If the Server Software has been licensed on a Per Named User basis, then the following additional terms and conditions will apply:
- 15.3.1. If the Server Software is licensed on a Per Named User basis, then the allocation and identification of the individual Named User must be maintained by Customer on file at Customer's location for a minimum of thirty (30) days before the allocation and identification of the Named User can be moved or transferred to a different, separate and unique individual. The identified Named User

may activate only one instance of the services of a Server from any Device at any location at any given point in time with each Named User CAL purchased. Multiple simultaneous instance activations of the services of a Server by a Named User requires an equal multiple number of Named User CALs.

- 15.3.2. CALs authorize access or use of only the specific Server Software associated with such CAL.
- 15.4 Per Server Use Basis. If the Server Software is licensed on a Per Server Use basis, then the maximum number of Devices that may access or utilize the services of the Server Software at a given point in time is equal to the number of Device CALs that have been purchased and designated for use for each Device with that Server. For the avoidance of doubt, one Device will require multiple CALs if the Device accesses or utilizes, directly or indirectly, concurrent sessions of the services of the Server Software. CALs authorize access or use of only the specific Server Software associated with such CAL. If any Software is licensed on a Per Server Use basis, and accesses any database or data source, then Customer must purchase the required access license for each database or data source accessed. Failure of Customer to purchase the required database or data source license is a material breach of the Agreement.
- 15.5 Per Processor Use Basis. If the Server Software is licensed on a Per Processor Use basis, then for each processor residing on the Server, a separate Per Processor use license must be purchased. A Per Processor license will allow an unlimited number of Devices to access the services of the Server running the Server Software as long as a Per Processor license has been purchased, pursuant to the Order Form, License File, or License Certificate, for each processor running on the Server.
- 15.6 Per Session Count Use Basis. If the Software is licensed on a Per Session Count Use basis, then the maximum number of Devices that may access or utilize the services of the Server Software at a given point in time is limited by the number of Sessions specified in the License File. For the avoidance of doubt, one Device will require multiple sessions (and corresponding licenses) if the Device accesses or utilizes, directly or indirectly, concurrent sessions of the services of the Server Software.
- 15.7 Per Core Use Basis. If the Server Software is licensed on a Per Core Use basis, then for each processor residing on the Server, a separate Per Core use license must be purchased. A Per Core license will allow an unlimited number of Devices to access the services of the Server running the Server Software as long as a Per Core license has been purchased, pursuant to the Order Form, License File, or License Certificate, for each core running on the Server.
- 15.8 Runtime Report Basis. If the Software is licensed on a Runtime Report basis, the maximum number of Runtime Reports utilized by Customer per Server is limited to the Runtime Report count for the Software as specified in the License File, Order Form or License Certificate.
- 15.9 Single Facility/Single Device Basis. If the Software is licensed on a Single Facility/Single Device basis, then the Software may only be installed and used on a single Device, which Device must be located at the Facility specified in the applicable Order Form. The Single Facility/Single Device license may be subject to further restrictions as set forth in the applicable Order Form.
- 15.10 Enterprise License. If the Software is licensed on an Enterprise License basis, the duration, scope and pricing of such Enterprise License will be determined on a case-by-case basis. An Enterprise License is granted upon Customer's receipt of a written authorization for such Enterprise License, which must be signed by AVEVA and also countersigned by Customer. Among other things, the signed written authorization will describe the duration, scope and license fees for the Enterprise License and Customer's Software support commitments under the Enterprise License.
- 15.11 Site License. If the Software is licensed on a Site License basis, the duration, scope and pricing of such Site License will be determined on a case-by-case basis. A Site License is granted upon Customer's receipt of a written authorization for such Site License, which must be signed by AVEVA and also countersigned by Customer. Among other things, the signed written authorization will describe the duration, scope and license fees for the Site License and Customer's Software support commitments under the Site License.
- 15.12 Facility License. If Customer's license of the Software is restricted to a specified Facility, then the Software may only be installed at the Facility specified in the applicable Order Form.
- 15.13 Educational license. If Customer wishes to acquire the Software for educational purpose only, please contact AVEVA or its authorized reseller serving the Customer's country. In case the Software is identified as an academic or educational software, Customer must be a qualified educational user to be entitled to use said Software; if Customer is not a qualified educational user, Customer has no rights under this Agreement with respect to said academic or educational software. To determine whether

Customer is a qualified educational user, please contact AVEVA or its authorized reseller serving the Customer's country. Once licensed to use said academic or educational Software, Customer may not sell or transfer any such Software or sub-license Customer's license right to use the same to anyone except to another person who is qualified by AVEVA as a qualified educational user. As used in this Agreement, the term 'person' will be broadly interpreted to include without limitation any individual, any corporation, company or other legal entity.

