

## TERMS AND CONDITIONS – FULL PROJECT

This document sets out the terms and conditions on which SolutionsPT Limited ("SolutionsPT") supplies information technology software, hardware and/or services to Client.

### 1. AGREEMENT

- 1.1 Clause 4.1 shall commence on the Commencement Date and bind the parties in accordance with its terms.
- 1.2 SolutionsPT and Client acknowledge and agree that with effect from the Project Initiation Date, by each of them executing a completed Project Initiation Document (as contemplated by clause 4.1), a contract for SolutionsPT to supply information technology software, hardware, Software Media, the Subscription Services and/or services to the Client is made between them upon (a) these terms and conditions (including Schedule 1 if applicable), (b) any additional terms and conditions set out in such Project Initiation Document and (c) any documents expressly named in such Project Initiation Document and/or these terms and conditions (collectively an "Agreement").
- 1.3 An Agreement shall remain in full force for the Term, unless terminated in accordance with clause 9.

### 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 Project Initiation 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:
  - (a) 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; and
  - (b) where a Currency Fluctuation occurs affecting the Fees of any multi-year Subscription Services provided to the Client, in accordance with the proportion of such Currency Fluctuation and on no less than thirty (30) days' prior written notice to the Client.
- 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-off 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 All amounts in respect of the Fees and Expenses that have been accrued but are not yet due and payable to SolutionsPT under an Agreement, shall become due and payable immediately upon termination of an Agreement.
- 2.8 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) (i) no act or omission of SolutionsPT in accordance with an Agreement, or (ii) 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 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 or clause 6 of these terms and conditions; 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. PROJECT SERVICES

##### **Project Methodology**

- 4.1 Within four (4) weeks of the Commencement Date, SolutionsPT shall draw up a draft Project Initiation Document and provide the same to the Client. SolutionsPT and the Client shall promptly each enter into good faith negotiations and use their reasonable endeavours in each case to agree the Project Initiation Document. Unless the parties agree otherwise in writing, in the event that the Project Initiation Document is not agreed within two (2) weeks of the Commencement Date, (a) such negotiations shall cease and (b) the Client shall pay the reasonable fees and expenses of SolutionsPT (calculated on a time and materials basis) incurred in preparation and negotiation of the Project Initiation Document immediately on receipt of an invoice for the same. Following payment of such fees and expenses by the Client, this clause 4.1 shall cease to bind the parties. The existence and substance of all such negotiations shall be kept confidential by SolutionsPT and the Client.
- 4.2 SolutionsPT shall supply the Client with each:
  - (a) Specification;
  - (b) Minimum Architecture Specification;
  - (c) set of Acceptance Criteria;
  - (d) set of Handover Acceptance Tests and Acceptance Tests;
  - (e) Service Level Document; and
  - (f) any other project document;
 (if any) identified in a Project Initiation Document, in accordance with the Implementation Plan.

- 4.3 In the event that either SolutionsPT or the Client considers that any of the Key Implementation Documents require supplementing, amending and/or replacing, SolutionsPT and the Client shall each use their reasonable endeavours to agree documents setting out such supplementary provisions or amendments, or in replacement of the Key Implementation Documents within two (2) weeks of the Project Initiation Date. In default of such agreement, Solutions PT's original documents shall apply.

#### **Obligations of SolutionsPT and Client**

- 4.4 SolutionsPT shall:

- (a) deliver the Hardware and Software Media to the Client Sites in accordance with the relevant Implementation Plan;
- (b) use reasonable endeavours to provide the Services in accordance with the relevant Implementation Plan and each relevant Specification;
- (c) supply the Client with the Documentation;
- (d) with effect from the Service Level Start Date, use reasonable endeavours to meet or exceed the service levels set out in each Service Level Document;
- (e) where it is to perform Hardware Installation Services, install the relevant Hardware at the relevant Client Site(s);
- (f) where it is to perform Software Installation Services:
  - (i) install the Software on the Client Architecture and/or the Hardware subject to the End User Licence Agreement(s);
  - (ii) use reasonable endeavours to configure the Software in accordance with each relevant Specification; and
  - (iii) enter the applicable End User Licence Agreement(s) in respect of the Software on the Client's behalf in accordance with clause 4.6.

- 4.5 Unless otherwise specified in a Project Initiation Document or Specification, the Client:

- (a) 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 Software and/or the Subscription Services (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, Software and/or the Subscription Services;
  - (iv) the safe custody of the Hardware and Software Media at the Client Sites at all times following delivery of the same by SolutionsPT;

- (v) making all necessary backup and security copies of the Software (to the extent consistent with these terms and conditions and any End User Licence Agreement) and Client Data, and of such other software and data as is comprised in the Client Architecture;
- (b) shall perform the Client Obligations in accordance with the relevant Implementation Plan;
- (c) shall only use the Software at the Client Site(s);
- (d) (save where SolutionsPT is to undertake the same pursuant to a Service) shall 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;
- (e) shall use adequate numbers of individuals who are appropriately experienced, qualified and trained and who have the requisite knowledge and skills to (i) perform its obligations under an Agreement and (ii) operate the Client Architecture, and, following the Acceptance Date, the Hardware and Software;
- (f) shall, where SolutionsPT is to perform Software Installation Services or supply Software Media and/or the Subscription Services to the Client, comply in full, with the terms of the applicable End User Licence Agreement(s); and
- (g) shall, where SolutionsPT is to provide Helpdesk Support Services, Software Maintenance Services and/or Hardware Maintenance Services:
  - (i) fully comply with and implement the instructions and procedures of SolutionsPT for remote diagnostics of which it is notified from time to time; and
  - (ii) 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) where SolutionsPT has also performed Hardware Installation Services, disconnect any individual Hardware device from any other individual Hardware or other device, cabling or communication link, without the prior consent of SolutionsPT.

#### **End User Licence Agreement(s)**

- 4.6 The Client hereby grants SolutionsPT the authority to enter any and all End User Licence Agreements required in respect of the Software and/or the Subscription Services on the Client's behalf. Any such End User Licence Agreement shall be between the Client and the Software publisher and a copy of the End User Licence Agreement will be available to access through the Software Media.
- 4.7 SolutionsPT shall not be under any obligation to negotiate the terms of the End User Licence Agreement(s) entered into in accordance with clause 4.6 on the Client's behalf.
- 4.8 Where any fee is due in respect of any such End User Licence Agreement for the Software and/or provision of the Subscription Services, SolutionsPT shall pay such fee on the Client's

behalf. SolutionsPT shall submit an invoice to the Client in respect of the relevant End User Licence Agreement fee (except where SolutionsPT has agreed to include such fee in the Fees), and the Client shall pay such fee within 30 days of receipt of the relevant invoice.

