



## PSE Standard Terms – Services

### 1. DEFINITIONS

1.1 The following definitions shall apply in this Agreement:

- (i) **“Affiliates”** means any entity which controls or is controlled by, or is under common control with a party to this Agreement. In this context control means directly or indirectly owning over fifty percent of the voting stock of an entity or in the case of a non-corporate entity, the ability to direct the management and policies of an entity.
- (ii) **“Agreement”** means this agreement together with all Schedules and addenda executed by the Parties which reference and are attached to this Agreement from time to time, and any mutually agreed written amendments and modifications.
- (iii) **“Background IP”** means any Intellectual Property owned or controlled by a party prior to this Agreement or generated by a party other than in the course of this Agreement excluding any Intellectual Property in PSE Software.
- (iv) **“Confidential Information”** means all information of a technical or business nature provided or disclosed by either Party (the **“Disclosing Party”**) to the other (the **“Receiving Party”**), in anticipation of, under or in relation to this Agreement. Confidential Information shall include, but not be limited to, any trade secrets, knowledge and data that relates to the Disclosing Party or any products, services, software, research, development, processes, inventions, works, marks, designs, models, formulas, rights, know-how, ideas, concepts, test data, purchasing, accounting, customer and prospect lists, business plans, marketing and sales plans and activities, pricing or any other strategies or other subject matters pertaining to any sphere of activities of the Disclosing Party.
- (v) **“Deliverables”** means the deliverables (including but not limited to records, reports, documents, designs, ideas, inventions, and all materials embodying them) prepared by PSE and provided to the Customer in the performance of the Services.
- (vi) **“Foreground IP”** means Intellectual Property arising out of the performance of the Services under this Agreement.
- (vii) **“Intellectual Property”** means all copyrights, patents, registered and unregistered design rights, trademarks and service marks and applications for any of the foregoing, together with all know-how, computer software (whether in object code or source code form), trade secrets, rights to confidence and other intellectual and industrial property rights in all parts of the world.
- (viii) **“Product Schedule”** or **“Schedule”** means a schedule setting out Services to be purchased under this Agreement. Where PSE’s standard Product Schedule is not used, the Schedule will be deemed to be those associated documents that detail the PSE Services to be purchased under this Agreement and any associated payment schedule.
- (ix) **“PSE Software”** means any computer software product, whether in object code or source code form, which is owned, marketed or licensed by PSE and which is offered by PSE on a commercial basis.

- (x) **“Services”** means the consulting or other services to be provided by PSE under any Schedule.

### 2. SCOPE

- 2.1 The Customer confirms that PSE is appointed to deliver the Services to the Customer and PSE hereby accepts such appointment.
- 2.2 PSE will provide the Services as an independent contractor and it is understood by the Parties that this Agreement shall not create any relationship of employer / employee between one Party and the employees of the other Party.
- 2.3 While the parties may collaborate on decisions regarding the execution of the Services it is agreed that PSE shall have the ultimate discretion right to determine the details of the Services and the manner in which they are to be provided.
- 2.4 PSE may at its sole discretion engage the services of sub-contractors as PSE deems necessary to assist in the performance of the Services. PSE may invite the Customer’s proposals as to sub-contractors but shall not be required to engage any such sub-contractor.

### 3. NON-SOLICITATION

- 3.1 During the term of this Agreement, and for six (6) months after the termination hereof, neither Party will solicit for employment any employee of the other Party with whom the hiring Party has had contact during performance of the Services unless agreed in writing by both Parties.

