

OSIsoft, LLC ("OSIsoft") Software License and Services Agreement

IF YOUR COMPANY HAS EXECUTED A LICENSE AGREEMENT WITH OSISOFT, THAT AGREEMENT WILL GOVERN AND THIS AGREEMENT WILL BE OF NO EFFECT.

IMPORTANT – READ CAREFULLY: OSIsoft is willing to license to your company ("Licensee") this software and documentation ("OSIsoft Products") only on the condition that your company accepts all of the terms in this Agreement. Capitalized terms not defined herein shall have the meaning defined in OSIsoft's quote or software price list. PLEASE READ THE TERMS CAREFULLY BEFORE INSTALLING OR USING THE SOFTWARE, AS INSTALLATION OR USE OF THE SOFTWARE WILL INDICATE YOUR COMPANY'S ASSENT TO THEM.

1. License

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1.2 License Restrictions. Except as expressly provided in Exhibit A, Licensee agrees that it has no right to: (i) modify the OSIsoft Products or to permit any third party to do so; (ii) copy the OSIsoft Products, except as strictly required to install the OSIsoft Software and make a reasonable number of copies for archival or backup purposes, or (iii) use the OSIsoft Products to provide service-bureau, software rental, time sharing or any data services to any third party. Any OSIsoft Products ordered by Licensee and licensed by OSIsoft as a bundled unit must be used by Licensee as a bundled unit. Licensee has no right to use or reference, for purposes of development, any "ServerManager" collection or library or any portion thereof contained in the "PI-SDK". Licensee acknowledges that OSIsoft Products contain trade secrets of OSIsoft, and in order to protect such trade secrets, Licensee agrees not to disassemble, decompile or reverse engineer the OSIsoft Products, nor permit any third party to do so, except to the extent such restrictions are prohibited by applicable law.

1.3 Limited Rights. Licensee's rights in the OSIsoft Products will be limited to those expressly granted in this Section 1, and OSIsoft reserves all other rights, title, interest and licenses therein. All OSIsoft Products provided to the U.S. Government pursuant to solicitations issued on or after December 1, 1995 is provided with the commercial license rights and restrictions described in this Agreement. All OSIsoft Products provided to the U.S. Government pursuant to solicitations issued prior to December 1, 1995 is provided with "Restricted Rights" as provided for in FAR, 48 CFR 52.227-14 (JUNE 1987) or DFAR, 48 CFR 252.227-7013 (OCT 1988), as applicable.

1.4. Audit Rights. Upon OSIsoft's written request, Licensee shall furnish OSIsoft with a certification signed by an officer of Licensee verifying that the OSIsoft Products are being used pursuant to the terms

of this Agreement. In addition, upon prior written notice, OSISOFT may audit Licensee's use of the OSISOFT Products to ensure that Licensee is in compliance with the terms of this Agreement. Any such audit shall be conducted during regular business hours at Licensee's facilities and shall not unreasonably interfere with Licensee's business activities. Licensee shall provide OSISOFT access to the relevant Licensee records and facilities. If an audit reveals that Licensee has underpaid fees to OSISOFT, Licensee shall be invoiced for such underpaid fees based on OSISOFT's price list in effect at the time the audit is completed. Licensee shall promptly deliver to OSISOFT any unpaid fee for any errors or omissions disclosed by such audit. Licensee shall pay OSISOFT an additional fee of twenty-five percent (25%) of the applicable unpaid fee disclosed by the audit to compensate for Licensee's over use of the OSISOFT Products. If the underpaid fees exceed five percent (5%) of the license fees previously paid by Licensee, then Licensee shall also pay OSISOFT's reasonable costs of conducting the audit.

2. Software Reliance Program. OSISOFT may make available to Licensee a support and maintenance program ("Software Reliance Program"). OSISOFT's current terms of Software Reliance Program will be provided on request and are also available through OSISOFT's description of services section at <http://www.osisoft.com> Promptly following its use of any Updates, Bug Fixes or other replacement software as designated by OSISOFT and accepted by Licensee ("Replacement Software"), Licensee will return or destroy the OSISOFT Software replaced by the Replacement Software. Licensee will not receive any credit for software replaced by Replacement Software. If Licensee purchases OSISOFT's installation services, OSISOFT will perform such work in a professional and workmanlike manner consistent with generally accepted standards in the enterprise software industry. Licensee agrees to supply OSISOFT with access to and use of all information and facilities reasonably necessary for OSISOFT to render any on-site services pursuant to this Agreement. OSISOFT will comply with all reasonable safety rules and procedures provided by Licensee to OSISOFT personnel in advance.