## **Warranties**

- 4.9 The warranties in clause 4.1 and clause 4.10 are in lieu of all other 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, whether in respect of the Hardware, the Software, the Subscription Services, or the Services.
- 4.10 SolutionsPT warrants that the Hardware shall be free from material defects for a period of twelve (12) months from the Acceptance Date or date of delivery (whichever is the later).
- 4.11 For the avoidance of doubt, SolutionsPT gives no representation or warranty in respect of the Subscription Services, the Software and the Documentation. The Client acknowledges and agrees that any defects or defaults in the provision of the Subscription Services, the SolutionsPT Software and SolutionsPT Documentation, Wonderware Software, Third Party Software or Third party Documentation are in each case a matter for the Client and the relevant software publisher pursuant to the applicable End User Licence Agreement.

## **Delivery, Title and Risk**

- 4.12 The Client shall ensure that each relevant Client Site is ready to receive the Hardware as at the scheduled date of delivery, including ensuring that each such site has adequate electrical and air conditioning resources.
- 4.13 If the Client fails to take delivery of any Hardware, Software Media or Documentation when supplied by SolutionsPT pursuant to clause 4.4 (save due to the same having been materially damaged in transit), SolutionsPT may at its absolute discretion:
- (a) store such Hardware, Software Media and Documentation until actual delivery to the Client, in which case the Client shall be liable for the relevant costs of storage and insurance incurred by SolutionsPT;
  - (b) if the Client fails to take delivery of such Hardware and/or Software Media within 21 days of the original delivery date, and in the interim SolutionsPT has increased its list prices and/or rates for providing the same, increase the related Fees payable by the Client to match such increased prices and/or rates; and/or
  - (c) if the Client fails to take delivery of such Hardware and/or Software Media within one month of the original delivery date, delivery shall be deemed to have occurred for the purposes of any contingent payment due to SolutionsPT.
- 4.14 Until the Client has paid the applicable Fees to SolutionsPT for the Hardware and the licences of the Software:
- (a) title in the Hardware, Software Media and Documentation shall remain with SolutionsPT and (in the case of Hardware only) will not pass to the Client if the same remain identifiable and, where attached to or incorporated in other goods, can be detached or removed from them;

- (b) if the Client sells or purports to sell the Hardware, Software Media or Documentation:
    - (i) the Client shall hold the proceeds of any such sale or purported sale on trust for SolutionsPT in a separate bank account;
    - (ii) SolutionsPT may, by written demand, require the Client to assign to SolutionsPT the Client's rights to recover the price from its purchaser;
    - (iii) SolutionsPT may trace the proceeds of any sale or purported sale that the Client receives into any bank or other account which the Client maintains;
    - (iv) the Client shall not assign to any person other than SolutionsPT any rights arising from a sale of the Hardware, Software Media or Documentation without SolutionsPT's written consent; and
  - (c) SolutionsPT may, where title to the Hardware, Software Media or Documentation remains with SolutionsPT, recover and resell the same, and for such purposes:
    - (i) SolutionsPT may enter the Client Site(s); and
    - (ii) detach or remove the Hardware from any other goods.
- 4.15 The Client shall store the Hardware, Software Media and Documentation separately from any other goods until title in them passes to the Client, or (in the case of Hardware only) they are attached to or incorporated in other goods pursuant to an Agreement.
- 4.16 Risk in the Hardware, Software Media and Documentation shall pass to the Client on delivery to the relevant Client Site(s) or otherwise in accordance with the Client's instructions. From such date, the Client shall insure the Hardware, Software Media and Documentation against all insurable risks with a reputable insurance company for not less than the Fees due to SolutionsPT for the same and use its best endeavours to procure the noting of SolutionsPT's interest on the relevant policy. If the Hardware, Software Media or Documentation is destroyed by an insured risk before the Client has paid for them, the Client shall hold the insurance proceeds on trust for SolutionsPT.

### **Acceptance Testing Procedure**

- 4.17 The following clauses 4.18-4.26 apply where SolutionsPT provide Acceptance Tested Services, unless the parties agree otherwise in writing.
- 4.18 Acceptance of the Tested Deliverable shall be deemed to have occurred on whichever is the earliest of:
- (a) the signing by Client of an acceptance certificate for the Tested Deliverable in accordance with clause 4.22;
  - (b) the expiry of fourteen (14) days after the commencement of all the relevant Acceptance Tests, unless Client has given any written notice under clause 4.23;
  - (c) SolutionsPT giving notice to Client pursuant to clause 4.26(c); and
  - (d) the live use of the Tested Deliverable by the Client in the normal course of its business other than for testing purposes.



- 4.19 SolutionsPT shall carry out the relevant Handover Acceptance Tests for the Tested Deliverable in accordance with the relevant Implementation Plan.
- 4.20 SolutionsPT shall provide the Client with a copy of the results of the relevant Handover Acceptance Tests and shall not handover the Tested Deliverable to the Client for Acceptance Testing unless the relevant Handover Acceptance Tests have been passed.
- 4.21 Unless otherwise agreed in writing by the parties, SolutionsPT shall carry out the relevant Acceptance Tests for the Tested Deliverable in accordance with the relevant Implementation Plan. The Client shall attend and witness such Acceptance Tests and shall provide SolutionsPT with such assistance as SolutionsPT may reasonably require to carry out such Acceptance Tests.
- 4.22 The relevant Acceptance Tests shall have been passed if the relevant Acceptance Criteria have been met. The Client shall execute an acceptance certificate to SolutionsPT in agreed form within 5 Business Days of the date on which such Acceptance Tests have been passed.
- 4.23 If the Tested Deliverable fails to pass the relevant Acceptance Tests, the Client shall within fourteen (14) days from the completion of such Acceptance Tests or any relevant part of these tests provide a written notice to this effect, giving details of such failure(s). Subject to clause 4.24, SolutionsPT shall use its reasonable endeavours to remedy the defects and deficiencies as soon as reasonably practicable and the relevant test(s) shall be repeated within a reasonable time.
- 4.24 If the Tested Deliverable fails to pass any such repeated Acceptance Tests (other than in circumstances contemplated by clauses 4.25 and 4.26) within thirty (30) days then the Client may, by written notice to SolutionsPT, choose at its sole discretion:
  - (a) to fix (without prejudice to the Client's other rights and remedies) a new date for carrying out further tests on the Tested Deliverable on the same terms and conditions. If the Tested Deliverable fails such further tests then the Client shall be entitled to request a repeat test under the provisions of this clause 4.24(a) or to proceed under clause 4.24(b); or
  - (b) to accept the Tested Deliverable subject to such change of relevant Acceptance Criteria, amendment of the Project Initiation Document, the Key Implementation Documents and/or reduction in the Fees as, after taking into account all the relevant circumstances, is reasonable.
- 4.25 Where Client provides notice to SolutionsPT pursuant to clause 4.23, and the failure of the Tested Deliverable to pass the relevant Acceptance Tests is due to Client Failure, Client shall use reasonable endeavours to remedy such failure within fourteen (14) days, and SolutionsPT shall promptly thereafter repeat such Acceptance Tests.
- 4.26 If the Tested Deliverable fails to pass any relevant Acceptance Tests repeated pursuant to clause 4.24 by reason of a Client Failure, SolutionsPT may, by written notice to Client, choose at its sole discretion:
  - (a) to fix (without prejudice to SolutionsPT's other rights and remedies) a new date for carrying out further tests on the Tested Deliverable on the same terms and conditions.



