



PSE Standard Terms - Software Products

(PSE_I_SW_201401)

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 Product 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) **"Confidential Information"** means all information of a technical or business nature provided or disclosed by PSE to Customer, 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 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 PSE.
- (iv) **"Contractor-Employee"** means an individual employed by the Customer or its Affiliates who works on-site and has access to the Customer or Affiliates' IT systems and premises in a substantially similar way to employees of the Customer or Affiliates. Contractor-Employee will include on-site students from bona fide Universities under supervision by the Customer or its Affiliates.
- (v) **"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.
- (vi) **"Product Schedule"** or **"Schedule"** means a schedule setting out a list of PSE Software to be purchased under this Agreement. Where PSE's standard Product Schedule is not used, the Product Schedule will be deemed to be those associated documents that detail the PSE Software to be purchased under this Agreement and any associated payment schedule.
- (vii) **"PSE Software"** or **"Software"** means any computer software, whether in object code or source code form, which is owned, marketed or licensed by PSE.
- (viii) **"Software Component"** means Software in object code form to be provided by PSE under any Product Schedule.

(ix) **"Territory"** means the geographical region in which the end user may use the Software determined by the type of concurrent user licence in the Product Schedule.

(x) **"Usage Log File"** means the readable usage log file embedded in activated Software.

(xi) **"User"** means the Employee(s) or Contractor-Employee(s) entitled to use the Software Component as determined by the licence in accordance with Clause 2.

2. LICENCE

2.1. The Product Schedule identifies the type of license granted based on the following definitions:

(i) A Named User Licence is a non-exclusive licence for a specific individual identified on a Product Schedule to use an instance of a Software Component requiring a specific Licence Key (The licenced Software Components include associated documentation);

(ii) A Site Licence is a non-exclusive licence for a Employees or Contractor-Employees located on the same Customer site and within the same operational unit to use an instance of a Software Component requiring a specific Licence Key (The licenced Software Components include associated documentation);

(iii) A Regional Licence is a non-exclusive licence for a Employees or Contractor-Employees located within 4 consecutive time zones to use an instance of a Software Component requiring a specific Licence Key (The licenced Software Components include associated documentation);

(iv) A Global Licence is a non-exclusive licence for a Employees or Contractor-Employees to use an instance of a Software Component requiring a specific Licence Key (The licenced Software Components include associated documentation);

2.2. PSE grants the Customer and its Affiliates the type of license identified in the Product Schedule to use the Software Components (including associated documentation) listed in all associated Product Schedules for the period stated in that Product Schedule subject to the terms and conditions set out below.

2.3. The number of licences in the Product Schedule determines the maximum number of instances that can be active concurrently. Each instance must comply with the terms and restrictions of the licence granted. An instance is activated when a Software Component on a designated computer network or stand-alone computer requires a specific Licence Key.

2.4. Any licence to Affiliates under this clause 2 shall only last for so long as an entity is an Affiliate of the Customer. The Customer takes responsibility for compliance by an Affiliate with the terms of this Agreement and shall procure compliance by the Affiliate with the terms of this Agreement.

3. DELIVERY AND ACCEPTANCE

3.1. Upon receipt of a signed Product Schedule and where specified in Product Schedule receipt of any upfront

payment or charge, PSE shall deliver to the Customer a password to download Software Components listed in the Product Schedule, together with associated documentation. Passwords may be issued for a limited period of time or issued for specific licence terms or may be issued subject to receipt of payment by PSE.

- 3.2. Access to the Software shall be controlled by licence management software delivered by PSE. The licence management software will require the Customer to input a licence key for each Software Component provided. The Customer shall be deemed to have accepted a Software Component upon delivery of the licence key by PSE. Licence keys may be issued for a period of time equivalent to the agreed payment terms and then re-issued subject to receipt of payment by PSE.
- 3.3. It is the Customer responsibility to ensure their compliance with the licensing terms in particular that the location and number of Users of the Software Components does not exceed the limits set out in the applicable Product Schedule. They shall not rely on the licence management software to determine their compliance.

4. USE

- 4.1. The Customer may install the Software Components in object code form for the use by Users for the purpose of processing the Customer's data for the normal business purposes of the Customer on a designated computer network or designated stand-alone computer.
- 4.2. The Customer shall not allow the use of the Software Components by, or for the benefit of, any person other than Users save where expressly permitted by PSE in writing. Use of Software Components by third parties other than Contractor-Employees may be permitted subject to PSE's written approval, which shall not be unreasonably withheld, provided that the third party has signed a non-disclosure agreement with the Customer which protects the confidentiality of the Software Components and PSE's confidential information. PSE will in general not approve use of the Software Components by third parties who are employees of direct competitors of PSE or major engineering contractors.
- 4.3. Where the Software Components are licensed on a named user basis, changes to the list of named users, where such users are Employees or Contractor-Employees of the Customer and the change is for good reason, may be permitted subject to PSE's written approval. PSE will not normally approve more than 2 changes per licence in any 1 calendar year.
- 4.4. The Customer shall not grant any sub-licence for the Software Components either in stand-alone form or incorporated within other software.
- 4.5. The Customer will be responsible for any improper use of the Software Components or breach of PSE's confidentiality by any person to whom it gives access under the terms of this Agreement including Contractor-Employees and any third parties approved by PSE in accordance with clauses 4.1 or 4.2.
- 4.6. The Customer shall permit PSE at its own expense to verify that the Customer is using the Software in accordance with the terms of this Agreement. The Customer agrees to permit: (i) an independent auditor appointed by PSE to inspect the Customer's internal records related to the installation and use of the Software during normal business hours and subject to