- 15.14 **License for Field-Test / Beta Version.** If Customer has acquired a license for field-test / beta version purpose, Customer acknowledges and agrees that the Software licensed to Customer under such license is a pre-release software only. As such, said Software may not be fully functional and Customer assumes the entire risk as to the results and performance of the Software. Customer may install and use the Software licensed to Customer under a field-test / beta version license on computers in Customer's workplace for only the purpose of testing said Software before it is commercialized by AVEVA and potentially identifying any errors, bugs or defects in said Software. Customer also agrees to use reasonable efforts to provide feedback to AVEVA regarding Customer's use of the Software, including providing AVEVA with a prompt report of errors, bugs or defects that Customer might find. Therefore, notwithstanding anything in this Agreement to the contrary, Customer may not distribute or transfer any applications Customer creates with the Software licensed to Customer under a field-test/beta version license. AVEVA will not update the Software licensed to Customer under a field-test/beta version license, nor will AVEVA provide support in relation thereto. The Software licensed to Customer under a field-test/beta version license may contain code that will, after a certain time period, deactivate the Software and render it unusable. Although said Software may attempt to warn Customer of the time frame in which it will be disabled, Customer acknowledges and agrees that said Software may be deactivated or rendered unusable with or without warning. Upon such deactivation, this Agreement will be considered terminated. Prior to deactivation of the Software, Customer may contact AVEVA to convert Customer's field-test/beta version license of the Software to a standard license governed by this Agreement on the final release of said Software, if and when available from AVEVA, by paying to AVEVA the applicable license fee (if any) and obtaining from AVEVA the relevant activation code(s).

**16. TOOLKIT SOFTWARE.**

If the Software includes any Toolkit Software, such Toolkit Software may include limited portions in source code (human-readable) form for which modifications are not supported by AVEVA.

**17. TRANSFER OF SOFTWARE.**

*The below terms and conditions will apply to (a) AVEVA InTouch HMI, formerly Wonderware, (b) AVEVA System Platform, formerly Wonderware, (c) AVEVA Development Studio, formerly Wonderware, (d) AVEVA Historian Client, (e) AVEVA Batch Management, (f) AVEVA Mobile Operator, (g) AVEVA BI Gateway, (h) QI Analyst, (i) SmartGlance Mobile Reports, (j) AVEVA Edge, (k) AVEVA Recipe Management, (l) AVEVA Work Tasks, (m) AVEVA Manufacturing Execution System, formerly Wonderware, (n) AVEVA Telemetry Server Communication Drivers, (o) AVEVA InduSoft Web Studio and (p) AVEVA Historian:*

Customer may transfer the Software from one designated Device or Application Name Space to another for application development or for operation of the Software provided that: (i) the Software (including the License Files) is completely removed from the initial designated Device or Application Name Space prior to installing the Software on the second computer or Application Name Space, and (ii) the end-user identification information (including the identification and location of the designated Device) contained within the License File remains accurate. The Software may only be used on one Device or Application Name Space at a time, and the component parts of the Software may not be separated for use on more than one Device.

**18. MULTIPLEXING AND POOLING.**

*The below terms and conditions will apply to (a) AVEVA System Platform, formerly Wonderware, (b) QI Analyst, (c) AVEVA Enterprise Integration, (d) AVEVA Recipe Management, (e) AVEVA Work Tasks, (f) AVEVA Batch Management, (g) AVEVA BI Gateway, (h) AVEVA Manufacturing Execution System, formerly Wonderware and (i) AVEVA Historian.*

Use of software or hardware that reduces the number of users or Seats directly or indirectly accessing or utilizing Server Software (sometimes called "multiplexing" or "pooling" software or hardware) does not

reduce the number of CALs or Seats required. The required number of CALs or Seats would equal the number of distinct inputs to the multiplexing or pooling software or hardware “front end”.

**19. ADDITIONAL SOFTWARE SPECIFIC TERMS AND CONDITIONS.**

*The below terms and conditions will apply to the below listed Software in addition to (and not in lieu of) any other terms and conditions set forth in the Agreement. If any terms in this Software Schedule that are not included in this Section 19 conflict with the terms contained in this Section 19, then the conflicting terms in this Section 19 will govern.*

19.1 AVEVA Work Tasks.

19.1.1. Software License.

- (i) If Customer has licensed the Software on a Per Server/Core basis the Software may be installed on a single Server that will be the designated Device under the Agreement. The services of the Server Software are considered to be accessed or utilized when there is a direct or indirect connection between a Device and the Server Software running on the Server (regardless whether the Server Software is accessed or utilized using the Device Software, Third-Party Products or an application developed by Customer).
- (ii) Alternatively, if access to the Server Software is licensed for use on a Client Connection basis, then each Client Connection can access a single instance of the services of the Server from any Device.