If the Tested Deliverable fails such further tests by virtue of a Client Failure then SolutionsPT shall be entitled to request a repeat test under the provisions of this clause 4.26(a) or to proceed under clause 4.26(b) or clause 4.26(c);

- (b) to use reasonable endeavours to agree with the Client such change of relevant Acceptance Criteria, or amendment of the Project Initiation Document, Key Implementation Documents, Client's obligations under an Agreement, or scope of the Services (including, where the Services are increased, an increase in the Fees) as is required to enable the relevant Client Failure to be rectified; or
- (c) where a Tested Deliverable remains unaccepted due to Client Failure for a period of thirty (30) days as from the first date on which the relevant Acceptance Tests were conducted, SolutionsPT may, by written notice to the Client, deem the Tested Deliverable accepted by the Client notwithstanding such Client Failure.

### **Project Management**

- 4.27 The following clauses 4.28-4.30 apply where SolutionsPT provide Project Management Services, unless the parties agree otherwise in writing.
- 4.28 SolutionsPT shall appoint a project manager (Project Manager), who shall have the responsibility and commensurate authority for the overall progress of the Services and to whom all questions regarding an Agreement can be referred. The name and qualifications of the appointed individual shall be notified in writing to the Client Representative.
- 4.29 The Project Manager shall co-operate with the Client Representative and shall attend meetings (either physically or via teleconference) scheduled by the Client Representative as agreed between the parties from time to time to advise and assist the Client on all matters relating to the Services.
- 4.30 SolutionsPT shall remove any employee or contractor whom the Client can demonstrate has materially failed to comply with the Client's Internal Policies.

### **Support and Maintenance Services**

- 4.31 SolutionsPT shall not be required to provide Helpdesk Support Services, Software Maintenance Services and/or Hardware Maintenance Services (as applicable):
  - (a) with respect to any Tested Deliverable, before the applicable Acceptance Date;
  - (b) with respect to Hardware, before completion of any Hardware Installation Services (where the same does not involve a Tested Deliverable); and
  - (c) with respect to Software, before completion of any Software Installation Services (where the same does not involve a Tested Deliverable).
  - (d) 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 wilful 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 the Documentation or with any supplementary instructions provided by SolutionsPT or (in respect of the Wonderware Software and Third Party Software only) any relevant third party software publisher; 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 in being breach of an Agreement;
- (ix) the Client's negligence; or
- (x) operator error;
- (e) in respect of any data; or
- (f) in respect of Hardware Maintenance Services only, exterior casing or parts, save where the functionality of the Hardware is affected by damage to the same.

## **Change Control**

4.32 SolutionsPT or the Client may request an amendment to an Agreement. In order to do so, the relevant party shall complete a change control document (in such form as SolutionsPT shall reasonably specify from time to time) in reasonable detail, including specifying the nature of the change and any material impact the same would have on other aspects of an Agreement (including without limitation on Fees and Expenses) and provide the same to the other party for review.

4.33 No variation or amendment to an Agreement shall be effective unless made in writing in accordance with clause 4.32 and signed by both of the parties.

## **5. AGENTS & SUB-CONTRACTORS**

5.1 Subject to clause 6 below, SolutionsPT may use third party agents, sub-contractors and Processors 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

### **General**

- 6.1 Each party shall comply with its obligations under Data Protection Laws in respect of all Shared Data. The parties agree to set out the Shared Data, the Shared Data Purpose and their relationship under Data Protection Laws in relation to the Shared Data in the Project Initiation Document.
- 6.2 Without prejudice to any other right or remedy SolutionsPT may have, Client shall indemnify on a continuing basis SolutionsPT and each of its officers, employees and agents in full from and against all claims, liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit and loss of reputation, whether arising in tort (including negligence), in contract or otherwise whether or not such losses were foreseeable or foreseen and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses), suffered or incurred by SolutionsPT arising out of or in connection with any breach of the terms of this clause 6 by Client, its personnel and/or any third party to whom Client has transferred Personal Data.
- 6.3 SolutionsPT shall indemnify Client against all reasonable losses directly incurred by Client arising out of or in connection with any breach by SolutionsPT of the terms of clause 6 including any negligent or reckless act, omission or default.
- 6.4 The parties acknowledge that they have conducted a data protection impact assessment in accordance with Article 35 GDPR in respect of the Shared Data Purpose (irrespective of whether such an assessment is required under that article), and have, based on that impact assessment, agreed that the Processing of the Shared Data for the Shared Data Purpose will comply with Data Protection Legislation provided that it is conducted in accordance with this Agreement.
- 6.5 The parties agree to review and (where necessary) revise the provisions of this clause 6 to reflect any changes in Data Protection Laws, updated guidance, codes of practice or similar issued by the Information Commissioner's Office or any other relevant Supervisory Authority. At the request of either party to revise the provisions of this clause 6 in accordance with this clause 6.5, the parties shall set up a committee (involving appropriately experienced representatives of both parties) to discuss and agree such changes, with both parties acting reasonably and in good faith.
- 6.6 Each party agrees to comply with the obligations set out in this clause 6.6 in respect of the Shared Data:

## **Information and Access to Personal Data**

- (a) The parties shall acting reasonably and in good faith agree, as soon as reasonably practicable, the wording of the Privacy Notice, which will be provided to Data Subjects before their Personal Data (which will constitute Shared Data) is collected. The Privacy Notice shall:
  - (i) be accurate and complete;
  - (ii) be sufficient in order for the Data Subject's Personal Data to be Processed by both parties; and
  - (iii) comply with Data Protection Laws and all guidance issued by the European Data Protection Board and the UK Information Commissioner's Office or other agreed Supervisory Authority.
- (b) The party who initially obtains the Shared Data from a Data Subject shall be responsible for: (a) the provision of the Privacy Notice to the Data Subject; and (b) obtaining any consents that may be required from the Data Subject (in each case to the extent necessary to comply with Data Protection Laws).

