

AVEVA Solutions Limited End User License Agreement

IMPORTANT NOTICE: PLEASE READ THIS END USER LICENCE AGREEMENT CAREFULLY BEFORE INSTALLING THE SOFTWARE

This licence agreement (“**Licence**”) is a legal agreement between you (“**Customer**” or “**you**”) and AVEVA Solutions Limited or based on where you live, one of our affiliates (“**AVEVA**” or “**we**”) for this software product (“**Software**”), which includes the Documentation (as defined in clause 2 below).

BY DOWNLOADING, INSTALLING AND/OR USING THE SOFTWARE OR CLICKING "I ACCEPT" WHEN PROMPTED, YOU ACCEPT ALL OF THE TERMS AND CONDITIONS OF THIS LICENCE. IF YOU ARE ACCEPTING THIS LICENCE ON BEHALF OF ANOTHER PERSON OR LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL LEGAL AUTHORITY TO ACCEPT ON BEHALF OF AND BIND THAT PERSON OR LEGAL ENTITY TO THIS LICENCE.

If you do not agree, you must not install or use the Software.

1. Issue and Use of Software and Supporting Hardware

Licence Fee(s): the fees payable by the Customer to AVEVA for Use of the Software excluding VAT and all other relevant taxes where applicable, as specified by AVEVA from time to time.

Licence Period: in relation to any Software, the period for which the Customer is permitted to Use the Software, as specified by AVEVA.

Maintenance Release: means any upgrade, update, enhancement, improvement or modification to the Software including without limitation error corrections and patches, but shall not include any new version of the Software which from time to time is publicly marketed and offered for purchase by AVEVA in the course of its normal business.

Notice File: means the file within the Software.

Use: means utilisation 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 the Customer’s hardware for the processing of the system instructions or statements contained in such Software and copying the Software for back-up purposes to the extent that such copies are reasonably necessary for the Customer’s operational security and Use within the scope of this Licence provided that no more than two (2) copies will be in existence under any licence at any one time without AVEVA’s prior written consent except as otherwise permitted by the applicable law and utilising the Documentation provided that the Customer shall not copy the whole or any part of the Documentation and shall not remove any trademark, copyright or proprietary notices from the Documentation.

- 1.1 AVEVA hereby grants to the Customer a non-exclusive, non-transferable, non-assignable and non-sub-licensable, licence to Use the Software and to make use of the Documentation for the duration of the Licence Period.
- 1.2 The Customer shall maintain accurate and up-to-date records of the number, location and date of creation of all copies of the Software and take all necessary steps to prevent unauthorised copying.
- 1.3 Other than in accordance with the rights to customise the Software which are set out in the accompanying Documentation the Customer shall not reproduce, modify, adapt, merge, translate, disassemble, decompile, recompile or reverse engineer the Software or create derivative works based on the whole or any part of the Software or incorporate the Software into any other software program not provided by AVEVA.
- 1.4 The Customer shall use the Software only for its internal business purposes and shall not make the Software and/or the Documentation available for use to any third party without AVEVA’s prior written consent. It shall not transfer the Software to another location or to other equipment without the consent of AVEVA such consent not to be unreasonably withheld, delayed or conditioned.