19.1.2. Additional Use Restrictions.

- (i) AVEVA Work Tasks Developer Edition Software Use and Restrictions. The AVEVA Work Tasks Developer Edition license:
  - A. is limited to one (1) development seat;
  - B. is limited to a specified number of Client Connections;
  - C. is strictly limited to non-production purposes; and
  - D. allows only a specific number of concurrent active workflows to be executed. The Software stops accepting more workflows if concurrency limits are exceeded - i.e. if more than the allowed number of workflows are either waiting or running.
- (ii) AVEVA Work Tasks Professional and Enterprise Software Use and Restrictions. For Core Based Server Licenses:
  - A. an unlimited number of Client Connections can access the Server;
  - B. use of the Software is limited by the number of Cores as defined in the authorization key, Order Form or License File or as identified in the operating system; and
  - C. the Software must not be used as a hosting solution for third parties.

19.2 AVEVA InTouch HMI, formerly Wonderware.

19.2.1. Software License. Certain components of the Software are licensed according to the Equipment count. The maximum amount of Equipment that Customer may capture information about according to established functional requirements is limited to the number of Equipment specified for the Software licensed hereunder as specified in the License File, Order Form, or License Certificate.

19.2.2. License Restrictions.

- (i) Remote Desktop Server Edition Technology. If Customer uses Remote Desktop Server Edition or other technology to run two or more instances (copies) of the same Software on a single Server or Device then a separate license must be purchased for each instance (copy) of the Software being run.
- (ii) Runtime Restriction. If the Software licensed under the Agreement is for “Runtime” use, then it may only be used to run a specific application, and may not be used either (A) to develop, and/or (B) in conjunction with, new applications, databases, or tables other than those contained in the specific application to which the “Runtime” license relates. This provision does not prohibit Customer from using a tool to run queries or reports from existing tables, or from using a separately licensed development environment to configure or extend such specific application.

19.3 AVEVA System Platform, formerly Wonderware.

18.3.1. License Restrictions.

- (i) AVEVA System Platform, formerly Wonderware. An AVEVA System Platform, formerly Wonderware Software license is limited by (A) the size of the Application Name Space, which in

turn is limited by the I/O Count, as defined in the License File, License Certificate or Order Form, and (B) the number of separate Devices which the AVEVA System Platform, formerly Wonderware can be physically distributed across, which in turn is limited by the Platform Count as defined in the License File, License Certificate or Order Form, and (C) the number of TS Sessions which the AVEVA System Platform, formerly Wonderware can be physically distributed across, which in turn is limited by the TS Session Count as defined in the License Certificate or Order Form. Additionally, (1) the AVEVA System Platform, formerly Wonderware license contains Software which can be installed on multiple computers, (2) the Software contained in the license cannot be separated or upgraded separately from the AVEVA System Platform, formerly Wonderware license and (3) the license must be used within a single Application Name Space.

- (ii) Galaxy Repository (GR) Access. The use of the Galaxy Repository (GR) Access interface and associated DLLs by a Non-AVEVA client application is restricted to the physical device where the AVEVA Development Studio License is located.

#### 19.4 AVEVA Development Studio, formerly Wonderware.

##### 19.4.1. License Restrictions.

- (i) Toolkit Software Restrictions and Rights. A Toolkit Software license provides the ability to extend Software within the limits of the specific Toolkit License as defined in the License Certificate. Subject to the then-current AVEVA licensing requirements, Customer may further distribute the application created with the Toolkit Software with other third-party users of Software provided that Customer: (A) includes AVEVA's copyright and other proprietary rights notices; (B) indemnifies, holds harmless and defends AVEVA and its suppliers from and against any claims or lawsuits, including attorney's fees, that arise or result from the use or distribution of the I/O servers, Extension Tools, SDK Tools or Customer's products; (C) agrees that all such items are provided "AS IS" without warranty of any kind, and (D) otherwise comply with the terms and limitations of the Agreement.
- (ii) Remote Desktop Server Edition Technology. If Customer uses Remote Desktop Server Edition or other technology to run two or more instances (copies) of the same Software on a single Server or Device then a separate license must be purchased for each instance (copy) of the Software being run.
- (iii) Runtime Restriction. If the Software licensed hereunder is for "Runtime" use, then it may only be used to run a specific application, and may not be used either (A) to develop, and/or (B) in conjunction with, new applications, databases, or tables other than those contained in the specific application to which the "Runtime" license relates. This provision does not prohibit Customer from using a tool to run queries or reports from existing tables, or from using a separately licensed development environment to configure or extend such specific application.
- (iv) AVEVA Development Studio, formerly Wonderware and AVEVA Advanced Development Studio Use and Restrictions. AVEVA Development Studio, formerly Wonderware includes application development tools that are used to develop applications for deployment of the AVEVA System Platform, formerly Wonderware Software, AVEVA InTouch HMI, formerly Wonderware and other AVEVA runtime applications as well as tools to configure AVEVA Historian, formerly Wonderware. AVEVA Development Studio, formerly Wonderware Software is licensed solely on a Per Device basis. The AVEVA Development Studio, formerly Wonderware Software may only be used to develop a specific application, and may not be used to run the application in a production environment except for AVEVA Historian, formerly Wonderware, InTouch Runtime, AVEVA Historian Client and OI Servers, if located on the same device as the AVEVA Development License.

