

TERMS AND CONDITIONS

SolutionsPT Limited ("SolutionsPT") and any third party named in a Service Document (whether an individual or corporate body) ("Client") acknowledge and agree that, by each of them executing a completed Service Document, a contract for SolutionsPT to supply Services is made between them upon (a) the terms set out in such Service Document, (b) these terms and conditions, and (c) the terms of any Service Level Document (collectively an "Agreement") to the exclusion of all other terms and conditions.

No terms or conditions endorsed upon, delivered with or contained in any document or other communication (electronic or otherwise) supplied or sent by the Client relating to an Agreement shall form part of such Agreement and the Client waives any right which it otherwise might have to rely on such other terms or conditions. No order or other offer made by the Client for services shall be deemed accepted by SolutionsPT until a written acknowledgement of the same is issued by SolutionsPT or (if earlier) provision of such services is undertaken by SolutionsPT.

1. TERM

1.1 An Agreement shall commence on the Commencement Date and remain in full force and effect for the Term unless terminated in accordance with clause 8.

2. PAYMENT & INVOICING

2.1 Save where otherwise provided in these terms and conditions, Client will pay to SolutionsPT the Fees and Expenses within 30 days of receipt of an invoice for the same valid for Value Added Tax purposes.

2.2 Unless otherwise stated in a Service Document overtime working is not included as standard in the Fees. Should SolutionsPT agree to work beyond Business Hours it reserves the right to charge the Client additional amounts (on a time and materials basis) and Expenses at its then current uplifted overtime rates;

2.3 SolutionsPT may increase the Fees payable in respect of Services at its sole discretion on the first and each subsequent anniversary of an Agreement. Where any item of Expenses is capped to an absolute amount, such amount shall increase on the first and each subsequent anniversary of an Agreement in line with the then current annualised rate of change of the Consumer Prices Index (as published from time to time by the Office of National Statistics) expressed as a percentage.

2.4 All payments by Client in respect of the Fees and Expenses shall be made in full and cleared funds to a bank account nominated in writing by SolutionsPT without any deduction or withholding other than as required by Applicable Law. Client shall not be entitled to assert any credit, set-offs or counterclaim against SolutionsPT in order to justify withholding payment of any such amount in whole or in part.

2.5 Without prejudice to any other right or remedy that it may have, if Client fails to pay SolutionsPT on the due date, SolutionsPT may suspend all Services until payment has been made in full.

2.6 Time for payment shall be of the essence of an Agreement. In the event of late payment, SolutionsPT may at its sole discretion charge the Client daily interest pursuant to the Late Payment of Commercial Debts (Interest) Act 1998 from time to time for the period beginning on the date on which payment is due and ending on the date on which payment is made.

2.7 If Client receives an invoice from SolutionsPT which it reasonably believes specifies Fees and/or Expenses which are (in whole or in part) not valid and properly due ("Disputed Charge"), Client shall notify SolutionsPT in writing within 10 Business Days of receipt of the invoice, of the nature of the existence of the Disputed Charge and the parties shall promptly commence to resolve such dispute. If no such notice is received by SolutionsPT within such period the relevant invoice shall be deemed correct and payable in accordance with the foregoing provisions of this clause 2. Client shall pay SolutionsPT any part of the Fees and/or Expenses (as applicable) under the relevant invoice which is/are not a Disputed Charge, in accordance with the foregoing provisions of this clause 2.

3. GENERAL OBLIGATIONS

3.1 Each of the parties warrants and undertakes that:

- (a) in performing its obligations under an Agreement in respect of the Services, it shall:
 - (i) use reasonable skill and care; and
 - (ii) provide the other party with such reasonable information (including, in the case of the Client only, (1) the Client Data and (2) all information in the Client's possession regarding any suspected breach of an End User Licence Agreement) and assistance as the other party shall reasonably request;
- (b) it has, and shall continue to have for the duration of an Agreement and for such reasonable time after the expiry or termination of an Agreement as is necessary for the proper performance of its obligations under an Agreement, full capacity, power and authority to enter into and to perform an Agreement; and
- (c) it is and shall continue to be duly incorporated, validly existing and in good standing under the laws of jurisdiction of its incorporation.