- 1.5 In the event that the Customer suspects or becomes aware of third parties using AVEVA's software without a valid licence from AVEVA then it shall as soon as reasonably practical notify AVEVA of its suspicions.
- 1.6 AVEVA reserves the right to vary, amend, modify or delete any product sales codes assigned to the Software for identification and/or inventory purposes only.
- 1.7 Customer agrees to be bound by the terms and notices contained in the Notice File.
- 1.8 Customer shall install all Maintenance Releases as soon as reasonably practicable after receipt and within seven days where AVEVA has notified Customer that the Maintenance Release has been issued to correct an infringement of a third party's Intellectual Property Rights, or an error in the functionality of the Software.
- 1.9 Subject to clause 1.10 below and unless otherwise agreed between the parties or varied by AVEVA on its website (see www.aveva.com/policies/support/en) AVEVA shall only support the current and the version immediately preceding the current version of the Software.
- 1.10 AVEVA reserves the right to "end of life" any Software product in accordance with its end of life policy which can be located on its website (see www.aveva.com/policies/eol/en).
- 1.11 To the extent that any provision in this section is in conflict with other terms and conditions within this Agreement then this section shall supersede such other terms and conditions with respect to Trial Software, but only to the extent necessary to resolve the conflict. Where an evaluation licence has been granted or the Software is supplied for the purposes of training, beta testing or other non-commercial use ("Trial Software") you may only use the Trial Software for those purpose and not for general production use. Unless agreed otherwise, you have 30 days from the delivery of the licence file to evaluate the Trial Software. If you decide to use the Software after the trial period has finished you must obtain a valid licence or cease using and delete any Trial Software from your computer systems. Trial Software provided for evaluation is done so on an "as is" basis and AVEVA does not provide any support or warranty. You acknowledge that any research and development you perform using the Trial Software is done so entirely at your own risk. In relation to beta software you shall hold all information regarding the product confidential and shall not, without the prior written consent of AVEVA, disclose any information relating to the beta software to any person or entity other than your representatives who need such information for the purpose of participating in the proposed evaluation and testing of the beta software. If so requested you will provide feedback regarding your evaluation and testing of the beta software.
- 1.12 AVEVA and its affiliated companies take all legal steps to eliminate piracy of their software products. In this context, the Software may include a security mechanism that can detect the installation or use of illegal copies of the Software, and collect and transmit data about those illegal copies. Data collected will not include any customer data created with the Software. By using the Software, you consent to such detection and collection of data, as well as its transmission and use if an illegal copy is detected. AVEVA also 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.

2. Documentation

Documentation: *the documentation provided by AVEVA for the Software, in machine readable form, including but not limited to the technical documentation, program specification and operations manual.*

- 2.1 The Customer is allowed to make a reasonable number of copies of the Documentation for its internal use only without AVEVA's prior written approval.

3. Hardware

Supporting Hardware: *means any dongles, or other physical devices supplied by AVEVA to the Customer for use with the Software.*

- 3.1 The Customer shall use any Supporting Hardware in accordance with AVEVA's instructions.

- 3.2 The Supporting Hardware provided by AVEVA shall remain AVEVA's property. AVEVA reserves the right to withdraw or change the Supporting Hardware as it sees fit.

4. Confidentiality

Affiliate/s: includes in relation to either party each and any subsidiary or holding company of that party and each and any subsidiary of a holding company of that party.

Confidential Information: means all information (however recorded or preserved) disclosed by a party or its Affiliates, its employees, officers, representatives or advisers (together its "Representatives") to the other party and that party's Representatives concerning: any information that would be regarded as confidential by a reasonable business person relating to: (i) the business, affairs, customers, clients, pricing and plans, of the disclosing party; and (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party (or of any member of the group of companies to which the disclosing party belongs).

- 4.1 Each party undertakes that it shall not at any time during this Licence, and for a period of five years after receipt of Confidential Information, disclose to any person any Confidential Information of the other party except as permitted by clause 4.2 below.
- 4.2 Each party may disclose the other party's Confidential Information:
- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the receiving party's obligations under this Licence, and in the case of AVEVA, for the purposes of assisting AVEVA to ensure Customer's compliance with this Licence. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's Confidential Information comply with clause 4.1 above; and
 - (b) as may be required by law, court order or any governmental or regulatory authority.
- 4.3 No party shall use any other party's Confidential Information for any purpose other than to perform its obligations under this Licence.