## **Processing Shared Data**

- (c) Each party shall only Process the Shared Data for the Shared Data Purpose (or as otherwise agreed between the parties in writing from time to time) and always in accordance with their respective obligations under this clause 6 and in compliance with Data Protection Laws.

## **Record-keeping**

- (d) Each party shall maintain a record of its Processing activities under these terms and conditions, the measures implemented under clause 6 and as required under Article 30 of the GDPR. Each party shall make such record available to the relevant Supervisory Authority and the other party.

## **Retention and Deletion of Shared Data**

- (e) Each party shall only retain the Shared Data provided by the other party in accordance with Data Protection Laws.

## **Shared Data – Data Subject Rights**

- (f) Each party (the "Notifying Party") shall:
  - (i) notify the other party promptly upon receiving any request for information, claim, complaint or query from a Data Subject in respect of Shared Data which is his/her Personal Data (an "**Enquiry**"); and
  - (ii) assist the other party with dealing with and responding to such Enquiryprovided always that the Notifying Party shall not take any other action in relation to any Enquiry without the other party's prior written authorisation, except to the extent of any action reasonably required to ensure compliance with the Notifying Party's obligations under Applicable Laws, including Data Protection Laws and, where practicable, upon giving the other party prior notice of such action.

## **Shared Data – Personal Data Breaches**

- (g) If at any time either party suspects or has reason to suspect that a Personal Data Breach has occurred:
  - (i) that party will notify the other party promptly (and in any event within 24 hours) and inform the other party of the remedial action that it proposes to take in respect of the Personal Data Breach; and
  - (ii) each party will perform its respective obligations in relation to the Personal Data Breach.

## **Processor Obligations**

- 6.7 If SolutionsPT acts as a Processor (as set out in the Project Initiation Document), the parties agree that the following clauses of this Clause 6 apply. The Client agrees to complete Schedule 1 to these terms and conditions before any data Processing activities take place.
- 6.8 The Client shall comply with its obligations under Data Protection Laws in respect of all Personal Data Processed pursuant to an Agreement.
- 6.9 The Client warrants and represents that:
  - (a) all Personal Data which it transmits to SolutionsPT is accurate and up to date and transmitted in accordance with Applicable Law; and
  - (b) it has and shall maintain throughout the term of an Agreement all appropriate, lawful bases to use such Personal Data in accordance with an Agreement, including ensuring the provision of appropriate Privacy Notices to any relevant Data Subjects covering the Processing of such Personal Data by SolutionsPT pursuant to an Agreement.
- 6.10 SolutionsPT shall only Process Personal Data for the purpose of performing the Data Processing Services on reasonable written instructions that the Client may give to SolutionsPT from time to time concerning such Processing. The Client shall ensure that any such instructions comply with all Applicable Law and that the Data Processing Services as set out in Schedule 1 are accurate and up to date. SolutionsPT shall notify the Client if, in SolutionsPT's opinion, any instruction given by or on behalf of the Client breaches Data Protection Laws and may refuse to comply with any such instruction.
- 6.11 Notwithstanding any provision to the contrary within this clause 6, SolutionsPT may take any steps that SolutionsPT (acting reasonably and in good faith) determines are necessary in order for it to comply with Data Protection Laws. This shall include without limitation SolutionsPT having the right to notify any relevant Supervisory Authority of any circumstance that has arisen in relation to the Processing of Personal Data under an Agreement to the extent that SolutionsPT (acting reasonably and in good faith) believes that this is necessary in order to comply with Data Protection Laws.
- 6.12 SolutionsPT shall maintain appropriate technical and organisational security measures in accordance with Article 32 of the General Data Protection Regulation.

- 6.13 Each party shall provide the other with such information as such other party reasonably requests from time to time to enable such other party to satisfy itself that the party providing the information is complying with its obligations under this clause 6.
- 6.14 Each party, at its own expense, may inspect the other party's compliance with this clause 6. SolutionsPT reserves the right to reasonably limit the scope of such audits or inspections, and require that such inspections:
- 6.15 must be preceded by advance written request of no less than 30 Business Days prior to the anticipated start date and may occur no more than once in any twelve (12) month period, barring exceptional circumstances, such as the Client's reasonable concern of an actual incident security, in which case an inspection may be performed in response to such circumstance;
- 6.16 must take place at a time mutually agreed by SolutionsPT and the Client;
- 6.17 if to be conducted by a third party, the third party must be:
- 6.18 approved in writing by SolutionsPT and the Client (such approval not to be unreasonably withheld or delayed);
- 6.19 subject to appropriate confidentiality and non-disclosure provisions; and
- 6.20 must not unreasonably disrupt SolutionsPT's normal business or IT operations.
- 6.21 SolutionsPT may cause or allow Personal Data to be transferred to and/or otherwise Processed in a Non-adequate Country, provided that such transfer or Processing complies with Data Protection Laws.
- 6.22 The Client acknowledges and agrees that SolutionsPT shall be entitled to use sub-processors to Process Personal Data pursuant to the Agreement. Such sub-processors shall be subject to contractual obligations which are substantially similar to the terms of this clause 6 and SolutionsPT shall be liable for all acts and omissions of such sub-processors in relation to the Processing of such Personal Data. If SolutionsPT wishes to appoint additional or replacement sub-processors during the term of an Agreement, it shall inform the Client of such proposed appointment in advance and give the Client the opportunity to object to the appointment. SolutionsPT shall take into account any objections communicated to SolutionsPT by the Client when deciding whether to make the appointment, but SolutionsPT shall not be bound by such objections. Where SolutionsPT are not reasonably able to appoint an alternative sub-processor, SolutionsPT may terminate the Agreement within 30 days of receiving an objection from the Client.
- 6.23 SolutionsPT shall, at the Client's expense, provide reasonable assistance to the Client for the fulfilment of the Client's obligation to respond to requests relating to Data Subjects' rights under Data Protection Laws.
- 6.24 SolutionsPT shall notify the Client without undue delay if SolutionsPT becomes aware of an actual Personal Data Breach involving the Personal Data of the Client.
- 6.25 SolutionsPT shall, at the Client's expense, provide such assistance, as reasonably requested by the Client from time to time, in undertaking any data protection impact assessments and/or

consultation with a Supervisory Authority that the Client may reasonably undertake pursuant to Article 35 and/or 36 (as applicable) of the General Data Protection Regulation.