3.2 Client warrants and undertakes that:

- (a) no act or omission of SolutionsPT in accordance with an Agreement, or (ii) any instructions of the Client provided pursuant to an Agreement, will result in SolutionsPT failing to comply with Applicable Law;
- (b) any information (including without limitation any Client Data) which it has provided or shall provide to SolutionsPT in connection with the subject matter of an Agreement (whether such provision occurs before or after the Commencement Date) is materially complete and accurate, and it shall immediately notify SolutionsPT if there is any material inaccuracy or change in any such information so provided;
- (c) it shall allow SolutionsPT and its permitted agents and sub-contractors at all reasonable times and upon reasonable notice to enter upon the Client Sites and to have full access to (i) the Client Architecture and any consumables, data and other systems, (ii) any of the Client's employees and agents and (iii) any documentation in the Client's possession, together with such reasonable office

(vi)

facilities and parking, in each case for such time and from time to time as is necessary for SolutionsPT to perform its rights and obligations herein or to allow SolutionsPT to investigate any suspected breach of an End User Licence Agreement; and

- (d) it will provide:
 - (i) a reasonably safe working environment for any person authorised by SolutionsPT to attend the Client Sites; and
 - (ii) without prejudice to sub-clause (i) immediately above, furnish such safety and other equipment to such person as is reasonably required given the nature of the Client Sites and the work being undertaken, to ensure a reasonably safe working environment for that person, or pay the reasonable costs incurred by SolutionsPT in furnishing the same (which shall be charged as Expenses).

4. SERVICES

Obligations of SolutionsPT and Client

4.1 SolutionsPT shall:

- (a) supply the Services (including the Deliverables (if any)) in accordance with the terms set out in a Service Document; and
- (b) with effect from the Service Level Start Date, use reasonable endeavours to supply the Services in a manner that meets or exceeds the service levels set out in each Service Level Document.

4.2 Unless otherwise specified in a Service Document, the Client:

- (a) shall perform the Client Obligations in accordance with such timescales as the parties shall agree from time to time; and
- (b) shall use adequate numbers of individuals who are appropriately experienced, qualified and trained and who have the requisite knowledge and skills to perform its obligations under an Agreement.

Support and Maintenance Services

4.3 Where SolutionsPT is to perform Support Services and/or Maintenance Services (as applicable), the Client acknowledges and agrees that:

- (a) it is responsible for:
 - (i) the provision, operation and maintenance of the Client Architecture, and in particular shall ensure that it:
 - (1) meets or exceeds each Minimum Architecture Specification;
 - (2) is fully operational as and when required in order for SolutionsPT to perform the Services;
 - (ii) all communication links (together with any related cabling) and data transfer between (i) the Hardware and Software and (ii) any other devices or software (whether networked or otherwise) comprised in the Client Architecture;
 - (iii) the maintenance of such environmental conditions as are necessary for the proper functioning of the Hardware and Software;
 - (iv) making all necessary backup and security copies of the Software (to the extent consistent with any End User Licence Agreement) and Client Data, and of such other software and data as is comprised in the Client Architecture; and
- (b) it shall:
 - (i) (save where SolutionsPT is to undertake the same pursuant to a Service) promptly implement all new versions, releases, updates, upgrades, patches, fixes or other software programs or code supplied to it in respect of the Software;
 - (ii) fully comply with and implement the instructions and procedures of SolutionsPT for remote diagnostics of which it is notified from time to time; and
 - (iii) not:
 - (1) request, permit or authorise anyone other than SolutionsPT to provide any support or maintenance services in respect of Hardware or Software;
 - (2) modify, repair or attempt to modify or repair the Hardware or Software itself; or
 - (3) not disconnect any individual Hardware device from any other individual Hardware or other device, cabling or communication link, without the prior consent of SolutionsPT.

4.4 SolutionsPT shall not be required to provide Support Services and/or Maintenance Services (as applicable):

- (a) where any failure, defect or malfunction of the relevant Hardware or Software is directly or indirectly caused by:
 - (i) any (1) modification, adjustment, or repair to, or (2) neglect, misuse or abuse of or willful or accidental damage to, in each case such software or hardware by any party other than SolutionsPT and its permitted agents;
 - (ii) any damage to, failure, fluctuation, intermittent operation, or inadequacy of (1) electrical power or related connections, (2) bandwidth or communication connections or (3) air conditioning;
 - (iii) environmental factors including excessive dust, humidity, heat, cold or moisture;
 - (iv) any Force Majeure Event;
 - (v) the use of information technology hardware or software other than that provided by SolutionsPT under an Agreement;
- (vi) any relocation or transportation of such hardware or software save where (1) SolutionsPT is aware of and has consented to the same in writing, and (2) Client has complied in full with any directions of SolutionsPT in relation to the same;