5. Warranty

- 5.1 AVEVA does not warrant that the use of the Software will be uninterrupted, error-free or free from viruses. The existence of any errors or viruses shall not constitute a breach of this Licence.
- 5.2 Other than in relation to Trial Software for which no warranty is given, in the event that the Customer discovers a material error which substantially affects its Use of the Software and AVEVA is notified of the error within ninety days from the date of this Licence AVEVA shall at its sole option either:
- a) use all reasonable endeavours to correct by patch or Maintenance Release (at AVEVA's option) that part of the Software exhibiting a material error; or
 - b) replace the Software; or
 - c) terminate this Licence immediately by notice in writing to the Customer and refund any of the Licence Fees paid by the Customer as at the date of termination (less a reasonable sum in respect of the Customer's use of the Software to the date of termination) on return of the Software and all copies thereof, PROVIDED THAT i) such material error has not been caused by any modification, variation or addition to the Software not performed by AVEVA or caused by its incorrect use, use outside the terms of this Licence or intended use of the Software, abuse or corruption of the Software or by use of the Software with other software or on equipment with which it is incompatible; and ii) the Customer provides all the information that may be necessary to assist AVEVA in resolving the defect or fault, including sufficient information to enable AVEVA to re-create the defect or fault. For the avoidance of doubt for the purpose of this clause AVEVA shall consider as "incompatible" all hardware which it has not specifically stated that it will support even if the Software happens to work in whole or in part on such hardware.

5.3 EXCEPT AS EXPRESSLY SET OUT IN THIS LICENCE, ALL CONDITIONS, WARRANTIES, TERMS AND UNDERTAKINGS, EXPRESS OR IMPLIED, WHETHER BY STATUTE, COMMON LAW, TRADE PRACTICE, CUSTOM, COURSE OF DEALING OR OTHERWISE (INCLUDING WITHOUT LIMITATION AS TO QUALITY, PERFORMANCE OR FITNESS OR SUITABILITY FOR PURPOSE) IN RESPECT OF THE SOFTWARE, THE DOCUMENTATION AND THE PROVISION OF SUPPORT ARE HEREBY EXCLUDED TO THE FULLEST EXTENT PERMISSIBLE BY LAW.

6. Intellectual Property Rights

Intellectual Property Rights means all patents, copyrights, design rights, trademarks, service marks, trade secrets, know-how, database rights and other rights in the nature of intellectual property rights (whether registered or unregistered) and all applications for the same, anywhere in the world.

6.1 AVEVA owns or is licensed to use all copyright and other Intellectual Property Rights relating to the Software and Documentation. Nothing in this clause transfers ownership of any Intellectual Property Rights belonging to the Customer or a third party which relates to data uploaded onto or created using the Software.

6.2 In relation to the Software, and subject to a maximum liability equivalent to the Licence Fees received by AVEVA from Customer in the twelve months preceding the claim being brought, AVEVA hereby indemnifies and will keep indemnified the Customer against any damages, losses, costs or expenses that are awarded by a competent court to be paid by the Customer to a third party in respect of a successful claim that the Software infringes a third party's Intellectual Property Rights ("Infringement Claim"). PROVIDED THAT the Customer:

- (a) has not done, permitted or suffered to be done anything which may have been an infringement of the copyright of a third party;
- (b) is using the latest Maintenance Release of the Software, where such use would have prevented the Infringement Claim.
- (c) notifies AVEVA in writing within seven days of any such claim;
- (d) does not make any admission as to liability or compromise or agree any settlement of any claim without AVEVA's prior written consent, or otherwise prejudice AVEVA or any other third party's defence of any claim;
- (e) give AVEVA, or such person as AVEVA shall direct, immediate and complete control of all negotiations and litigation arising from any claim; and
- (f) give AVEVA and such other third parties as AVEVA shall direct all reasonable assistance with the conduct or settlement of any such negotiations or litigation.