3. Warranties.

3.1 Limited Warranty. OSISOFT warrants that, for a period of one (1) year after delivery of the OSISOFT Products, the OSISOFT Products will function in accordance with OSISOFT's accompanying documentation in all material respects. As Licensee's sole and exclusive remedy and OSISOFT's entire liability for any breach of the foregoing warranty, OSISOFT will repair or replace, at no additional charge to Licensee, any OSISOFT Products that fail to meet this limited warranty. The limited warranty set forth herein shall automatically become null and void if a party other than OSISOFT modifies the OSISOFT Products in any way. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, OSISOFT MAKES NO WARRANTIES OF ANY KIND EITHER EXPRESS OR IMPLIED, AND OSISOFT EXPRESSLY DISCLAIMS ANY AND ALL SUCH OTHER

WARRANTIES, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT AND NONINFRINGEMENT.

3.2 Insurance Requirements. During the term of this Agreement, OSIssoft will obtain and maintain in force insurance with the following policy limits:

(a) Worker's Compensation as required by statutory regulations in the applicable state and Employer's Liability Insurance with limits not less than \$1,000,000;

(b) General Liability Insurance with limits not less than \$1,000,000 per occurrence for bodily injury or property damage; \$2,000,000 in the aggregate.

(c) Automobile Liability with a combined single limit of \$1,000,000.

3.3 Proof of Coverage. At Licensee's request, OSIssoft will furnish Licensee with Certificates of Insurance evidencing the insurance described above, including a notice that no change in, or cancellation of, any such policy or policies shall be made without notice to Licensee at least ten (10) days prior to such change or cancellation.

4. Indemnity

4.1 OSIssoft Indemnity Obligation. OSIssoft will defend any action brought against Licensee to the extent that it is based upon a claim that the OSIssoft Products infringe any U.S. patent, copyright or trade secret, and will pay any costs, damages and reasonable attorneys' fees attributable to such claim that are finally awarded or paid in settlement in any such action, provided that: (i) Licensee promptly notifies OSIssoft in writing of the claim; (ii) Licensee grants OSIssoft sole control of the defense and settlement of the claim; and (iii) Licensee provides OSIssoft with all assistance, information and authority reasonably required for the defense and settlement of the claim, at OSIssoft's expense.

4.2 Injunction. If Licensee's use of any of the OSIssoft Products hereunder is, or in OSIssoft's opinion is likely to be, subject to the type of infringement claim specified in Section 4.1, OSIssoft may, at its sole option and expense: (i) procure for Licensee the right to continue using such OSIssoft Products, as applicable under the terms of this Agreement; (ii) replace or modify such OSIssoft Products so that it is non-infringing, but retains substantially the same functionality; or (iii) if options (i) and (ii) above cannot be accomplished despite OSIssoft's reasonable efforts, then OSIssoft may terminate Licensee's rights and OSIssoft's obligations hereunder with respect to such OSIssoft Products and refund to Licensee the unamortized portion of the fees paid for such OSIssoft Products, based upon a straight-line three (3) year depreciation commencing as of the date Licensee received such OSIssoft Products.

4.3 OSIssoft Indemnity Exclusions. OSIssoft will have no liability for infringement claims of any kind arising from: (i) any use of the OSIssoft Products beyond the scope of this Agreement; (ii) Licensee's use of the

OSIsoft Products in combination with any products not developed by OSIsoft, if the basis for the claim is such combined use; (iii) Licensee's failure to use updated or modified versions of the OSIsoft Products provided or made available by OSIsoft without additional charge; or (iv) OSIsoft's compliance with designs or specifications provided by Licensee. THE PROVISIONS OF THIS SECTION 4 SET FORTH OSIsoft's SOLE AND EXCLUSIVE OBLIGATIONS AND LICENSEE'S SOLE AND EXCLUSIVE REMEDIES WITH RESPECT TO INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.