- (vii) the Client failing to:
- (1) comply with all supporting documents supplied to an end user as standard by the relevant software publisher and/or manufacturer or with any supplementary instructions provided by SolutionsPT or the relevant software publisher or manufacturer; or
 - (2) maintain good housekeeping practices, including keeping the hardware clean and replenishing all consumables (if any) as reasonably required;
 - (3) (save where SolutionsPT is to undertake the same pursuant to a Service) promptly implement all new versions, releases, updates, upgrades, patches, fixes or other software programs or code supplied to it by SolutionsPT in respect of the Software;
- (viii) the Client being breach of an Agreement;
- (ix) the Client's negligence; or
- (x) operator error;
- (b) in respect of any data; or
- (c) in respect of Hardware only, exterior casing or parts, save where the functionality of the Hardware is affected by damage to the same.
5. **AGENTS & SUB-CONTRACTORS**
- 5.1 SolutionsPT may use third party agents and sub-contractors in the course of providing some or all of the Services. SolutionsPT acknowledges that Client may use third party agents, professional advisers and consultants in the course of its business. Each party shall co-operate with such third parties in accordance with any reasonable written instructions provided by the other party from time to time.
- 5.2 Notwithstanding clause 5.1 each party shall be and remain liable to the other party for compliance with its obligations under an Agreement.
6. **COMPLIANCE & DATA PROTECTION**
- 6.1 SolutionsPT warrants and undertakes that where it has access to Client Data that is Personal Data, it shall (a) use such Client Data solely for the purpose of carrying out its obligations pursuant to an Agreement, (b) process such Client Data in accordance with the Client's instructions, (c) take appropriate technical and organisational measure to prevent unauthorised or unlawful processing or accidental loss or destruction of or damage to such Client Data, (d) not transfer the whole or any part of any such Client Data to any place outside the European Economic Area without the Client's prior written consent and then only to states and/or data processors having in place an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data, and (e) promptly notify the Client of any complaint, subject access request or regulatory notice in respect of such Client Data and deal with the same in accordance with Applicable Law.
- 6.2 Client warrants and undertakes that:
- (a) where it supplies Client Data to SolutionsPT pursuant to an Agreement, such client Data (i) has been obtained, and (ii) may be used by SolutionsPT(1) for such purposes and in such manner as is contemplated by an Agreement and (2) if different, in accordance with Client instructions from time to time, in each case in accordance with Applicable Law; and
 - (b) for the purposes of sub-clause (a) immediately above, it has and shall maintain adequate internal procedures and controls to ensure compliance with Applicable Law.
- 6.3 Each party shall ensure that each of its employees and permitted agents and sub-contractors are made aware of and shall comply with (in the case of agents and sub-contractors, by means of a written agreement) its obligations under clauses 6.1-6.2 (as applicable).
7. **INTELLECTUAL PROPERTY RIGHTS**
- 7.1 Any Intellectual Property Rights in pre-existing materials provided by SolutionsPT to the Client in the course of the Services shall be and remain the property of SolutionsPT. SolutionsPT hereby grants to the Client a revocable, non-exclusive licence to use such materials, and take a reasonable number of copies of the same, in each case for its own internal business purposes during the Term.
- 7.2 Any Intellectual Property Rights in pre-existing materials provided by the Client to SolutionsPT in the course of the Services shall be and remain the property of the Client. The Client hereby grants to SolutionsPT a revocable, non-exclusive licence to use such materials, and take a reasonable number of copies of the same, in each case as reasonably necessary in order for SolutionsPT to perform the Services during the Term.
- 7.3 Any Intellectual Property Rights in Deliverables shall be and remain the property of SolutionsPT. The Client hereby assigns to SolutionsPT with full title guarantee and free from all liens, charges, encumbrances and third party rights, all present and future Intellectual Property Rights the Client has or may have (if any) in any Deliverables, with the intention that the same vest immediately upon coming into existence. The Client hereby waives any Moral Rights it may have in respect of such Intellectual Property Rights. SolutionsPT hereby grants to the Client a revocable, non-exclusive licence to use the Deliverables, and (where such Deliverables are in the form of documents) take a reasonable number of copies of the same, in each case for its own internal business purposes during the Term.
- 7.4 The Intellectual Property Rights in the Software and Hardware are, and shall remain, the property of the relevant software publisher identified in the applicable End User Licence Agreement, or manufacturer respectively.
- 7.5 The Client warrants that SolutionsPT's use of the Client Data, any materials it supplies to SolutionsPT in the course of the Services, and the Deliverables (to the extent that the Client would have Intellectual Property Rights in the same, but for the above assignment) as contemplated above, in each case will not be subject and give rise to any claim for infringement of any Intellectual Property Rights of any third parties.