6.3 If in AVEVA's opinion the Software infringes the copyright of a third party, or is likely to infringe the copyright of a third party, AVEVA shall have the right in its absolute discretion to:

- (a) procure the right for the Customer to continue using the Software in accordance with the terms of this Licence;
- (b) make such alterations, modifications or adjustments to the Software so that it becomes non-infringing;
- (c) replace the Software with non-infringing software; or
- (d) terminate this Licence and refund to the Customer the unused proportion of any Licence Fees as applicable paid by the Customer.

6.4 The Customer shall indemnify AVEVA against all liabilities, costs and expenses (including without limitation all legal fees) which AVEVA may incur as a result of any claim attributable to data uploaded onto or created using the Software and the use or possession by the Customer of the Software and Documentation other than in accordance with the provisions of this Licence.

6.5 If the Customer brings any claim that the Software infringes an existing patent, this Licence and the Customer's right to the use the Software shall automatically terminate immediately.

6.6 Where the Customer has the express right to make copies of the Software, all copyright notices and all other legends of ownership must be reproduced on each copy or partial copy of the Software.

7. Limitation of Liability

- 7.1 AVEVA shall not be liable for: loss of profits; loss of business; depletion of goodwill and/or similar losses; loss of anticipated savings; loss of goods; loss of contract; loss of use; loss of corruption of data or information; any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses which may be suffered by the Customer (or any person claiming under or through the Customer), including but not limited to, any loss suffered by the Customer (or any person claiming under or through the Customer) resulting from the inaccuracy or invalidity of any data created by the Software even if AVEVA was aware of such circumstances in which such losses could arise.
- 7.2 AVEVA's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance, or contemplated performance of the Software shall be limited to 100% of the Licence Fees paid in the year in which the Customer's claim is brought.
- 7.3 In the event that the Software contains software of any third-party, such third-parties shall not be liable for consequential damages and to the extent permitted by law, such third-parties hereby disclaim all implied warranties (including without limitation implied warranties of satisfactory quality, merchantability, non-infringement and fitness for a particular purpose).
- 7.4 The limitations set out in clauses 7.1, 7.2 and 7.3 shall apply to the fullest extent permissible at law.

8. Audit Rights

- 8.1 Upon 30 days written notice AVEVA shall have the right to audit your use of AVEVA's Software. You agree to cooperate with AVEVA's audit and provide reasonable assistance and access to relevant information. You agree to pay within 30 days of written notification any fees applicable to your use of the Software in excess of your licence rights. AVEVA may terminate any licenses, support, services and/or this Agreement in the event of non-payment. AVEVA shall not be responsible for any costs incurred by you in cooperating with the audit irrespective of whether any misuse is identified by AVEVA.

9. Suspension and Termination

Change of Control: occurs if a person or entity who Controls any body corporate ceases to do so or if another person or entity acquires control of it.

Control: means in relation to a body corporate, the power of a person or entity to secure that the affairs of the body corporate are conducted in accordance with the wishes of that person or entity:

- (a) by means of the holding of shares, or the possession of voting power, in or in relation to, that or any other body corporate; or
- (b) by virtue of any powers conferred by the constitutional or corporate documents, or any other document, regulating that or any other body corporate.

- 9.1 AVEVA may suspend provision of any service, including the supply of any Software or Licence Entitlement Manager, or terminate this Licence immediately on written notice to Customer, where :
- (a) the Customer has not paid the Licence Fees; or
- (b) the Customer is in material or persistent breach of any of the terms of this Licence (including any breach identified as a result of an audit) and either that breach is incapable of remedy, or the Customer fails to remedy that breach within 30 days after receiving written notice requiring it to remedy that breach;
- (c) there is a Change of Control of the Customer or in an Affiliate; or
- (d) the Customer is unable to pay its debts or becomes insolvent, or is subject to an order or a resolution for its liquidation, or has an administrative or other receiver, manager, trustee, administrator or similar officer appointed over all or any substantial part of its assets, or enters into or proposes any composition or arrangement with its creditors, or is subject to any analogous event or proceeding in any applicable jurisdiction.