6.26 SolutionsPT shall ensure that its personnel, to the extent that they are involved in the Processing of Personal Data in connection with an Agreement shall be subject to appropriate binding obligations to protect the confidentiality of such Personal Data.

6.27 SolutionsPT's obligations under this clause 6 exclude any Personal Data relating to its personnel engaged in the performance of SolutionsPT's obligations under an Agreement generated by SolutionsPT solely for the purposes of its internal human resources procedures and records.

## 7. INTELLECTUAL PROPERTY RIGHTS

7.1 Any Intellectual Property Rights in pre-existing materials (other than Software and Hardware and related Documentation) 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 (other than Software, Hardware and Documentation) 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 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, the Subscription Services, Hardware and Documentation are, and shall remain, the property of the relevant software publisher identified in the applicable End User Licence Agreement, or the manufacturer (as applicable).

7.5 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, Aveva Group PLC or any third party software publisher on the Software Media, the Subscription Services or the Documentation, and shall reproduce such notices, labels and marks on any permitted copies of the same that the Client makes.

7.6 The Client shall promptly notify SolutionsPT of any unauthorised use, disclosure, reproduction, or distribution of the Software, the Subscription Services or the Documentation which comes to its attention, or which its reasonably suspects.



7.7 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 Aveva Group PLC or any trade name or logo or trademark associated with any Third Party Software or the Subscription Services, except to the extent expressly permitted by the applicable End User Licence Agreement.

## 8. SUBSCRIPTION SERVICES

8.1 Subject to clause 4.5(f) and payment of the Fees, SolutionsPT hereby grants to the Client a non-exclusive, non-transferable right, without the right to grant sublicenses, to permit the Client (and its authorised users) to use the Subscription Services and the relevant Documentation during the Subscription Term solely for the Client's internal business operations.

8.2 The Client agrees and acknowledges that SolutionsPT and/or the third party software publisher shall have the right to suspend the Subscription Services in accordance with the terms of the relevant End User Licence Agreement or where any of the circumstances set out in clauses 2.5, 9.1 or 9.3 arise.

## 9. TERMINATION

### General rights of termination for cause

9.1 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.

9.2 Each party shall notify the other in writing if any Act of Insolvency occurs in relation to itself.

### Specific rights of termination for cause

9.3 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) Client indicates to SolutionsPT that it does not or shall not agree to the terms of any relevant End User Licence Agreement;

- (c) any End User Licence Agreement is terminated in accordance with its terms by the Client or the relevant software publisher;
- (d) 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 12; or
- (e) SolutionsPT terminates a Related Agreement in accordance with its terms;
- (f) 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 (30) days of receipt of a notice from SolutionsPT specifying the breach or commits a material breach of any provision of a Related Agreement which is not capable of remedy.

#### **Consequences of expiry and/or termination**

- 9.4 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.
- 9.5 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. For the avoidance of doubt, either party is entitled to retain a copy of any Personal Data:
  - 9.5.1 where necessary to comply with any continuing obligation that either party may have following termination or expiry of an Agreement; or
  - 9.5.2 which Data Protection Laws require to be stored.
- 9.6 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.
- 9.7 Without prejudice to clause 9.7, clauses 2.4, 4.12-4.16 inclusive, 6, 7.4-7.9 inclusive, 9.5-9.8 inclusive, 12-16 inclusive, and 18-19 inclusive shall survive termination of an Agreement.
- 9.8 All amounts payable to SolutionsPT shall become immediately due on termination of an Agreement, notwithstanding any other term of that Agreement.
- 10. DELAY & FORCE MAJEURE
  - 10.1 Client acknowledges and agrees that SolutionsPT's ability to meet the relevant Implementation Plan is contingent upon timely completion by Client of each Client Obligation.
  - 10.2 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 such target date.

- 10.3 Client will be responsible for, and assumes the risk of delays resulting from, any issues or problems concerning the Client Data.
- 10.4 The Implementation Plan 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 or Specification that are made after the same has been agreed, or (c) any delay contemplated by clause 10.3. For the avoidance of doubt, no such delay will relieve or suspend Client's obligation to pay SolutionsPT under an Agreement.
- 10.5 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.
- 10.6 For the avoidance of doubt, with respect to the obligations of SolutionsPT under an Agreement, time shall not be of the essence.

## 11. LIABILITY & INDEMNITY

### Scope of liability

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

### General provisions

- 11.2 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 and invoiced accordingly as at the date at which SolutionsPT's liability is calculated, any estimated Fees shall be deemed definitive.
- 11.3 SolutionsPT shall not be liable for any indirect Losses.
- 11.4 SolutionsPT shall not be liable for Losses in respect of:
- (a) loss of or damage to or errors in data (including costs and expenses associated with its recovery and/or reconstruction);
  - (b) loss of profits;
  - (c) loss of contracts;
  - (d) loss of business revenue;

- (e) loss of goodwill;
- (f) loss of anticipated savings;
- (g) delays in the provision of access to the Subscription Services or delivery of the Hardware, Software Media or Documentation;
- (h) loss arising from any claim made against the Client by any third party.

11.5 Client acknowledges and agrees that it is its responsibility:

- (a) to insure itself against indirect Losses and the Losses set out in clause 11.4;
- (b) to ensure that the specification of the System and each of its component elements (as set out in the Documentation and Specification) meets its requirements, and accordingly SolutionsPT shall not be liable for any failure of the System to provide any facility or functionality not described in such documentation.

11.6 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.

#### **Liability for Hardware Warranty**

11.7 Where the Hardware does not comply with the relevant warranty in clause 4.10, SolutionsPT shall, at its sole discretion, repair or replace the same or return the Hardware to the relevant manufacturer for repair or replacement in each case in accordance with, and subject to, the following clauses 11.8-11.12.