- 7.6 The Client shall not remove, alter, cover or obfuscate any patent, copyright, trademark, trade name, or other proprietary notices, labels or marks (including the trade name "Wonderware" and any related logo or trademark) of SolutionsPT, Invensys Systems Inc or any third party software publisher on the Software Media or Hardware or any related documentation, and shall reproduce such notices, labels and marks on any permitted copies of the same that the Client makes.
- 7.7 The Client shall promptly notify SolutionsPT of any unauthorised use, disclosure, reproduction, or distribution of the Software or any related documentation which comes to its attention, or which its reasonably suspects.
- 7.8 Neither party will make use of any logo, trademarks or trade name or Intellectual Property Rights of the other (save those expressly licensed herein) without the other's prior written consent. For the avoidance of doubt, the Client shall not use the trade name "Wonderware" or any related logo or trademark of Invensys Systems Inc., or any trade name or logo or trademark associated with any Software, except to the extent expressly permitted by the applicable End User Licence Agreement.
8. **TERMINATION**
- General rights of termination for cause**
- 8.1 Either party may terminate an Agreement at any time:
- (a) immediately upon giving written notice to the other party to such effect where:
 - (i) the other party commits a material breach of any provision of an Agreement which is capable of remedy and fails to remedy such breach within thirty (30) days of receipt of a notice from the innocent party specifying the breach;
 - (ii) the other party commits a material breach of any provision of an Agreement which is not capable of remedy; or
 - (iii) an Act of Insolvency occurs with respect to the other party; or
 - (b) on giving five (5) Business Days notice in writing to such effect where a delay or failure pursuant to a Force Majeure Event persists for more than a continuous period of three (3) months.
- 8.2 Each party shall notify the other in writing if any Act of Insolvency occurs in relation to itself.
- Specific rights of termination for cause**
- 8.3 SolutionsPT may terminate an Agreement immediately upon providing written notice to such effect to Client where:
- (a) Client fails to make payment of any amount when due under an Agreement or a Related Agreement, and the same is not remedied within thirty (30) days of the due date;
 - (b) the Client commits a material breach of any provision of a Related Agreement which is capable of remedy and fails to remedy such breach within thirty (30) days of receipt of a notice from the innocent party specifying the breach, or commits a material breach of any provision of a Related Agreement which is not capable of remedy; or
 - (c) a Related Agreement is terminated in accordance with its terms;
 - (d) any End User Licence Agreement is terminated in accordance with its terms by the Client or any relevant third party; or
 - (e) Client fails to execute or confirm acceptance in the manner prescribed of, or otherwise indicates to SolutionsPT that it does not or shall not agree to the terms of any relevant End User Licence Agreement; or
 - (f) it becomes aware of any breach of an End User Licence Agreement by the Client, and may immediately notify the relevant third party software publisher of such breach (and of any related information in SolutionsPT's possession) notwithstanding the terms of clause 11.
- Consequences of expiry and/or termination**
- 8.4 Upon termination of an Agreement:
- (a) other than by the Client pursuant to clause 8.1(a):
 - (i) the Client shall immediately pay to SolutionsPT all Fees and Expenses previously invoiced by SolutionsPT which remain outstanding (if any) save for Disputed Charges; and
 - (ii) the Client shall pay to SolutionsPT within 10 Business Days of receipt of an invoice for the same valid for VAT purposes, the balance of all Fees (calculated on a pro-rata basis where such Fees are fixed and on a time and materials basis in all other cases) and Expenses accrued in respect of SolutionPT's performance of the Services to the relevant date of termination.
- 8.5 The termination of an Agreement by either party for any reason shall not prejudice any rights or obligations existing or that may have accrued prior to the date of such expiry or termination.
- 8.6 On the expiry or earlier termination of an Agreement in accordance with its terms, either party may require the other party to return or destroy or otherwise render unusable to itself or any third party all Confidential Information, materials, documents, data and information (regardless of the format in which such other party holds the same) that relates to or is the property of the party making such request, and to provide a certificate in agreed form signed by an officer or senior manager, certifying that the same has been completed.
- 8.7 Notwithstanding the termination of an Agreement, all the provisions of an Agreement which are expressed or intended to have effect on, or at any time after, such termination shall survive such termination, and the parties shall perform and observe their respective obligations and discharge their respective liabilities under all such provisions of an Agreement.
- 8.8 Without prejudice to clause 8.7, this clause and clauses 2.4, 2.6, 2.7, 3.1(b) and 3.1(c), 3.2, 5.2, 6, 7, 8.4-8.7 (inclusive) and 9-19 (inclusive), shall survive termination of an Agreement.
9. **DELAY & FORCE MAJEURE**
- 9.1 Client acknowledges and agrees that SolutionsPT's ability to perform the Services in a timely manner is contingent upon timely completion by Client of each Client Obligation.
- 9.2 Client shall immediately advise SolutionsPT as soon as it becomes aware of any developments that may delay or otherwise render it unable to perform a Client Obligation by any applicable target date agreed between the parties.
- 9.3 Client will be responsible for, and assumes the risk of delays resulting from, any issues