prior written notice by PSE; and (ii) PSE to access and review the Usage Log File for any installed Software, solely to confirm the Customer's compliance with this Agreement. Where such audit reveals use by the Customer of Software other than as permitted by this Agreement, PSE shall so notify the Customer and the Customer shall be liable to pay: (i) such additional licence fees as are applicable in respect of its use of such Software up until the date of notice; and (ii) PSE's costs in relation to the audit. The Customer shall either immediately cease to use such Software or pay such licence fee for further use of the Software as PSE may properly invoice.

- 4.7. If PSE processes any personal data when performing its obligations under this Agreement, including by conducting the audit described in Clause 4.6; the parties record their intention that the Customer shall be the "data controller" and PSE shall be a "data processor" for the purposes of the Data Protection Act 1998. The Customer shall be responsible for obtaining any consents required under the Data Protection Act.
- 4.8. For purposes of licence management, a designated computer may be substituted at any time with another one upon written request by the Customer and to the extent such substitution is required for Customer's ongoing business requirements. PSE will deliver a new Licence Key for the new designated computer. The Customer shall immediately and permanently remove all Licence Keys installed on previous designated computers (and shall not re-install deleted Licence Keys including any back-up copies) and shall notify PSE in writing within three (3) working days that this has been completed. Where Customer requests substitution of a designated computer multiple times in any three month period or where PSE determines that the number of substitution requests is unreasonable, PSE may notify Customer in writing that any further substitutions shall be at the discretion of PSE and PSE may levy a further charge or payment from Customer for any further substitution. Any further substitutions following receipt of notice by Customer will be subject to PSE's prior written approval.
- 4.9. The Customer shall keep the Software confidential and shall not disclose the same to any third party without the prior written consent of PSE. The Customer shall disclose any PSE passwords or licence keys to the minimum number of Contractor-Employees required for the sole purpose of changes in the Customer's personnel.

5. MODIFICATIONS

- 5.1. The Customer shall not decompile, reverse engineer, modify or alter the Software in any way.
- 5.2. The Customer shall not remove or obscure in any way PSE's copyright notices on the Software.

6. TECHNICAL SUPPORT AND MAINTENANCE

- 6.1. PSE will provide the Customer technical support via telephone, facsimile and electronic mail between 09:00 to 17:30 (GMT or BST as applicable), Monday to Friday, excluding British public holidays. All communications and documents relating to technical support provided will be in the English language. PSE will respond to User enquiries within 8 working hours.
- 6.2. Technical support provided includes advice on proper installation and use of the Software and correction of software errors reported to PSE. PSE will endeavour to correct or provide workarounds for software errors

which can be repeated by PSE. Under no circumstances does PSE warrant or represent that any or all errors can or will be corrected.

- 6.3. For the avoidance of doubt, technical support does not include advice on generic modelling issues or specific application design and development aspects.
- 6.4. Technical support is provided for the latest version of a Software Component. The previous version shall be supported for a period of 12 months following the release date of the latest version.
- 6.5. The Customer may download current updates and new releases of a Software Component so long as a valid Licence Key is available for that Software Component.
- 6.6. As far as possible and subject to technical and business constraints PSE will attempt to retain compatibility between versions and to give reasonable advance notice if this cannot be achieved.

7. OWNERSHIP

- 7.1. Nothing in this Agreement shall affect PSE's ownership of intellectual property rights in the Software or Software Component.
- 7.2. The Customer agrees not to copy or use the Software except as expressly permitted in this Agreement.

8. CHARGES AND PAYMENT TERMS

- 8.1. PSE shall invoice the Customer for Software in accordance with the payment schedule specified in the associated Product Schedule and the Customer shall pay to PSE the sums invoiced in accordance with the payment schedule specified in the associated Product Schedule.
- 8.2. 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 withhold taxes, imposts, customs, levies or other withholding ("Tax") from 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.
- 8.3. 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.
- 8.4. Where any payment is outstanding or overdue, PSE reserves the right to withhold issue of a licence key for any new licence (or extension of existing licence) to the Software or Software Component or to suspend Customer's access to the Software or Software Component until any overdue payment is received by PSE. PSE shall not be responsible for any damages, claims or liability arising as a result of such withholding or suspension.