11.8 Save where the parties agree otherwise from time to time, in order for the Client to benefit from a remedy pursuant to clause the immediately preceding clause:

- (a) the Client shall promptly report the relevant defect giving rise to non-compliance to SolutionsPT by telephone within Business Hours (and promptly confirm the same in writing);
- (b) the Client shall, within 5 Business Days of such date of notification, provide SolutionsPT with a documented example of the defect in question; and
- (c) thereafter:
  - (i) the Client shall promptly undertake such tests as SolutionsPT directs to assist in establishing the nature of such defect;
  - (ii) SolutionsPT shall, in consultation with the Client, use reasonable endeavours to determine the nature of such defect and the urgency with which a remedy is needed, and proceed to implement such remedy in accordance with any relevant agreed timescale, including without limitation by:
    - a) arranging for a permitted agent of SolutionsPT to attend the relevant Client Site during Business Hours as soon as reasonably practicable; or
    - b) requiring the Client to disconnect and return the affected Hardware, at its own cost and correctly packaged, to SolutionsPT, in which case the

Client must include (1) a valid Returns (RMA) number obtained from SolutionsPT, (2) the invoice number associated with the Hardware, and (3) a description of the fault, in the relevant package.

- 11.9 Where the relevant Hardware or any component thereof is found to be faulty and determined by SolutionsPT to require replacement, it shall be exchanged with new parts or their equivalent in performance. All replacement parts shall become part of the Hardware, and any components removed shall become the property of SolutionsPT.
- 11.10 The applicable warranty period (if any) under clause 4.10 is unaffected by any remedy implemented by SolutionsPT pursuant to clauses 11.7-11.9.
- 11.11 The warranties in clause 4.10 shall not apply in the circumstances set out in clause 4.28(d) or in respect of exterior casing or parts save where the functionality of the Hardware is affected by damage to the same.
- 11.12 Client acknowledges and agrees that SolutionsPT's sole liability in respect of any breach of the warranties set out in clause 4.7, shall be to undertake the applicable remedies set out in clause 11.8.

**Fees & expenses: additional payments and termination**

- 11.13 To the extent that SolutionsPT provides Services:
- (a) In circumstances where:
    - (i) It is not required to do so under an Agreement;
    - (ii) a delay contemplated by clause 10 has occurred;
    - (iii) a delay has occurred as a result of repeating Acceptance Tests pursuant to clauses 4.22 and 4.23; or
  - (b) 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.

- 11.14 Where an Agreement is terminated by either party pursuant to clause 9.1(b) or by SolutionsPT pursuant to clause 9.3(b):
- (a) 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
  - (b) the Client shall pay to SolutionsPT within 10 Business Days of receipt of an invoice for the same valid for Value Added Tax purposes, the balance of:
    - (i) all Fees (if any) accrued in respect of the licensing of SolutionsPT Software to the relevant date of termination; and
    - (ii) 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 SolutionsPT's performance of the Services to the relevant date of termination.

## Indemnity

- 11.15 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:
- (a) any Claim or any threatened claim, action, proceeding, demand or allegation that the use by SolutionsPT of the Client Data in accordance with an Agreement infringes a third party's Intellectual Property Rights or rights in respect of confidential information;
  - (b) any breach by Client of clause 6;
  - (c) any breach by the Client of an End User Licence Agreement; and
  - (d) in the event of the termination of this Agreement in accordance with its terms (other than by the Client pursuant to clause 9.3(a)), any item of Wonderware Software, Third Party Software or Hardware.

## Handling of claims

- 11.16 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 11.15.
- 11.17 If SolutionsPT wishes to claim under the indemnity in respect of such a claim or action it shall, subject to clauses 11.18-11.20(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.
- 11.18 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.
- 11.19 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.
- 11.20 Where the Client has care and conduct of a matter pursuant to this clause 11 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).

## 12. CONFIDENTIALITY

- 12.1 This clause 12, 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.
- 12.2 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.

- 12.3 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.
- 12.4 Each party's obligations under clause 12 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.
- 12.5 "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, and (in respect of SolutionsPT only) the SolutionsPT Software and SolutionsPT Documentation, 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.

### 13. NOTICES & POINTS OF CONTACT

- 13.1 All notices in respect of an Agreement shall:
  - (a) be communicated to the other party by fax (save in respect of a notice pursuant to clause 9 or concerning a Force Majeure Event), post or by hand; and
  - (b) be valid if (i) marked for the attention of the persons, and (ii) delivered to the address(es) or number(s) set out in a Project Initiation Document or otherwise in



accordance with such other directions as may be prescribed in writing by the receiving party from time to time; and

(c) be deemed to be served:

- (i) 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
- (ii) 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.

#### 14. THIRD PARTY RIGHTS

14.1 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.

#### 15. DISPUTE RESOLUTION PROCEDURES

15.1 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 10 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.

15.2 A party shall be entitled (by giving the other party notice in writing) to withdraw from the dispute resolution process set out in clause 15.1 above and commence court proceedings relating to any dispute arising from an Agreement.

15.3 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.

#### 16. GOVERNING LAW AND JURISDICTION

16.1 Each Agreement shall be governed by English law and the parties agree to submit to the exclusive jurisdiction of the English courts.

#### 17. COUNTERPARTS

17.1 Each 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.

17.2 Each counterpart shall constitute an original agreement but all the counterparts together shall constitute one and the same instrument.

#### 18. ENTIRE AGREEMENT

18.1 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.

18.2 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.

## 19. MISCELLANEOUS

19.1 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) 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.

19.2 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.

19.3 The Client shall not novate, assign or otherwise transfer an Agreement except with the prior written consent of SolutionsPT.

19.4 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.

19.5 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.

19.6 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.

19.7 Nothing in an Agreement (or any of the arrangements contemplated hereby) shall be deemed to create a partnership between the parties.

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## 20. DEFINITIONS

20.1 In these terms and conditions, the following words and expressions shall have the following meanings unless the context otherwise requires:

**"Acceptance Criteria"** means in respect of any Deliverable, SolutionsPT's criteria for acceptance of such Deliverable, as amended, supplemented or replaced pursuant to clause 4.3;

**"Acceptance Date"** means, in respect of any Tested Deliverable, the date of acceptance of that Deliverable pursuant to clause 5.14;

**"Acceptance-Tested Services"** means Services involving a Tested Deliverable;

**"Acceptance-Tests"** means in respect of any Tested Deliverable, SolutionsPT's Client-witnessed and/or Client-performed tests to ascertain whether the relevant Acceptance Criteria have been met for such Tested Deliverable (and **"Acceptance Testing"** shall be construed accordingly);

**"Act of Insolvency"** means in relation to either party:

- 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; or
- d) becomes or is declared insolvent or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or
- 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; or
- g) ceases or threatens to cease, to carry on business; or
- 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; or
- 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;

**"Adequacy Decision"** a finding under Article 25(2) of the Data Protection Directive that a country or territory ensures an adequate level of protection within the meaning of Article 25 of the Data Protection Directive or (as applicable) a finding under Article 45(1) of the General Data Protection Regulation that a country, a territory or one or more specified sectors within that country, or the international organisation in question ensures an adequate level of protection within the meaning of Article 45 of the GDPR.