### 4. PROVISION OF SERVICES

- 4.1 PSE shall provide suitably trained and skilled PSE employees, consultants or sub-contractors to perform the Services.
- 4.2 PSE will nominate a primary contact (the **“Lead Consultant”**), who will be responsible for delivery of the Services and for liaison with the Customer on all technical matters. The Customer shall nominate a primary technical contact (the **“Primary Technical Contact”**) who will be responsible for liaising on all technical matters, including provision of data, resolution of queries and receipt and acceptance of Deliverables. Both Parties will endeavour to ensure continuity where reasonably practicable but are entitled to change their nominations on reasonable notice.
- 4.3 Unless otherwise agreed, PSE shall deliver the Services from its office locations with travel to a Customer’s site as and when requested specifically by the Customer. The Customer will provide a desk and work environment to PSE’s consultants free of charge for the duration of any visit to the Customer’s site and will inform PSE of all health and safety rules and security requirements that apply at the Customer’s premises.
- 4.4 The Customer will reimburse PSE for reasonable travel expenses incurred by PSE consultants. PSE reserves the right to charge for travelling time at the equivalent of fifty per cent (50%) of the applicable daily or hourly fee rate for the Services.
- 4.5 Should it be necessary for the delivery of the Services for the Customer to visit a PSE office, PSE may, subject to prior agreement, provide a desk and work environment to the Customer’s employee(s) free of charge for the duration of the visit.
- 4.6 Communications between PSE and the Customer will be by telephone, email, post, facsimile or WebEx (or equivalent)



- between 09:00 to 17:30 (GMT or BST as applicable), Monday to Friday, excluding British public holidays. All communications shall be in English.
- 4.7 The Customer shall co-operate with PSE in all matters relating to the Services and shall provide PSE, in a timely manner, with all such information and materials that PSE may reasonably require, and ensure that it is accurate in all material respects.
- 4.8 If PSE's performance of any of its obligations under this Agreement is prevented or delayed by any act or omission of the Customer or the Customer's agents, employees, consultants or subcontractors, PSE shall not be liable for such non-performance or delay.
- 5. SPECIFICATION AND PLAN**
- 5.1 Time requirements provided by PSE are estimates, made with the best judgement based on information available at the time of specification. The Services deal with complex applications. Due to factors which may not be foreseen in the implementation of models or other aspects of delivery, PSE can give no undertaking to complete the work in the estimated time and time shall not be of the essence for performance of the Services. It may be necessary to adjust estimates during the course of the Services to provide realistic delivery dates. PSE will keep the Customer informed of any event or development that may require adjustment of the time estimate, and will use all reasonable endeavours to adhere to such revised time estimates.
- 5.2 If it is not possible to complete the Services within the duration specified, PSE and the Customer will agree a revised programme for completion, incorporating any agreed increases in the price, or agree to terminate the Services at an appropriate stage before completion. Any such agreed revisions will be agreed in writing.
- 5.3 PSE will use all reasonable endeavours to supply reports and Deliverables to the Customer as specified in the applicable Schedule or otherwise in proposals.
- 6. CHANGE ORDERS**
- 6.1 Any request for addition, modification or change to the scope or specification of the Services shall be submitted in writing to the appropriate Party. If approved, the change request will be formalised in a change order ("Change Order") signed by both Parties. PSE shall have the right to adjust milestones, schedules, projected numbers of hours, and costs in order to take into account the effect of the Change Order.
- 6.2 The initiation of work by PSE on a change requested by the Customer without execution of an accepted Change Order shall not affect PSE's right to claim additional costs and reasonable fees or its right to adjust milestones or project schedules. The Parties shall work in good faith to adjust payments, milestones and schedules as reasonably necessary to account for any requested change.
- 6.3 PSE has the right to refuse requested changes until a Change Order has been executed by both Parties, or stop work on a requested change until such a Change Order is executed by both Parties.
- 7. OWNERSHIP**
- 7.1 Nothing in this Agreement shall affect the ownership of the Parties' respective Background IP, nor grant any rights therein other than as expressly set out in this Agreement.
- 7.2 Subject to any pre-existing rights of PSE, the Customer or any third party:
- (i) Customer shall own all right, title, and interest in and to all Foreground IP which is derived solely from the Customer's Background IP;
  - (ii) PSE shall own all right, title, and interest in and to all Foreground IP which is derived solely from PSE's Background IP or Intellectual Property contained within PSE Software, and
  - (iii) all other Foreground IP shall be owned by PSE.
- 7.3 PSE hereby grants to the Customer a royalty-free, non-exclusive, non-transferable, non-sublicensable perpetual licence to use PSE's Background IP (excluding Background IP available in PSE Software) and the Foreground IP owned by PSE, to the extent necessary for the Customer to make internal business use of the Deliverables.
- 7.4 Affiliates of the Customer are also granted a licence to use PSE's Background IP and the Foreground IP owned by PSE on the same terms as set out in this Agreement and during the period that such entities remain Affiliates of the Customer. The Customer takes responsibility for compliance by the Affiliate with the terms of this Agreement and shall procure compliance by the Affiliate with the terms of this Agreement.
- 7.5 The Customer and/ or its Affiliates may license PSE Software subject to terms to be agreed separately and negotiated between the Parties in good faith.
- 7.6 The Customer hereby grants to PSE a royalty-free, non-exclusive licence to use the Customer's Background IP and the Foreground IP owned by the Customer for the purposes of providing the Services.
- 7.7 Nothing in this Agreement shall prevent PSE from using general skills, modelling techniques, knowledge or expertise acquired during performance of this Agreement provided that such use will not disclose any of the Customer's Confidential Information.
- 7.8 Except as set forth herein, PSE shall not provide continued maintenance and support services for any Foreground IP or Deliverables delivered hereunder unless agreed under separate written agreement with the Customer.
- 8. CHARGES AND PAYMENT TERMS**
- 8.1 PSE shall invoice the Customer for Services in accordance with the payment schedule specified in the associated Schedule and the Customer shall pay to PSE the sums invoiced in accordance with the payment schedule specified in the associated Schedule.
- 8.2 PSE will invoice the Customer at cost for all reasonable travel, accommodation and subsistence expenses incurred by PSE in delivering the Services.
- 8.3 Any amounts payable under this Agreement are exclusive of all tax or duties of any kind. If taxes or duties of any kind (other than taxes on or measured by PSE's income) are imposed by any taxing authority, the taxes shall be paid by the Customer in addition to all amounts specified in this Agreement. If the Customer is required to pay withholding taxes, import duties, customs levies or other similar deductions ("Tax") on any payments due to PSE hereunder, the Customer shall gross-up such payment to provide PSE the same amount after such Tax as it would have received without the imposition of such Tax, and