#### 19.5 AVEVA Manufacturing Execution System, formerly Wonderware.

19.5.1. Operations. In addition to any other license restrictions set forth in the Agreement for the Software, Customer's license of the Software will be limited to the number of Concurrent User Logins and the specified Equipment/Segment set forth in the applicable Order Form.

19.5.2. Performance. In addition to any other license restrictions set forth in the Agreement for the Software, Customer's license of the Software will be limited to the number of Concurrent User Logins and the specified Equipment/Segment set forth in the applicable Order Form.

19.5.3. Quality. In addition to any other license restrictions set forth in the Agreement for the Software, Customer's license of the Software will be limited to the number of Concurrent User Logins and the specified Equipment/Segment set forth in the applicable Order Form.

19.6 AVEVA BI Gateway.

19.6.1. License Restrictions.

- (i) AVEVA BI Gateway Server. If the Software licensed by Customer hereunder includes a license for Software known as AVEVA BI Gateway Server, then the Customer's access to AVEVA BI Gateway Server is limited by Per Server Use. Under Per Server Use, the Customer must purchase an AVEVA BI Gateway Server CAL which limits the number of Devices and/or Users accessing or utilizing the services of AVEVA BI Gateway Server. If Customer's use of AVEVA BI Gateway Server requires the access of any database, Customer must purchase the required access license for each database accessed.
- (ii) OEM Version of Tableau Software. AVEVA BI Gateway Clients are provided using an OEM version of Tableau software. AVEVA BI Gateway Clients allow connecting to a set of data sources as enabled in the AVEVA BI Gateway Analytics Client only if those data sources are configured in the AVEVA BI Gateway Server software. Standalone use of this OEM version of Tableau software to connect data sources that are not configured in AVEVA BI Gateway Server is strictly prohibited and is a breach of the Agreement.
- (iii) Licensing Modes. Customer cannot mix the licensing modes for Dashboard Users on the same License Certificate. Access to the Server may either be "Per Named User", or "Per Server Use", or "Per Core Use".

19.7 AVEVA Enterprise Integration. Customer may transfer the Software from one designated Device to another for application development or for operation of the Software provided that: (i) the Software (including the License Files) is completely removed from the initial designated Device prior to installing the Software on the second Device, and (ii) the end-user identification information (including the identification and location of the designated Device) contained within the License File remains accurate. AVEVA Enterprise Integration Server is comprised of components in the form of services and .DLLs. Those components may be distributed across more than one Device but only one instance of each component can be installed and active on a Device per AVEVA Enterprise Integration Server license.

19.8 AVEVA Edge. Customer's license allows Customer to install and use AVEVA Edge Software on a single Device.

19.9 AVEVA InduSoft Web Studio.

19.9.1. Customer's license allows Customer to install and use AVEVA InduSoft Web Studio Software on a single Device.

19.9.2. The following provisions apply only if Customer obtained the Software from the Wind River Marketplace:

- (i) "Wind River Marketplace" means the Wind River Marketplace web application operated by or for Wind River Systems, Inc. or its successor ("Wind River"), where Wind River may post and distribute partner products to Wind River Marketplace users.
- (ii) Subject to Customer's compliance with its obligations under the Agreement, AVEVA grants to Customer a royalty free, personal, non-transferable, non-exclusive, non-sublicensable, worldwide, limited demonstration license to perform, display, and use the Software and any content contained in, accessed by, or transmitted through the Software for Customer's internal business use, solely to evaluate the features, functionality and performance of the Software and solely with the Wind River product VxWorks 7.
- (iii) The following disclaimers on behalf of AVEVA and Wind River are in addition to and not in lieu of the disclaimers set forth in the Agreement:

THE SOFTWARE IS PROVIDED AS-IS WITHOUT WARRANTIES OF ANY KIND AND AVEVA, FOR ITSELF AND ON BEHALF OF WIND RIVER, HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY AVEVA, ITS DEALERS, DISTRIBUTORS, OR AGENTS OR EMPLOYEES WILL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THE WARRANTIES GIVEN IN THE

AGREEMENT, AND CUSTOMER MAY NOT RELY ON ANY SUCH INFORMATION OR ADVICE. NEITHER AVEVA NOR WIND RIVER WARRANTS THAT THE SOFTWARE WILL MEET CUSTOMER'S REQUIREMENTS, THAT THE SOFTWARE WILL OPERATE IN COMBINATIONS OTHER THAN AS SPECIFIED IN THE DOCUMENTATION, THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT THE SOFTWARE WILL PROTECT AGAINST ALL POSSIBLE SECURITY THREATS, INTERNET THREATS, OR OTHER THREATS OR INTERRUPTIONS.