<b>"Affiliate"</b>	<p>means in relation to either party, any person or any entity at any time:</p> <ul style="list-style-type: none"> <li>a) that exercises, or is able to exercise, or is entitled to acquire, direct or indirect control over the affairs of that party; or</li> <li>b) whose affairs are or are capable of being controlled directly or indirectly by that party; or</li> </ul> <p>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;</p>
<b>"Applicable Law"</b>	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 Laws;
<b>"Business Day"</b>	means Monday to Friday each week, excluding designated bank holidays in the applicable Territory;
<b>"Business Hours"</b>	means a total of 7.5 hours per Business Day;
<b>"Commencement Date"</b>	means the date of signature of this Agreement;
<b>"Confidential Information"</b>	bears the meaning set out in clause 12.5;
<b>"Controller"</b>	has the meaning given in the GDPR;
<b>"Client"</b>	means the relevant client of SolutionsPT;
<b>"Client Architecture"</b>	means the information technology hardware, cabling, communication and software (including operating system) architecture of the Client, save the Hardware and Software;
<b>"Client Currency"</b>	means the currency used for the Fees as specified in a Project Initiation Document;
<b>"Client Data"</b>	means data (including without limitation Personal Data) concerning the Client's business, systems and process;
<b>"Client Failure"</b>	means in respect of any set of circumstances, reasonably demonstrated by SolutionsPT to be in whole or in part due to any act or omission of the Client;
<b>"Client Obligation"</b>	means an activity or undertaking designated to the Client pursuant to an Agreement;
<b>"Client Representative"</b>	means the individual(s) set out in a Project Initiation Document or such other individual(s) representing the Client Document as is/are notified to SolutionsPT from time to time as having overall responsibility for delivery of the Services;
<b>"Client Site"</b>	means the premises of the Client within the Territory specified in a Project Initiation Document;

<b>"Currency Fluctuation"</b>	if the value of the Client Currency against the United States Dollar varies by 5% or more when compared to the value of the Client Currency against the United States Dollar on the date stated on a Project Initiation Document. The rate of exchange for these purposes shall be the daily spot exchange rate published by the Bank of England;
<b>"Data Processing Services"</b>	means the services set out at Schedule 1 and completed by the Client.
<b>"Data Protection Laws"</b>	the GDPR together with the UK Privacy and Electronic Communications Regulations 2003 and the UK Data Protection Act 2018m and any applicable guidance or codes of practice issued by Working Party 29, the European Data Protection Board or a Supervisory Authority;
<b>"Data Protection Officer"</b>	has the meaning given in the Data Protection Act 2018 or (as applicable) the GDPR;
<b>"Data Services"</b>	means any part of the Services involving the collection, configuration, or conversion of Client Data;
<b>"Data Subject"</b>	has the meaning given in the Data Protection Act 2018 or (as applicable) the GDPR;
<b>"Deliverable"</b>	means a deliverable to be delivered by SolutionsPT pursuant to an Agreement;
<b>"Documentation"</b>	means (as applicable) the Third Party Documentation and the SolutionsPT Documentation;
<b>"End User Licence Agreement"</b>	means in respect of any Software the relevant end user software licence agreement for such software;
<b>"Expenses"</b>	means such reasonable expenses as are incurred by SolutionsPT in accordance with any expenses policy agreed with the Client from time to time;
<b>"Fees"</b>	means the fees set out in a Project Initiation Document;
<b>"Force Majeure Event"</b>	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;
<b>"GDPR"</b>	Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data;
<b>"Handover Acceptance Tests"</b>	means in respect of any Tested Deliverable, SolutionsPT's non-Client witnessed, laboratory and Client Site-based tests to ascertain whether a such Tested Deliverable should proceed to Acceptance Testing;
<b>"Hardware"</b>	means the information technology hardware and equipment specified in a Project Initiation Document (if any);
<b>"Hardware Installation Services"</b>	means any part of the Services involving the installation of Hardware;
<b>"Hardware Maintenance Services"</b>	means any part of the Services involving the maintenance of Hardware;
<b>"Helpdesk Support Services"</b>	means any part of the Services comprising the provision of advice by SolutionsPT in response to issues raised by Client in respect of Hardware or Software, in each case by telephone;
<b>"Implementation Plan"</b>	means in respect of any Service, SolutionsPT's timetable for implementation of that Service;
<b>"Intellectual Property Rights"</b>	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;
<b>"Internal Policies"</b>	means in respect of a party, the policies more particularly detailed in, or appended to, a Project Initiation Document (if any);
<b>"Key Implementation Documents"</b>	means the documents listed in clause 4.2, as supplemented, amended or replaced pursuant to clause 4.3;
<b>"Losses"</b>	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;

<b>"Minimum Architecture Specification"</b>	means the standard minimum specification of the Client Architecture (a) in respect of an item of Software to be installed on the Client Architecture, necessary for such Software to run effectively and (b) in respect of an item of Hardware to be attached to the Client Architecture, necessary for such Hardware to function effectively;
<b>"Non-adequate Country"</b>	means a country or territory which is outside the European Economic Area and in respect of which there has not been an Adequacy Decision. For the purposes of this Agreement, "Non-adequate Country" includes the United States of America;
<b>"Personal Data"</b>	has the meaning given in the Data Protection Act 2018 or (as applicable) the GDPR;
<b>"Personal Data Breach"</b>	an actual or suspected breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Shared Data;
<b>"Privacy Notice"</b>	the information notice required to be supplied to Data Subjects under Data Protection Laws detailing the relevant Processing and provided at a time, in a form and at all times containing content, which is compliant with the requirements of Data Protection Laws and relevant guidance issued by the Article 29 Working Party/European Data Protection Board and/or the Information Commissioner's Office;
<b>"Processing"</b>	has the meaning given in the Data Protection Act 2018 or (as applicable) the GDPR and <b>"Process"</b> and <b>"Processed"</b> have corresponding meanings;
<b>"Processor"</b>	any natural or legal person, public authority, agency or other body which Processes Shared Data on behalf of either party pursuant to these terms and conditions;
<b>"Project Initiation Date"</b>	means the date set out on the Project Initiation Document for the commencement of the Services;
<b>"Project Initiation Document"</b>	<p>means a project initiation document setting out in reasonable detail such information as is required for such project to be undertaken by SolutionsPT, including without limitation:</p> <ul style="list-style-type: none"> <li>a) the relevant objectives, method of approach and scope (including exclusions, constraints, interfaces and assumptions);</li> <li>b) the relevant hardware, software services and deliverables;</li> <li>c) an Implementation Plan;</li> <li>d) the fees;</li> <li>e) what further Key Implementation Documents are to be provided (if any); and</li> <li>f) each parties' key personnel;</li> <li>g) any relevant internal policies of the Client with which SolutionsPT is to comply;</li> <li>h) any Shared Data, the Shared Data Purpose and the parties relationship under Data Protection Laws in relation to the Shared Data.</li> </ul>