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6. Confidential Information. "Confidential Information" means the OSIsoft Products and any business (including any pricing information provided by OSIsoft) or technical information that is marked by a disclosing party as "confidential" or "proprietary" at the time of disclosure. Licensee's Confidential Information shall also include information related to Licensee's operations that Licensee discloses to OSIsoft in connection with this Agreement in whatever form. OSIsoft's Confidential Information shall also include without liability any interfaces developed using OSIsoft's Software. The receiving party will not use or disclose any Confidential Information of the other party except as expressly permitted herein and will use all reasonable measures to maintain the confidence of all such Confidential Information, which measure will in no event be less than the measures that the receiving party takes to protect its own confidential information of similar importance. Confidential Information will not include information which: (i) is or becomes publicly available without fault of the receiving party; (ii) is independently developed by the receiving party without use or access to the Confidential Information; or (iii) was known to the receiving party prior to its receipt of the Confidential Information from the disclosing party and is not subject to other restrictions on disclosure or use.

7. Term and Termination. This Agreement will remain in effect perpetually unless and until terminated pursuant to this Section. Either party may terminate this Agreement if the other party breaches any material term, and such breach remains uncured for thirty (30) days after receiving notice thereof. In the event of any termination of this Agreement, the parties agree to return or at the other party's request destroy all of the other party's Confidential Information within three (3) business days, and without limiting the foregoing, Licensee will return or at OSIssoft's request destroy all copies of the OSIssoft Products within its possession or control. Licensee may terminate its license to the OSIssoft Products under this Agreement at any time by destroying all copies of the OSIssoft Products and Confidential Information associated with the OSIssoft Products within its possession or control. Termination of this Agreement by either party will be a nonexclusive remedy for breach without prejudice to any other right or remedy of such party. The rights and obligations of the parties contained in Sections 5, 6 and 8 will survive the termination of this Agreement.

8. General

8.1 Assignment, Independent Contractors, Notices and Force Majeure. Licensee may assign this Agreement provided that OSIssoft consents in writing to such assignment. Licensee hereby acknowledges that as a condition to such consent, OSIssoft may require any assignee to update all OSIssoft Products to the then-current version and purchase one year of Software Reliance Program services at OSIssoft's then-current rate. Except as otherwise specified in writing by OSIssoft in its consent to assign this Agreement, Orders submitted by the Assignee will be in accordance with OSIssoft's then current list price. Any attempted assignment, whether by operation of law, as a result of any change in control of Licensee or otherwise without complying with this Section shall be null and void. The parties to this Agreement are independent contractors and neither party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent. All notices required or permitted under this Agreement will be sent to the address specified above (or such other address specified by the receiving party) in writing and will be deemed effective upon receipt. OSIssoft will not be responsible for any failure or delay in its performance under this Agreement due to causes beyond its reasonable control.

8.2 Disputes and Governing Law. Any dispute arising out of or relating to this Agreement, including without limitation its existence, validity or termination, shall be referred to and finally resolved by arbitration under the Commercial Rules of the American Arbitration Association (the "AAA"). The arbitration panel shall consist of a single arbitrator experienced in the enterprise software industry, selected and agreed to by the parties. If the parties cannot agree upon selection of an arbitrator, then the AAA shall appoint the arbitrator. The place of the arbitration will be San Francisco, California. The arbitration will be conducted in English. The arbitrator shall apply the substantive law of California. The

arbitrator shall provide detailed written findings of fact and conclusions of law in support of any award. Judgment upon any such award may be enforced in any court of competent jurisdiction.

Notwithstanding the foregoing, OSIsoft may file an action in any court of competent jurisdiction to enforce its intellectual property rights in the OSIsoft Products without first submitting its claim to arbitration, Licensee hereby submits to the jurisdiction and venue of the federal or state courts located in San Francisco, California for this purpose. This Agreement will be governed by and construed in accordance with the laws of the State of California, excluding that body of law pertaining to conflicts of law and the United Nations Convention on Contracts for the International Sale of Goods. The prevailing party in any action arising from or relating to this Agreement shall be entitled to recover all attorneys' fees and costs including, without limitation, arbitration fees and fees of experts.