maintain complete records of all amounts withheld and paid along with receipts received from government authorities and shall promptly furnish such materials to PSE upon request.

- 8.4 All payments shall be due within thirty (30) days of invoice in the currency of invoice by bank transfer nett of all transfer charges. Late payment will be charged interest at an annual rate of 8% above the base rate of PSE's bank.
- 8.5 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay PSE any sums due on the due date, PSE may suspend all Services until payment is made in full.

## **9. CONFIDENTIALITY AND DISCLOSURE**

- 9.1 The Receiving Party shall keep the Confidential Information confidential and not use it for any purpose other than the performance of this Agreement. The Receiving Party shall not divulge any Confidential Information to any third party whatsoever other than to its employees, agents and advisors as is necessary for the performance of this Agreement, and only provided that the Receiving Party shall procure that the persons to whom such information is divulged shall themselves observe the requirements of this Clause.
- 9.2 The obligations of confidentiality contained in Clause 9.1 shall not apply to information:
- (i) which is in or comes into the public domain otherwise than as the result of breach of this Agreement;
  - (ii) which is obtained from a third party who is free to divulge the same; or
  - (iii) which was known to the Receiving Party prior to receipt from the Disclosing Party.
- 9.3 Confidentiality obligations expressed in this Clause 9 shall continue for an additional five (5) year period following the completion of the last service engagement, whichever is the later, and thereafter the confidentiality obligation shall expire entirely.
- 9.4 The Customer acknowledges that the restrictions pertaining to the Confidential Information contained in this Agreement are reasonable and necessary protection of the legitimate interests of PSE and that any violation of them could cause substantial injury. The Customer further acknowledges that an action for damages would not be expected to provide full and adequate compensation in the event of a violation of such restrictions by the Customer. Therefore, in the event of a violation of such restrictions, PSE shall be entitled, in addition to any other remedy available under law, to seek immediate preliminary injunctive relief against disclosure.