- (iv) The following limitation of liability on behalf of AVEVA and Wind River is in addition to and not in lieu of the limitation of liability set forth in the Agreement:

NEITHER AVEVA NOR WIND RIVER WILL HAVE ANY LIABILITY FOR ANY DIRECT, SPECIAL, INDIRECT, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES INCURRED BY CUSTOMER OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF AVEVA OR WIND RIVER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A REMEDY SET FORTH IN THIS SCHEDULE (OR THE AGREEMENT) IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

## 19.10 AVEVA Plant SCADA.

### 19.10.1. Software License.

- (i) License. For the purposes of the license of AVEVA Plant SCADA Software all references to AVEVA will refer to AVEVA Software Australia Pty Limited ACN 113 112 744.
- (ii) Device and Server Software Grant. Server Software is licensed on a Per Server/Concurrent Use basis, and may be installed on a single Server that will be the designated Device hereunder, and the maximum number of Devices that may access or utilize the services of the Server Software at a given point in time is limited by the number of concurrent sessions specified in the License Key. The services of the Server Software are considered to be accessed or utilized when there is a direct or indirect connection between a Device and the Server Software running on the Server (regardless whether the Server Software is accessed or utilized using the Device Software, Third-Party Products or an application developed by the Customer). One CAL is provided with a single Server license, which must be dedicated to a single Device. Additional CALs must be purchased for each specific Device that accesses or utilizes Server Software (which may access or utilize the services of the Server Software on any number of Servers running the Server Software) and each Per Device CAL must be dedicated to a single Device. Server Software is licensed on a Per Server Use basis. The maximum number of Devices that may access or utilize the services of the Server Software at a given point in time is equal to the number of Device CALs that have been purchased and designated for use for each Device with that Server. CALs authorize access or use of only the specific Server Software associated with such Client license. If any Software is licensed on a Per Server Use basis, and accesses any database or data source, then Customer may be required to purchase the required access license for each database or data source accessed. Failure of Customer to purchase a required database or data source license is a material breach of the Agreement.
- (iii) Software Update Utility. This Software includes a utility called the Schneider Electric Software Update (the "Utility"), which is licensed to AVEVA by Schneider Electric SA. The main function of this Utility is to notify the user when an update for the Software is available, and, the Utility also allows the Customer to participate in the AVEVA program to improve the user experience of AVEVA's software products. Participating in this improvement program means that the Utility informs AVEVA about: the hardware and software configuration of the user's PC; which features and options of the Software and the Utility are used; and any error reports relating to the Software and the Utility. AVEVA uses this information to speed up improvements to the products and features customers use most often. Customer may elect to receive automatic notifications of updates to the Software by selecting the Schneider Electric Software Update utility as one of the Core Components at installation of the Software. Furthermore, Customer may opt out of the Utility at any time after it has been installed by revoking participation in the Utility settings. The technical documentation for the Software provides information about the presence of the Utility in the Software, and specifically, what information is being collected; this documentation is



available to Customer upon request to AVEVA.

The personal data, if any, collected by Schneider Electric through the Utility is subject to Schneider Electric's Privacy Policy (located here:

<https://www.se.com/ww/en/about-us/legal/data-privacy.jsp>);

any personal data received by AVEVA through the Utility is subject to AVEVA's Privacy Policy (located here:

<https://www.aveva.com/en/legal/privacy-policy/>).

#### 19.10.2. Authorized Applications.

- (i) For the purpose of the Agreement, "Authorized Applications" will mean those applications that Customer creates, develops or generates by using the Software (including its programming tool if any) or by loading in such applications, with or without modification, a library of the Software, provided that Customer has validly licensed said Software from AVEVA or its authorized resellers. Authorized Applications include, without this being limitative, applicable runtime engines for the Software and applicable driver interface that Customer may provide to Customer's own customers as part of or together with Customer's Authorized Applications.
- (ii) Notwithstanding the foregoing, any application created with a Pre-Production Release or for demonstration, test or evaluation purposes, is not an Authorized Application.
- (iii) Customer may distribute or otherwise make available Authorized Applications provided Customer complies with each of the requirements set forth below:
  - A. Customer includes Customer's own valid copyright notice on Customer's Authorized Applications;
  - B. Customer does not remove or obscure any notice of copyright, trademark, patent or other industrial or intellectual property rights that appear on the Software as delivered to Customer or as may appear concerning the Software in the Authorized Application's About Box and in any applicable written documentation distributed with each copy of Customer's Authorized Applications;
  - C. Customer does not use AVEVA's name, logo or trademarks to market or identify Customer's Authorized Applications unless Customer is party to a separate agreement with AVEVA giving Customer such rights or AVEVA has given Customer its express prior written consent to do so;
  - D. Customer indemnifies, holds harmless, and defends AVEVA from and against any claims (including based on warranty) or lawsuits, including attorneys' fees, that arise or result from the use or distribution of Customer's Authorized Applications, provided however that Customer's contractual obligation of indemnification will not extend to the percentage of the claimant's damages or injuries or the settlement amount attributable to AVEVA's fault or to strict liability imposed upon AVEVA as a matter of law in any country (on either federal or state level, when applicable); the foregoing obligation of indemnification will survive the expiry or termination of the Agreement;
  - E. Customer does not permit further redistribution of the Software (including Customer's modifications thereto) by third parties except as part of Customer's Authorized Applications;
  - F. Customer concludes Customer's own license agreement to grant the right to use Customer's Authorized Applications to any third party; and
  - G. Customer otherwise comply with the terms of the Agreement.