- (e) in the reasonable opinion of AVEVA the Customer's actions may result in AVEVA being in breach of any Export Control Laws and/or sanctions.
- 9.2 Termination shall not affect any rights or remedies that accrued prior to termination.
- 9.3 On termination of this Licence for any reason:
 - (a) all rights granted to the Customer under this Licence shall cease;
 - (b) all amounts owed by Customer to AVEVA shall become due and payable; and
 - (c) the Customer shall immediately destroy or return to AVEVA (at AVEVA's option) all copies of the Software and Documentation and any Supporting Hardware then in its possession, custody or control and, in the case of destruction, certify to AVEVA that it has done so.
- 9.4 Any provision of this Licence which expressly or by implication is intended to come into or continue in force on or after termination of this Licence shall remain in full force and effect.

10. Third Party Rights

- 10.1 No person other than a party to this Agreement, and their respective successors and permitted assigns, shall have any rights to enforce any term of this Agreement.

11. Force Majeure

- 11.1 Subject to compliance with clause 11.2 neither party shall be in breach of this Licence nor liable for delay in performing, or failure to perform, any of its obligations under this Licence if such delay or failure results from events, circumstances or causes beyond its reasonable control ("Force Majeure Event"), and in such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for three months, the party not affected may terminate this Licence by giving fourteen days' written notice to the other party.
- 11.2 The affected party must:
 - a) promptly notify the other party in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance;
 - (b) provide reasonable evidence that it could not have avoided the effect of the Force Majeure Event by taking precautions which, having regard to all the matters known to it before the Force Majeure Event, it ought reasonably to have taken; and
 - (c) have used, and continue to use, all reasonable endeavours to mitigate the effect of the Force Majeure Event to enable it to carry out its obligations under this Licence in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.

12. Notices

- 12.1 If you have a dispute with AVEVA or if you wish to serve notice under any of the indemnity provisions or if you become subject to insolvency or other similar legal proceedings you will promptly send written notice in the English language to: AVEVA Group Plc, High Cross, Madingley Road, Cambridge CB3 0HB UK, marked for the attention of the Group Legal Counsel.

13. Compliance with Laws

- 13.1 Both parties represent, warrant and covenant that they possess and will maintain all licences and authorisations necessary to comply with their obligations under this Licence.
- 13.2 Customer shall comply fully with all applicable laws of the country in which it is located, and in which the Software is to be used.

13.3 Customer confirms that to date it has not breached any applicable laws and regulations and will promptly report any breach, or any event which reasonably suggests a breach, of the applicable laws and regulations.

14. Export

Export laws and regulations of the United Kingdom, European Union, the United States and any other relevant local export laws and regulations apply to the Software. You agree that such export control laws govern the use of the Software (including technical data) and any services, deliverables provided under this Licence, and regardless of any disclosure made by you to AVEVA of an ultimate destination of the Software, you agree to comply with all such export laws and regulations (including “deemed export”) and “deemed “re-export” regulations). You agree that no data, information, program and/or materials resulting from services (or direct product thereof) will be exported, directly or indirectly, in violation of these laws, or will be used for any purpose prohibited by these laws including, without limitation, nuclear, chemical or biological weapons proliferation, or development of missile technology. You shall indemnify, defend and hold AVEVA harmless for any breach of your obligations pursuant to this clause.

15. Waiver

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

16. Severance

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

16.2 The parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.

17. Variation

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

18. Assignment

18.1 You may not assign this Licence or give or transfer the Software and/or any services or an interest in them to another individual or entity.

19. Language

19.1 This Licence is drafted in the English language. If this Licence is translated into any other language, the English language text shall prevail.

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

20. Law and Jurisdiction

20.1 This Licence and any dispute or claim arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales and each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or

claim arising out of or in connection with this Licence or its subject matter or formation (including non-contractual disputes or claims).

- 20.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.