## **10. WARRANTIES**

- 10.1 PSE warrants that the Services shall be performed with standards of care and skill ordinarily used by other members of the chemical engineering profession when undertaking similar services. If, however, in the Customer's reasonable opinion any of PSE's personnel fail to carry out consulting services with efficient competency, the Customer should notify PSE and PSE shall promptly correct or re-perform any Services which PSE agrees have not been performed in accordance with this warranty. The warranty under this Clause 10.1 shall be valid for a period of three (3) months from the completion or termination of Services.

- 10.2 The Customer is solely responsible for the results of any actions or decisions based on, or any use made of, the Deliverables or output from Services and no warranty is given by PSE in relation to such results.

- 10.3 All warranties whether express or implied other than those set out expressly herein are excluded to the fullest extent permitted by law.

## **11. LIABILITIES AND INDEMNITIES**

- 11.1 Notwithstanding any other provision in this Agreement, in no event shall either the Customer or PSE be liable to the other for any indirect or consequential loss, damage, cost or expense of any kind whatsoever and howsoever arising, or for any direct, indirect or consequential loss in the categories of: loss of profits or of contracts; business interruption; loss of or corruption to data; loss of operation time; loss of goodwill; and anticipated savings, even if the other Party has been advised of the possibility of such loss.
- 11.2 PSE shall not be liable for any services or products supplied by the Customer or provided by any third parties even if such third party was identified or referred to the Customer by PSE.
- 11.3 PSE shall not be liable for any losses or damages which the Customer suffers as a direct or indirect consequence of the Customer's failure to comply with its obligations under this Agreement.
- 11.4 The Customer shall defend, indemnify and hold harmless PSE, its employees, agents and sub-contractors from and against any and all losses, expenses and claims (including those of third parties) for death, personal injury, or property damage caused by the negligence or wilful misconduct of the Customer, its employees, agents or subcontractors.
- 11.5 PSE shall indemnify and hold the Customer, its employees, agents, and contractors harmless from and against any and all losses, expenses and claims (including those of third parties) for death, personal injury, or property damage caused by the negligence or wilful misconduct of PSE arising out of the performance of its Services.
- 11.6 No matter how many claims are made and whatever the basis of such claims, PSE's maximum aggregate liability to the Customer under or in connection with this Agreement in respect of any direct loss (or any other loss to the extent that such loss is not excluded by Clauses 11.1 to 11.3 above or otherwise) whether such claim arises in contract or in tort shall not exceed the price stated in the Schedule which relates to the Services in connection with which such liability has arisen.
- 11.7 None of the Clauses herein shall apply so as to restrict liability for death or personal injury resulting from the negligence of PSE, its employees or its appointed agents.

## **12. TERMINATION**

- 12.1 Either Party may terminate this Agreement by written notice to the other Party if such other Party is in material breach of any of the terms of this Agreement and such breach is either irremediable or, in the case of a breach capable of being remedied, if such other Party fails to remedy said breach within 30 (thirty) days of receipt of written notice thereof. Persistent non-payment of sums by Customer shall constitute a material breach entitling termination of this Agreement by PSE.