9. CONFIDENTIALITY AND DISCLOSURE

- 9.1. Customer shall keep the Confidential Information confidential and not use it for any purpose other than the performance of this Agreement. The Customer 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 Customer 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:
 1. which is in or comes into the public domain otherwise than as the result of breach of this Agreement
 2. which is obtained from a third party who is free to divulge the same
 3. which was known to the Customer prior to receipt from PSE.
- 9.3. Confidentiality obligations expressed in this Clause 9 shall continue for an additional five (5) year period following the termination of the last software licence or 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 and software 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 it has the right to grant the Customer the licences of the Software specified in any and all associated Product Schedules.
- 10.2. PSE will indemnify the Customer against any claims, demands, actions, costs and expenses (excluding loss of profits) and damages arising from or incurred by reason of infringement of any copyright or patent right by the use or possession of the Software in accordance with the terms of this Agreement by the Customer.
- 10.3. PSE shall not be responsible or liable for any claim of infringement (whether under clauses 10.1 and 10.2 or otherwise) which relates to any version of the Software other than the version most recently released to PSE's customers, or if that claim is based on a combination of the Software with third party software not licensed from PSE, or if that claim arises from any use made by the Customer of the Software which falls outside of the terms of the licence granted by PSE to the Customer under Clause 2.
- 10.4. The Customer shall notify PSE if any claim or demand is made or action brought against the Customer for infringement of any copyright or patent right by reason

of the use or possession of PSE Software by the Customer or any of the parties permitted to have access to and use of the Software. PSE shall at its own expense conduct, and the Customer grants PSE exclusive control of, any litigation arising therefrom and all negotiations for settlement of the same.

- 10.5. If an infringement claim is brought or is in PSE's opinion likely to be brought as described in Clause 10.4, PSE may at its sole option and expense: (i) procure for the Customer the right to continue using the Software; or (ii) revise the Software so that it ceases to be infringing; or (iii) replace the Software with non-infringing software; or (iv) terminate this Agreement forthwith by notice in writing and refund any of the fees paid by the Customer in respect of such software (less a reasonable sum in respect of the Customer's use of the Software to the date of termination).
- 10.6. The Customer accepts responsibility for the selection of the Software to achieve the Customer's intended results and acknowledges that the Software has not been developed to meet the individual requirements of the Customer.
- 10.7. The Customer is solely responsible for the results that the Customer obtains from any use made of the by the Customer and no warranty is given by PSE in relation to such results.
- 10.8. 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 willful misconduct of the Customer, its employees, agents or subcontractors.
- 11.5. 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, through indemnity or warranty, breach of statutory duty or in tort shall not exceed the

price stated in the Product Schedule which relates to the Software in connection with which such liability has arisen.

- 11.6. 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.
- 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 (and "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. The licence to use each Software Component will terminate on the end date specified in the applicable Product Schedule or on termination of this Agreement. PSE may also terminate this Agreement where the Customer repeatedly fails to make payments by the due dates specified on provision of 30 days written notice to Customer.
- 12.5. 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. Upon termination of this Agreement or any license to any Software Component, the Customer will cease to use the Software or Software Component as relevant and delete all copies of the Software or Software Component and any related License Keys from its computer systems.
- 12.6. No part of the fee already paid to PSE shall be refundable to the Customer upon termination or expiry except that if early termination is due to a breach of this Agreement by PSE a refund of the License Fees paid under Clause 8 only shall be made by PSE to the Licensee pro-rata for the unused period of the license for any Software Component.
- 12.7. The provisions of Clauses 9, 10, 11, 12, 13, 15 and 16 shall continue in full force and effect notwithstanding expiry or termination of this Agreement.

13. PUBLICATIONS

- 13.1. The Customer will acknowledge the use of the Software in any publications covering the applications in which it was applied, with full reference to the name of the Software Component(s) used and PSE's copyright in the Software.
- 13.2. The Customer will, subject to written approval which shall not be unreasonably withheld, allow PSE to refer to

the Customer as a user of the Software in PSE's marketing literature. No details relating to the purpose for which the Customer uses the Software will be divulged.

14. FORCE MAJEURE

- 14.1. 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.

15. GENERAL CONTRACTUAL ISSUES

- 15.1. 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.
- 15.2. 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.
- 15.3. PSE regards software piracy as the crime it is, and we view offenders accordingly. PSE does not tolerate the piracy of its software products, and will pursue (both civilly and criminally) those who do so using all legal means available, including public and private surveillance resources. As part of these efforts, PSE utilizes data monitoring and scouring technologies to obtain and transmit data on users of illegal copies of our software. This data collection is not performed on users of legally licensed software.
- 15.4. 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.
- 15.5. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law or in equity.
- 15.6. 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.
- 15.7. Any amendment to this Agreement shall be ineffective unless made in writing and signed by an authorised signatory of each Party.
- 15.8. 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.

- 15.9. All notices relating to this Agreement shall be in writing and sent by registered mail to the address included for PSE or Customer above. 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.
- 15.10. 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.
- 15.11. The heading of each Clause of this Agreement is for reference purposes only and does not form part of this Agreement.

16. ARBITRATION

- 16.1. 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.