- or problems concerning the Client Data.
- 9.4 Any timescales agreed with the Client for performance of the Services shall be adjusted in writing in the event of: (a) any delay caused by Client's failure or inability to perform a Client Obligation, save to the extent that the same is a direct result of SolutionsPT not fulfilling an obligation; or (b) any delay due to Client's request for changes to the Services that are made after the same has been agreed, or (c) any delay contemplated by clause 9.3. For the avoidance of doubt, no such delay will relieve or suspend Client's obligation to pay SolutionsPT under an Agreement.
- 9.5 Neither party will be liable for any delay in performing or its failure to perform its obligations under an Agreement if such delay or failure results from a Force Majeure Event. Such delay or failure shall not constitute a breach of an Agreement and the time for performance shall be extended by a period equivalent to that during which performance is so prevented.
- 9.6 Unless otherwise agreed in writing, with respect to the obligations of SolutionsPT under this Agreement:
- any timescale agreed by the parties is an estimate only; and
 - time shall not be of the essence.

10. LIABILITY & INDEMNITY

Scope of liability

- 10.1 Neither party shall, or shall seek to, restrict or exclude its liability for:
- death or personal injury caused by its negligence;
 - fraud or fraudulent misrepresentation;
 - any other form of loss, damage or liability which cannot be excluded or restricted under Applicable Law.

General provisions

- 10.2 SolutionsPT's aggregate liability under an Agreement shall in no event exceed 100% of the total aggregate Fees which would be actually paid by Client to SolutionsPT pursuant to such Agreement, if the same were properly performed and completed on time. For such purpose, and save where the related Services have been performed in full as at the date at which SolutionsPT's liability is calculated, any estimated Fees shall be deemed definitive.
- 10.3 SolutionsPT shall not be liable for any indirect Losses.
- 10.4 SolutionsPT shall not be liable for Losses in respect of:
- loss of or damage to or errors in data (including costs and expenses associated with its recovery and/or reconstruction);
 - loss of profits;
 - loss of contracts;
 - loss of business revenue;
 - loss of goodwill;
 - loss of anticipated savings; or
 - loss arising from any claim made against the Client by any third party.
- 10.5 Client acknowledges and agrees that it is its responsibility to insure itself against indirect Losses and the Losses set out in clause 10.4;
- 10.6 Where SolutionsPT attends a Client Site in the course of performing the Services, SolutionsPT's maximum liability in contract, tort or otherwise for physical damage to the Client's tangible personal or real property resulting from SolutionsPT's negligence shall not exceed £5 million per event or series of events.

Fees & expenses: additional payments

- 10.7 To the extent that SolutionsPT provides Services:
- in circumstances where:
 - it is not required to do so under an Agreement;
 - a delay contemplated by clause 9 has occurred;
 - at the request of the Client but which SolutionsPT subsequently determines are unnecessary;
- SolutionsPT shall be entitled to charge the Client additional Fees (on a time and materials basis) at its then current rates and Expenses.

Indemnity

- 10.8 Client shall indemnify, defend and hold harmless, SolutionsPT and its employees and agents and sub-contractors from any and all Losses arising from or in connection with:
- any Claim or any threatened claim, action, proceeding, demand or allegation that the use by SolutionsPT of the Client Data, any materials supplied by the Client in the course of the Services, or Deliverables (to the extent that the Client would have Intellectual Property Rights in the same, but for the assignment in clause 7.3) in accordance with an Agreement infringes a third party's Intellectual Property Rights or rights in respect of confidential information;
 - any breach by Client of clause 6.2;
 - any breach by the Client of an End User Licence Agreement; and
 - in the event of the termination of this Agreement in accordance with its terms (other than by the Client pursuant to clause 8.1(a)), any item of Software or Hardware.

Handling of claims

- 10.9 SolutionsPT shall promptly notify the Client if any claim is made or action brought against SolutionsPT that falls within the subject matter of the indemnity in clause 10.8.
- 10.10 If SolutionsPT wishes to claim under the indemnity in respect of such a claim or action it shall, subject to clauses 10.11 to 10.13 (inclusive) give the Client conduct and control of all negotiations and litigation resulting from such claim or action and SolutionsPT shall, at the request and expense of the Client, afford to the Client all reasonable assistance for the purpose of contesting any such claim or action.
- 10.11 The Client shall consult regularly and fully with SolutionsPT in relation to the handling of such claim or action and shall give all due consideration and weight to SolutionsPT's recommendations. The Client shall keep SolutionsPT fully advised of the progress of

such claim or action including by providing SolutionsPT with copies of all court and other legal documents relating to it.

- 10.12 The Client shall not settle any such claim or action without SolutionsPT's prior written consent such consent not to be unreasonably withheld or delayed.
- 10.13 Where the Client has care and conduct of a matter pursuant to this clause 10 it shall on request from SolutionsPT immediately provide SolutionsPT's with security for costs and damages for which SolutionsPT has a potential legal liability on terms acceptable to SolutionsPT (acting reasonably).

Implied Terms

- 10.14 To the fullest extent permitted by Applicable Law, SolutionsPT hereby excludes all representations, conditions, warranties or other terms which may be implied by statute or otherwise, including but not limited to any implied condition of satisfactory quality or fitness for a particular purpose, in respect of the Services.