- 12.2 Either Party may terminate this Agreement forthwith on written notice if the other Party shall cease to trade or threaten to cease to trade, become bankrupt or insolvent, or make an arrangement with its creditors, or go into liquidation, or have a receiver appointed over all or part of its assets, or be the subject of any similar occurrence.
- 12.3 PSE may terminate this Agreement forthwith on written notice if there is a change in control of the Customer, where "control" for the purposes of this Clause means ownership of more than 50% of the issued share capital or other equity interest or the legal power to direct or cause the direction of the general management and policies of the Customer.
- 12.4 Termination of this Agreement shall be without prejudice to any rights of either Party against the other which may have accrued up to the date of such termination.
- 12.5 No part of the fee already paid to PSE shall be refundable to the Customer upon termination or expiry.
- 12.6 The provisions of Clauses 9, 10, 11, 12, 14 and 15 shall continue in full force and effect notwithstanding expiry or termination of this Agreement.
- 13. FORCE MAJEURE**
- 13.1 Neither Party shall be liable for failure to perform any of its obligations hereunder where such performance is prevented or interfered with by riots, wars or hostilities between any nations, acts of God, fires, storms, floods, earthquakes, strikes, labour disputes, shortages or delays of carriers, shortages or curtailments of raw materials, labour, power or other utility services, and other cause beyond the reasonable control of the Parties. This provision shall not be construed as relieving either Party from its obligation to pay any sums due the other Party.
- 14. GENERAL CONTRACTUAL ISSUES**
- 14.1 This Agreement is not intended to and shall in no way be construed or interpreted so as to create a partnership or joint venture between the Parties, or a relationship of agent and principal between the Parties, or authorise either party to act in the name of or otherwise to bind the other Party in any way.
- 14.2 The Customer shall comply with all applicable government export control laws and regulations insofar as they may apply to the Software, and understands that such laws and regulations apply to the export and re-export of the Software.
- 14.3 No waiver by either Party of any right or remedy under this Agreement shall be binding unless made in writing. The waiver by either Party of any breach, default or omission shall not be deemed to be a waiver of any subsequent such breach or other breach, default or omission.
- 14.4 The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law or in equity.
- 14.5 The Customer shall not assign or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of PSE, which consent shall not be unreasonably withheld. The Customer shall be permitted to assign this Agreement with the sale of substantially all of the assets, plants or facilities in which the Software is used. PSE may freely assign or otherwise transfer its rights or obligations under this Agreement.
- 14.6 Subject to Clause 6, any amendment to this Agreement shall be ineffective unless made in writing and signed by an authorised signatory of each Party.
- 14.7 If any provision or part-provision of this Agreement is found by any court or authority of competent jurisdiction to be invalid, illegal or unenforceable, prohibited or shall be rendered void or unenforceable by any legislation the validity or enforceability of this Agreement as a whole or of any other part thereof shall not be affected. PSE and the Customer agree to replace such invalid, illegal or unenforceable provision by one that is valid, legal and enforceable and comes economically closest to the one originally agreed upon.
- 14.8 All notices relating to this Agreement shall be in writing and sent by registered mail to the address given for PSE or Customer. Such a notice shall take effect at 10 am GMT on the seventh working day after posting. Notices to PSE shall be sent to the Managing Director and to the Customer shall be sent to the Contract Administrator named on the associated Schedule.
- 14.9 This Agreement constitutes the entire agreement between the Parties and supersedes all previous drafts, arrangements, understandings or arrangements between them, whether written or oral, relating to the subject matter of this Agreement. Each Party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any representation or warranty that is not set out in this Agreement. Nothing in this Clause shall limit or exclude any liability for fraud.
- 14.10 The heading of each Clause of this Agreement is for reference purposes only and does not form part of this Agreement.
- 15. ARBITRATION**
- 15.1 The Parties shall attempt to resolve amicably all disputes, differences or controversies at any time arising between the Parties as to the interpretation or the performance of this Agreement, or as to any matter or thing arising out of this Agreement or in any way connected therewith. Any such disputes or differences which cannot be resolved amicably by the Parties in a period which is reasonable in the circumstances (and in any event within 30 days) shall be referred to arbitration in accordance with the then current Rules for Conciliation and Arbitration of the International Chamber of Commerce. The arbitration shall be conducted in London, United Kingdom by a single arbitrator who shall be agreed between the Parties or who, failing such agreement, shall be appointed at the request of either Party by the President for the time being of the Institution of Chemical Engineers of the United Kingdom. The decision of the arbitrator shall be final and binding on the Parties.