<b>"Project Management Services"</b>	means any part of the Services specifically described as constituting project management services;
<b>"Related Agreement"</b>	means any other agreement the Client has with SolutionsPT from time to time;
<b>"Service Level Document"</b>	means in respect of any Service, SolutionsPT's standard service levels (together with related terms) for that Service;
<b>"Service Level Start Date"</b>	means the date specified as such in a Service Level Document;
<b>"Services"</b>	means the services set out in a Project Initiation Document;
<b>"Shared Data"</b>	Personal Data which a party to these terms and conditions has obtained from a Data Subject and wishes to share with the other party for the Shared Data Purpose;
<b>"Shared Data Purpose"</b>	the purpose for which the Shared Data will be Processed as more particularly described in the Project Initiation Document;
<b>"Software"</b>	means collectively, the Wonderware Software, the Third Party Software and SolutionsPT Software;
<b>"Software Customisation Services"</b>	means any part of the Services involving the provision or development of SolutionsPT Software;
<b>"Software Installation Services"</b>	means any part of the Services involving the installation of Software on the Client Architecture and/or the Hardware;
<b>"Software Maintenance Services"</b>	means any part of the Services involving the maintenance of Software;
<b>"Software Media"</b>	means the media (together with associated packaging) on which Software is loaded;
<b>"SolutionsPT Documentation"</b>	means in respect of the System or any of its component elements, such user guides, operating manuals and other supporting documents available for distribution to SolutionsPT's clients from time to time, of which SolutionsPT is the author;
<b>"SolutionsPT Software"</b>	means all proprietary software of SolutionsPT specified in a Project Initiation Document, including proprietary software comprised within any Subscription Services, whether pre-existing or developed in the course of the Services;
<b>"Specification"</b>	means in respect of any item of Hardware or Software or any Service, the standard specification of that Hardware or Software or Service;
<b>"Subscription Services"</b>	means the provision of services by SolutionsPT, Aveva Group PLC and other third party software publishers, including access to online software applications;

<b>"Subscription Term"</b>	means the duration of the Subscription Services (subject to earlier termination in accordance with the End User Licence Agreement and/or these clauses), as set out in the Project Initiation Document;
<b>"Supervisory Authority"</b>	an independent public authority which is established by a member state of the European Union, including without limitation the United Kingdom's Information Commissioner's Office (or any equivalent successor body that may be appointed from time to time);
<b>"System"</b>	means an information technology system comprised of two or more of the following: <ul style="list-style-type: none"> <li>a) the Client Architecture;</li> <li>b) where SolutionsPT is to perform Software Installation Services, the Wonderware Software and Third Party Software;</li> <li>c) where SolutionsPT is to perform Hardware Installation Services, the Hardware;</li> <li>d) where Solutions PT is to perform Data Services or is otherwise provided with Client Data, the Client Data; and</li> <li>e) where Solutions PT is to perform Software Customisation Services, the SolutionsPT Software;</li> </ul>
<b>"Term"</b>	means the aggregate period of time allocated for performances of the Services as specified in a Project Initiation Document;
<b>"Territory"</b>	means either of the United Kingdom or the Republic of Ireland;
<b>"Tested Deliverable"</b>	means a Deliverable that is to be subject to Acceptance Tests;
<b>"Third Party Documentation"</b>	means such user guides, operating manuals and other supporting documents as are made available to SolutionsPT in respect of the Subscription Services, Wonderware Software, Third Party Software, and (where applicable) Hardware, by the relevant software publishers and Hardware manufacturers for distribution to SolutionsPT's clients;
<b>"Third Party Software"</b>	Means the third party proprietary software specified in an Project Initiation Document, save the Wonderware Software, including proprietary software comprised within any Subscription Services;
<b>"Use"</b>	means, (a) in respect of Software, to load, execute, access, employ, utilize, store and/or display, configure, maintain (which includes the application of new versions, releases, upgrades, updates, fixes, and patches), (where applicable) to input and display data and run reports using the same, to make one copy for each of back-up, training and testing purposes, and to operate and to otherwise use the same for the internal business purposes and benefit of the Client, and (b) in respect of Documentation, to copy and create derivative works from, same, and otherwise use the same, in each case as is reasonably necessary for the internal business purposes and benefit of the Client;

<b>"Virus"</b>	means any computer code constituting a virus or other contaminant including but not limited to any computer codes or instructions that may or will be used without the Client's approval to access, modify, delete or damage any data files or other computer programs used by the Client; and
<b>"Wonderware Software"</b>	means the proprietary software of Aveva Group PLC specified in a Project Initiation Document, including proprietary software comprised within any Subscription Services.

20.2 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) the Project Initiation Documents and these terms and conditions, the Project Initiation 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 Key Implementation Document, Deliverable or other document forming part of an Agreement and these terms and conditions, these terms and conditions shall prevail.

## APPENDIX 1

### TERMS & CONDITIONS

### SIGNATURE PAGE

We hereby agree to the terms and conditions set out in this document:

Signature		Signature	
Authorised Officer for and on behalf of:		Authorised Officer for and on behalf of:	
SolutionsPT Limited		Client Name	
Print Name		Print Name	
Position		Position	
Date		Date	

## Schedule 1

### The Data Processing Services

1. The subject-matter and duration of the processing

[insert details]

2. The nature and purpose of the processing

[insert details]

3. The type of personal data

[insert details]

4. The categories of data subjects

[insert details]