11. CONFIDENTIALITY

- 11.1 This clause 11, applies in respect of all Confidential Information disclosed by one party (the "Disclosing Party") to the other party (the "Receiving Party") pursuant to an Agreement.
- 11.2 The Receiving Party shall use the Disclosing Party's Confidential Information solely for the purposes of performing its obligations and exercising its rights under an Agreement. The Receiving Party shall not disclose any Confidential Information of the Disclosing Party to any third parties save to those employees permitted agents, subcontractors and professional advisers of the Receiving Party who are required to have the information in order for the Receiving Party to perform its obligations and exercise its rights under an Agreement. If the Receiving Party is required by law to make any disclosure that is prohibited or otherwise constrained by an Agreement, the Receiving Party shall (where permitted to do so by law) provide the Disclosing Party with prompt written notice of such requirement prior to such disclosure so that the Disclosing Party may seek a protective order or other appropriate relief. Subject to the foregoing sentence, the Receiving Party may furnish that portion (and only that portion) of the Confidential Information that it is legally compelled or is otherwise legally required to be disclosed; provided, however, that the Receiving Party provides such assistance as the Disclosing Party may reasonably request in obtaining such order or other relief at the Disclosing Party's option and expense.
- 11.3 The Receiving Party shall use at least the same effort to prevent unauthorised use or disclosure of the Disclosing Party's Confidential Information as it uses to protect its own confidential information of a similar nature, but in no event less than a reasonable degree of care.
- 11.4 Each party's obligations under clauses 11.1 and 11.2 are of a unique character and each agrees that any breach may result in irreparable and continuing damage to the other party for which there may be no adequate remedy in damages. In the event of such a breach, the damaged party will be entitled to seek injunctive relief and/or a decree for specific performance and such further relief as may be proper.
- 11.5 "Confidential Information" means any information disclosed by a party by any means (including orally, in writing or as code) that relates to its business or the subject matter of an Agreement, including the existence and content of any such Agreement, (in respect of the Client only) the Client Data, or which is otherwise reasonably expected to be treated in a confidential manner given the circumstances of disclosure, whether or not the same is marked to indicate its confidential or proprietary nature.

Confidential Information shall not, however, include any information that: (a) was in the public domain prior to the time of disclosure by the disclosing party; (b) enters the public domain after disclosure by the disclosing party through no action or inaction of the other party; (c) was already in the possession of the other party without confidentiality obligations at the time of disclosure (as shown by such other party's files and records immediately prior to the time of disclosure); (d) is obtained by the other party without confidentiality obligations from a third party who is not in breach of its own confidentiality obligations; (e) is independently developed by the other party without use of or reference to other Confidential Information; or (f) is in SolutionsPT's possession that relates to a breach or suspected breach of an End User Licence Agreement.

12. NOTICES & POINTS OF CONTACT

- 12.1 All notices in respect of an Agreement shall:
- be communicated to the other party by fax (save in respect of a notice pursuant to clause 8 or concerning a Force Majeure Event), post or by hand; and
 - be valid if (a) marked for the attention of the persons, and delivered to the address(es) or number(s) set out in a Service Document to an Agreement or otherwise in accordance with such other directions as may be prescribed in writing by the receiving party from time to time; and
 - be deemed to be served:
 - in respect of notices delivered by post or by hand, if delivered during Business Hours on a Business Day, when so delivered; and if delivered outside Business Hours, at the start of Business Hours on the next Business Day; and
 - in respect of notices delivered by fax, at the time when in the ordinary course of the means of transmission it would first be received by the addressee, provided that, where such time does not fall within Business Hours on a Business Day, such notice shall be deemed served at the start of Business Hours on the next Business Day.

13. THIRD PARTY RIGHTS

- 13.1 No person who is not a party to an Agreement has any right to enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.

14. DISPUTE RESOLUTION PROCEDURES

- 14.1 All disputes between the parties shall be referred to the parties' respective representatives for resolution. The respective representatives shall meet as soon as possible should a dispute arise (and in any event within 14 Business Days of the dispute being notified in writing by one party to the other) and shall negotiate in good faith and use all reasonable endeavours to resolve the dispute.
- 14.2 A party shall be entitled (by giving the other party notice in writing) to withdraw from the dispute resolution process set out in clause 14.1 above and commence court