#### 19.10.3. Embedding the Software. Customer may embed or otherwise integrate the Software within Customer's own product or a third-party product, provided that:

- (i) Customer has validly licensed the Software from AVEVA or its authorized resellers;
- (ii) Customer performs such embedding or integration in a manner that complies with the Software documentation to the extent said documentation contains any instructions or recommendations in relation therewith; and
- (iii) Customer complies - with respect to Customer's own products and said Third-Party Products - with each of the same requirements as set forth hereinabove concerning Authorized Applications; said foregoing requirements will apply mutatis mutandis to any of Customer's own products or Third-Party Products within which Customer embeds or otherwise integrates the Software, and

any reference made to the term “Authorized Application” in the foregoing provision will be deemed for the purpose of this present section to be a reference to Customer’s own products or Third-Party Products embedding or otherwise integrating the Software.

- (iv) Where Software is embedded or otherwise integrated by Customer within Customer’s own product or a third-party product, Customer then ceases all use of the Software, whether direct, indirect, concurrent or otherwise.

#### 19.11 AVEVA Production Management.

##### 19.11.1. Software License.

- (i) License. For the purposes of the license of AVEVA Production Management Software all references to AVEVA will refer to AVEVA Software Australia Pty Limited ACN 113 112 744.
- (ii) Client and Server Software Grant. Server Software is licensed on a Per Server/License Unit basis and may be installed on a single Server that will be the designated Device hereunder. The maximum number of Devices that may access or utilize the services of the Server Software at a given point in time is not limited. The services of the Server Software are considered to be accessed or utilized when there is a direct or indirect connection between a Device and the Server Software running on the Server (regardless whether the Server Software is accessed or utilized using the Device Software, Third-Party Products or an application developed by the Customer). There is no set limit on the number of CALs that are supplied with the License Units. CALs will be used for each specific Device that accesses or utilizes Server Software (which may access or utilize the services of the Server Software on any number of Servers running the Server Software).

##### 19.11.2. Authorized Applications.

- (i) For the purpose of the Agreement, ‘Authorized Applications’ will mean those applications that Customer creates, develops or generates by using the Software (including its programming tool if any) or by loading in such applications, with or without modification, a library of the Software, provided that Customer has validly licensed said Software from AVEVA or its authorized resellers. Authorized Applications include, without this being limitative, applicable runtime engines for the Software and applicable driver interface that Customer may provide to Customer’s own customers as part of or together with Customer’s Authorized Applications.
- (ii) Notwithstanding the foregoing, any application created with a Pre-Production Release or for demonstration, test or evaluation purposes, is not an Authorized Application.
- (iii) Customer may distribute or otherwise make available Authorized Applications provided Customer complies with each of the requirements set forth below:
  - A. Customer includes Customer’s own valid copyright notice on Customer’s Authorized Applications;
  - B. Customer does not remove or obscure any notice of copyright, trademark, patent or other industrial or intellectual property rights that appear on the Software as delivered to Customer or as may appear concerning the Software in the Authorized Application’s About Box and in any applicable written documentation distributed with each copy of Customer’s Authorized Applications;
  - C. Customer do not use AVEVA’s name, logo or trademarks to market or identify Customer’s Authorized Applications unless Customer is party to a separate agreement with AVEVA giving Customer such rights or AVEVA has given Customer its express prior written consent to do so;
  - D. Customer indemnifies, holds harmless, and defends AVEVA from and against any claims (including based on warranty) or lawsuits, including attorneys’ fees, that arise or result from the use or distribution of Customer’s Authorized Applications, provided however that Customer’s contractual obligation of indemnification will not extend to the percentage of the claimant’s damages or injuries or the settlement amount attributable to AVEVA’s fault or to strict liability imposed upon AVEVA as a matter of law in any country (on either federal or state level, when applicable); the foregoing obligation of indemnification will survive the expiry or termination of the Agreement;
  - E. Customer does not permit further redistribution of the Software (including Customer’s modifications thereto) by third parties except as part of Customer’s Authorized Applications;