- proceedings relating to any dispute arising from an Agreement.
- 14.3** Save where otherwise required by Applicable Law, each party shall keep confidential all discussions and negotiations relating to any dispute unless and until the matter is referred for resolution by a court.
- 15. GOVERNING LAW AND JURISDICTION**
- 15.1** An Agreement shall be governed by English law and the parties agree to submit to the exclusive jurisdiction of the English courts.
- 16. COUNTERPARTS**
- 16.1** An Agreement may be executed in any number of counterparts and by the parties on separate counterparts, but shall not be effective until each of the parties has executed at least one counterpart.
- 16.2** Each counterpart shall constitute an original agreement but all the counterparts together shall constitute one and the same instrument.
- 17. ENTIRE AGREEMENT**
- 17.1** An Agreement and any appendix, schedule or annex to the same constitute the entire agreement and understanding of the parties and supersede any previous agreements between the parties relating to the same subject matter.
- 17.2** Each of the parties acknowledges and agrees that in entering into an Agreement it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether a party to an Agreement or not) other than as expressly set out in an Agreement. Nothing in this clause shall, however, operate to limit or exclude any liability for fraud.
- 18. MISCELLANEOUS**
- 18.1** If the Client or any of its Affiliates:
- (a) at any time during, or within six (6) months following the date of termination or expiry of, an Agreement;
- (b) at any time during, or within six (6) months following the date of termination or expiry of, the employment of any employee of SolutionsPT;
- employs or enters into an agreement to receive consultancy services from any person who was formerly an employee of SolutionsPT that had been within the preceding 12 month period engaged in an Agreement, the Client shall pay to SolutionsPT such amount as is certified by SolutionsPT to equal 150% of the aggregate value of such person's current annual salary, potential annual bonus (if any), and benefits, assessed as at the date that he or she leaves the employment of SolutionsPT. Client shall pay such amount to SolutionsPT within 30 days of receipt of (i) an invoice for the same and (ii) the certificate referred to above.
- 18.2** All amounts to be paid or repaid by one party to the other under the terms of an Agreement shall be exclusive of Value Added Tax (unless otherwise stated), which shall be paid as necessary following receipt by such party of an invoice valid for Value Added Tax purposes.
- 18.3** The Client shall not novate, assign or otherwise transfer an Agreement except with the prior written consent of SolutionsPT.
- 18.4** Except as expressly provided in an Agreement, the rights and remedies provided under an Agreement are in addition to, and not in place of, any rights or remedies provided by law.
- 18.5** Any failure by either party to enforce at any time and for any period any one or more of the terms of, or rights arising pursuant to, an Agreement shall not be a waiver of such terms or rights, or of the right at any time subsequently to enforce all the terms of, and rights arising under, an Agreement.
- 18.6** The invalidity or unenforceability of any term of, or any right arising pursuant to, an Agreement shall not in any way affect the remaining terms or rights.
- 18.7** Nothing in an Agreement (or any of the arrangements contemplated hereby) shall be deemed to create a partnership between the parties.
- 18.8** No variation or amendment to an Agreement, or any Service Document or Service Level Document shall be effective unless made in writing and signed by both of the parties.
- 19. DEFINITIONS**
- 19.1** In these terms and conditions, the following words and expressions shall have the following meanings unless the context otherwise requires:
- "Act of Insolvency"** means in relation to either party: (a) the party passes a resolution for winding up (otherwise that for the purposes of a solvent amalgamation or reconstruction) or a court makes an order to that effect; (b) becomes or declared insolvent or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; (c) the party passes a resolution for winding up (otherwise that for the purposes of a solvent amalgamation or reconstruction) or a court makes an order to that effect; (d) becomes or is declared insolvent or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; (e) (being a partnership or other unincorporated association) is dissolved or (being a natural person) dies; or (f) has a liquidator, receiver, administrator, administrative receiver, manager, trustee or similar officer appointed over any of its assets; (g) ceases or threatens to cease, to carry on business; (h) the appointment of a receiver, administrator, liquidator or trustee or analogous officer of such party over all or any material part of such party's property; (i) the convening of any meeting of its creditors for the purpose of considering a voluntary arrangement as referred to in Section 3 of the Insolvency Act 1986 (or any analogous proceeding); or (j) the levying of distress or execution upon its property;
- "Affiliate"** means in relation to either party, any person or any entity
- at any time:
- (a) that exercises, or is able to exercise, or is entitled to acquire, direct or indirect control over the affairs of that party; or
- (b) whose affairs are or are capable of being controlled directly or indirectly by that party; or
- (c) whose affairs are or are capable of being controlled directly or indirectly by the same person who, or entity which, exercises, or is able to exercise, or is entitled to acquire, direct or indirect control over the affairs of that party;
- "Applicable Law"** means all applicable laws, statutes, statutory instruments and regulations, together with all official guidance and codes of practice issued by governmental authorities or self-regulatory bodies, including without limitation the Data Protection Act 1998;
- "Business Day"** means Monday to Friday each week, excluding designated bank holidays in the applicable Territory;
- "Business Hours"** means a total of 7.5 hours per Business Day;
- "Commencement Date"** means such date as is specified in a Service Document;
- "Confidential Information"** bears the meaning set out in clause 11.5;
- "Client"** means the relevant client of SolutionsPT as identified in a Service Document;
- "Client Architecture"** means the information technology hardware, cabling, communication and software (including operating system) architecture of the Client, save the Hardware and Software;
- "Client Data"** means data (including without limitation Personal Data) concerning the Client's business, systems and process;
- "Client Obligation"** means an activity or undertaking designated to the Client pursuant to an Agreement;
- "Client Representative"** means the individual(s) set out in a Service Document or such other individual(s) representing the Client as is/are notified to SolutionsPT from time to time as having responsibility for delivery of the Services;
- "Client Site"** means premises of the Client within the Territory specified in the Service Document;
- Deliverables** means any deliverables to be provided or developed in the course of the Services, as set out in a Service Document;
- "End User Licence Agreement"** means in respect of an item of Software, the relevant end user software licence agreement for such software;
- "Expenses"** means such reasonable expenses as are incurred by SolutionsPT in accordance with any expenses policy agreed with the Client from time to time.
- "Force Majeure Event"** means any event affecting the performance of any provision of an Agreement arising from or attributable to acts, events, omissions or accidents which are beyond the reasonable control of a party, including, without limitation, abnormally inclement weather, flood, lightning, storm, fire, explosion, earthquake, subsidence, structural damage, epidemic or other natural physical disaster, failure or shortage of power supplies, failure or shortage of communication links, internet or web-server errors or unavailability, war, military operations, riot, crowd disorder, terrorist action, civil commotion and any legislation, regulation, ruling or omissions (including failure to grant any necessary permissions) of any relevant government, court or any competent national authority and similar events (but excluding strikes, lock-outs, and industrial action/disputes) suffered by a party;
- "Hardware"** means the information technology hardware and equipment specified in a Service Document (if any) in respect of which Services are to be performed, and all supporting documents intended for supply to an end user as standard by the relevant manufacturer;
- "Maintenance Services"** means any part of the Services involving the maintenance of Software and/or Hardware;
- "Support Services"** means any part of the Services comprising the provision of support in respect of Software and/or Hardware in response to issues raised by Client, including without limitation, by telephone;
- "Intellectual Property Rights"** means (including, without limitation), any patents, designs, trade marks, service marks, (whether registrable or otherwise), applications for any of the foregoing, trade or business names, copyright, database rights, domain names, moral rights, inventions whether or not capable of protection by patent or registration, rights in commercial information and technical information, including know-