- F. Customer concludes Customer's own license agreement to grant the right to use Customer's Authorized Applications to any third party; and
  - G. Customer otherwise complies with the terms of the Agreement.
- 19.12 AVEVA Energy Performance. In addition to any other license restrictions set forth in the Agreement for the Software, Customer may not modify the predefined AVEVA Energy Performance Intelligence Model unless the license for the Software is specified as an Open Intelligence Model in the applicable Order Form. If the license model for the Software is specified as an Open Intelligence Model, then any modification of the predefined AVEVA Energy Performance Intelligence Model will be limited to the addition of more dimensions and measures.
- 19.13 AVEVA Water Network Management. In addition to any other license restrictions set forth in the Agreement for the Software, Customer's license of the Software will be subject to the limitation on the Water Flow Rate as set forth in the applicable Order Form.
- 19.14 AVEVA Performance Manager.
- 19.14.1. License Restrictions.
- (i) In addition to any other license restrictions set forth in the Agreement for the Software, Customer's license of the Software will be limited to the number of concurrent users and the number of Tags that include Key Performance Indicators ("KPI") and/or Key Operating Parameters ("KOP") and/or Data Acquisition Points and set forth in the applicable Order Form, along with any limitations on the number of KPIs as defined in the KPI Manager, the number of cases defined in the decision manager, and/or the number of modeled applications that are unified in the operational data management model.
  - (ii) Customer agrees and acknowledges that any domain applications that are loaded with the Software will only be applied to one licensed AVEVA Performance Manager installation, either on a single server or in distributed environment.
- 19.15 AVEVA Line Performance. In addition to any other license restrictions set forth in the Agreement for the Software, Customer's license of the Software will be limited to the number of Concurrent User Logins and the specified Equipment/Segment set forth in the applicable Order Form.
- 19.16 AVEVA Discrete Lean Management.
- 19.16.1. Software License. The Software is licensed according to the Line count. The maximum amount of Line that customer may capture information about according to established functional requirements is limited to the number of Line specified for the Software licensed under the Agreement as specified in the License File, Order Form or License Certificate.
- 19.16.2. In addition to any other license restrictions set forth in the Agreement for the Software, Customer's license of the Software will be limited to the Site set forth in the applicable Order Form.
- 19.17 AVEVA Telemetry Server Communication Drivers. The set of AVEVA Telemetry Server Communication Drivers are a single node licensed software offering. A license is required for every node that the customer installs and runs an instance of Telemetry Server.
- 19.18 AVEVA Enterprise SCADA.
- 19.18.1. Software License.
- (i) Customer's license allows Customer to install and use AVEVA Enterprise SCADA Software solely on the System described in the Order Form for Customer's ordinary internal business, under the terms and conditions herein.
  - (ii) In addition to any other license restrictions set forth in the Agreement for the Software, Customer's license of the Software will be limited to the number of computers or work stations set forth in the applicable Order Form.
- 19.18.2. License Restrictions.
- (i) Customer 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, Customer may make copies of the documentation provided to Customer 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. Customer 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 Customer is a network license. AVEVA's RealTime Services

and Historical Services software will be installed on servers forming part of Customer's System in the configuration as shown in Order Form (i.e. single, Dual Redundant or Triple Redundant). The RealTime Services, Historical Services and application Software may be accessed by the number of Seats specified in Order Form.

- (iii) Customer will 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)". Customer will have the right to use the Software without charge or prior consent at another location on a temporary basis if computer equipment at any Site becomes inoperative. Once the equipment at the original Site becomes operational, then Customer will promptly return the Software to the original Site and will discontinue use elsewhere.
- (iv) Customer will not use the Software for acquisition or processing of data on behalf of any Third Party outside permitted Customer's ordinary internal business use without the consent of AVEVA.

#### 19.19 AVEVA Commercial Advisor.

##### 19.19.1. Software License.

- (i) Customer's license allows Customer and its Affiliates to use AVEVA Commercial Advisor Software solely on the System described in the Order Form for Customer's ordinary internal business, under the terms and conditions herein.
- (ii) In addition to any other license restrictions set forth in the Agreement for the Software, Customer's license of the Software will be limited to the number of computers or work stations set forth in the applicable Order Form.

##### 19.19.2. License Restrictions.

- (i) Customer 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, Customer may make copies of the documentation provided to Customer 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. Customer 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) Customer will 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)". Customer will have the right to use the Software without charge or prior consent at another location on a temporary basis if computer equipment at any Site becomes inoperative. Once the equipment at the original Site becomes operational, then Customer or its Affiliate will promptly return the Software to the original Site and will discontinue use elsewhere.
- (iii) Customer will not use the Software for acquisition or processing of data on behalf of any Third Party outside permitted Customer's ordinary internal business use without the consent of AVEVA.

#### 19.20 AVEVA Historian (formerly Wonderware).

##### 19.20.1. Software License.

- (i) An AVEVA Historian license is limited by: (i) the maximum Tag Count, as defined in the License File, License Certificate or Order Form, (ii) the number of separate Devices which the AVEVA Historian can physically be installed as defined in the License File, License Certificate or Order Form, and (iii) the amount of time stored data can be accessed as defined in the License File, License Certificate or Order Form. The AVEVA Historian license contains Software which can be installed on multiple computers. The Software contained in the license cannot be separated or upgraded separately from the AVEVA Historian license.