how, research and development data specifications and drawings and other intellectual property rights, whether registrable or not in any country and all rights or forms of protection having equivalent or similar effect anywhere in the world;

"Losses"	means all losses, liabilities, costs, expenses, damages and claims including fines levied by any relevant regulator whether arising in contract, tort (including negligence) or otherwise;
"Minimum Architecture Specification"	means in respect of an item of Software or Hardware, the standard minimum specification of information technology architecture necessary for the same to run and function effectively, as published by the relevant software publisher or manufacturer respectively;
"Moral Rights"	means all rights described in Part 1, Chapter IV of the Copyright Designs and Patents Act 1988 and any similar rights of authors anywhere in the world;
"Service Document"	means a document entitled Quotation/Proposal supplied by SolutionsPT to Client setting out the Services to be supplied by SolutionsPT to Client on these terms and conditions;
"Personal Data"	bears the meaning given in the Data Protection Act 1998;
"Related Agreement"	means any other agreement SolutionsPT has with the Client from time to time;
"Service Document" Level	means in respect of any Service, any document setting out SolutionsPT's standard service levels (together with related terms) for that Service;
"Service Start Date" Level	means the date specified as such in a Service Level Document;
"Services"	means the services set out in a Service Document;
"Software"	means the proprietary software of SolutionsPT, Invensys Systems Inc, and other third party software publishers specified in a Service Document in respect of which SolutionsPT is to perform Services, and all supporting documents intended for supply to an end user as standard by the relevant software publisher;
"Software Media"	means the media on which Software is loaded;
"Term"	means such period of time as is specified in a Service Document;
"Territory"	means either of the United Kingdom or the Republic of Ireland as specified in a Service Document;

19.2 In these terms and conditions, save where the context requires otherwise:

- (a) clause headings are inserted for ease of reference and shall not affect its interpretation;
- (b) any reference to a clause or sub-clause shall mean a clause or sub-clause terms and conditions;
- (c) words suggesting any gender include any other gender;
- (d) words denoting a singular number only shall include the plural and vice versa; references to either party shall be deemed to include its employees, officers, authorised agents, duly appointed sub-contractors, and such successors and assignees as are permitted by the terms of these terms and conditions;
- (e) any reference to "persons" includes natural persons, firms, partnerships, companies, corporations, industrial and provident societies, associations, organisations, governments, states, foundations and trusts (in each case whether or not having separate legal personality);
- (f) references to any statute or statutory instrument or government regulation shall be deemed to include any modification, amendment, extension or re-enactment thereof from time to time; and
- (g) all usage of "include" or "including" or derivations thereof shall not be construed as words of limitation;
- (h) any reference to a party to these terms and conditions, shall include that party's permitted agents, sub-contractors, successors and assignees; and
- (i) in the event of any conflict between (a) a Service Document or Service Level Document and these terms and conditions, the Service Document or Service Level Document shall prevail; (b) any applicable End User Licence Agreement and these terms and conditions, the relevant End User Licence Agreement shall prevail, (c) any Deliverable or other document forming part of an Agreement and these terms and conditions these terms and conditions shall prevail.