##### 19.20.2. License Restrictions.

- (i) In addition to any other license restrictions set forth in the Agreement for the Software, Customer's license of the Software will be limited to the number of Concurrent User Logins and

the specified Equipment/Segment set forth in the applicable Order Form.

19.21 AVEVA Enterprise SCADA Management of Change.

19.21.1. Software License.

- (i) Customer's license allows Customer and its Affiliates to use AVEVA Enterprise SCADA management of Change Software solely on the System described in the Order Form for Customer's ordinary internal business, under the terms and conditions herein.

19.21.2. License Restrictions.

- (i) In addition to other license restrictions set forth in the Agreement for the Software, the embedded AVEVA Work Tasks used within the AVEVA Enterprise SCADA Management of Change application:
  - A. Is limited for use solely within this application;
  - B. Is limited for use solely within the AVEVA Enterprise SCADA system to which they are associated;
  - C. Is limited to the specified number of simultaneous users; and
  - D. Allows only a specific number of concurrent active workflows to be executed. The Software stops accepting more workflows if concurrency limits are exceeded.

19.22 AVEVA Operations OPC UA Server (OPC UA Server).

19.22.1. Software License

- (i) Customer may license the OPC UA Server in one of two ways:
  - A. Flex. Customer may license the OPC UA Server as part of Flex-licensed AVEVA InTouch, AVEVA System Platform, AVEVA Plant SCADA, and AVEVA Operations Control (any edition), for no additional cost.
    - 1. Customers having licensed the aforementioned HMI/SCADA products on a perpetual basis are not entitled to license the OPC UA Server for no additional cost. All such Customers shall have to license the OPC UA Server separately as noted in (B) below.
  - B. Perpetual. Customer may only license the OPC UA Server on a perpetual basis with an AVEVA Communication Drivers Professional license, which is licensed on a per node basis.

19.23 AVEVA Operations Control Product Suite; Enterprise Edition, Supervisory Edition & Edge Edition.

19.23.1 Software License.

- (i) Except for the cloud products identified in (ii) below, all products included in the Enterprise Edition, Supervisory Edition & Edge Edition of the AVEVA Operations Control Product Suite are licensed on a Per Named User basis, without any additional Tag Count or instance limitation.
- (ii) Cloud products included in all of the editions of the AVEVA Operations Control Product Suite, including AVEVA Development Studio/Integration Studio, AVEVA Teamwork and AVEVA Insight, shall be accessed in accordance with the AVEVA Cloud Services Addendum.

**20. LIMITED WARRANTIES AND DISCLAIMERS.**

- 20.1 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.

- 20.2 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.
- 20.3 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 20.1 (Limited Software Warranty) or Section 20.2 (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).
- 20.4 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.

**21. LIMITATION OF LIABILITY.**

- 21.1 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.

- 21.2 Damages Cap. Subject to Section 21.3 (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 21 (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.
- 21.3 Exceptions. Notwithstanding the foregoing, the limitations on amounts of Damages set forth in Section 20.2 (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 8 (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 25 (Compliance with Laws) of this Agreement.

## **22. INDEMNIFICATION.**

- 22.1 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 25 (Compliance with Laws) of this Agreement. If AVEVA believes, in its reasonable opinion, that a Claim under this Section 22.1 (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.
- 22.2 Infringement Remedies. In the event a Claim under Section 22.1 (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 22.1 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 22.1 (Indemnification by AVEVA).
- 22.3 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.

22.4 **Indemnification Requirements.** The indemnification obligations under this Section 22 (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 22 (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.

## 23. **TERMINATION.**

23.1 **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.

23.2 **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.

23.3 **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.

23.4 **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.

## 24. **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.



**25. COMPLIANCE WITH LAWS.**

- 25.1 **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 25.1 (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 23.1 (Termination). Without limiting the generality of the foregoing, each Party undertakes to the other Party that:
- 25.1.1. 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;
  - 25.1.2. 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
  - 25.1.3. 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 25.1.1 and 25.1.2 and will provide any information reasonably requested by the other Party in support of such compliance.
- 25.2 **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.
- 25.3 **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 25.1 (Anti-Bribery) or Section 25.1 (Trade Control), that breach shall constitute a material breach of this Agreement for purposes of Section 23.1 (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.

**26. MISCELLANEOUS.**

- 26.1 **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.
- 26.2 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.
- 26.3 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.
- 26.4 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.
- 26.5 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 26.5.
- 26.6 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.
- 26.7 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.
- 26.8 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), 20 (Limited Warranties and Disclaimers), 21 (Limitation of Liability), 22.3 (Indemnification by You), 23 (Termination), 24 (Third-Party Products ), 25 (Compliance with Laws) and 26 (Miscellaneous).
- 26.9 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 26.10 (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.
- 26.10 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.

- 26.11 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.
- 26.12 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.
- 26.13 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.
- 26.14 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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