8.3 Compliance with Laws; Government Approvals and Severability. Licensee's use of the OSIsoft Products will comply with all laws, rules, and regulations of the United States and other countries that may be applicable to the OSIsoft Products. Without limiting the generality of the foregoing, Licensee acknowledges that the distribution and use of OSIsoft Products and any technical data related thereto (collectively "OSIsoft Technology") may be subject to U.S. export control laws and regulations including, but not limited to, the U.S. Export Administration Act of 1979, as amended, and the regulations promulgated there under. Licensee will not export or re-export, directly or indirectly, any OSIsoft Technology, to any destination for any use that is restricted by U.S. export control laws and regulations including, without limitation, to any party that is involved in sensitive or unguarded nuclear activities, or activities related to chemical or biological weapons or missiles, unless Licensee first obtains the required authorizations from the U.S. Department of Commerce or other appropriate governmental agencies. Licensee may not use the OSIsoft Products to operate or control any inherently dangerous application. Notwithstanding the preceding sentence, Licensee may use the OSIsoft Products in a commercial nuclear power facility so long as Licensee does not use the OSIsoft Products: (i) in any manner where failure of the OSIsoft Products would affect the operability of Licensee's facility or affect Licensee's ability to safely cease all operations of the facility; (ii) to control any safety related system or in any safety related application; or (iii) in any manner that would violate applicable laws or regulations. Licensee shall indemnify and hold OSIsoft harmless from any and all claims, liability, costs, damages and losses arising out of or related use of the OSIsoft Products in violation of this section. OSIsoft shall have no responsibility to test, certify, validate or to take any other action regarding the OSIsoft Products with the Nuclear Regulatory Commission or any other governmental agency. Obtaining such approvals, if any, will be the sole responsibility of Licensee. Within ninety (90) days of the Effective Date, Licensee must, at Licensee's expense, obtain and arrange for the maintenance of all government approvals, if any that may be necessary to make this Agreement effective in the locations where the OSIsoft Products are used by Licensee. If for any reason any part of this Agreement is found unenforceable, the remainder of this Agreement will be enforced to the maximum extent permissible.

8.4 Use of Name in Customer List. Licensee consents to OSIsoft's use of Licensee's non-stylized corporate name in its marketing literature and customer lists. Licensee may withdraw such consent at any time with reasonable notice.

8.5 Entire Agreement, Waiver and Language. This Agreement is the entire agreement between OSIsoft and Licensee with respect to all OSIsoft products and services and their use, superseding any prior agreements (except for agreements which pertain to trial or beta software) or understandings related to any OSIsoft products or services. This Agreement cannot be amended except by a writing which specifically references this Agreement and is signed by both parties. In no event will any purported amendment or agreement be binding on OSIsoft, unless executed by an OSIsoft officer. The failure by either party to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision. The parties hereto have agreed that this Agreement and any documentation, agreements and/or correspondence ancillary thereto be written in English. Les parties aux présentes ont exigés que ce contrat et toute documentation, convention et/ou correspondance pouvant y être accessoire soient rédigés en anglais. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

EXHIBIT A

OSIsoft Products Usage Terms

The following usage terms will apply only to the extent that Licensee orders each type of OSIsoft Product as specified by OSIsoft in its then current price list or otherwise.

Client/Server Products (Currently includes PI System Software, Sigmafine, ProcessPoint and IT Monitor)

Licensee's use of Client Software cannot exceed the number of Individual Licenses specified in accepted Orders and licensed pursuant to this Agreement. Licensee's use of Server Software cannot exceed the number of DataStream Points created in such Server Software (as measured by the OSIsoft Software), Data Connections or Users as applicable and specified in accepted Orders and licensed under this Agreement. Server Software modules and DataStream Points designated by Licensee in an Order for use with one "PI" Server Software module cannot be moved to or otherwise used with any other "PI" Server Software module without OSIsoft's express consent. The "PI" Server Software may not be used to programmatically interoperate with third party applications or Licensee developed applications unless Licensee has purchased the "Data Access Package" Server Software for such "PI" Server. Additionally, except as otherwise expressly provided in this Agreement, once DataStream Points have been designated by Licensee in an Order for use with a PI Server Software module, Licensee cannot return such DataStream Points to OSIsoft for any credit or refund of any kind. Licensee's use of Interfaces will not exceed the number of Data Connections specified in accepted Orders and licensed pursuant to this Agreement.

Thin-Client Products (Currently includes ICE)

In using this type of OSIssoft Software, Licensee will not exceed the number of Concurrent Users specified in accepted Orders and licensed under this Agreement.

Enterprise Application Integration (Currently includes RLINK Products)

In using this type of OSIssoft Software, Licensee will not exceed the number of Data Connections between the Enterprise Application Integration software and OSIssoft's server software as specified in accepted Orders and licensed under this Agreement.

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This type of OSIssoft Software is licensed solely for Licensee's internal development and support purposes on a single computer. Such OSIssoft Software cannot be used in production or otherwise used to process any data generated from Licensee's business operations.

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Software designated as "Third Party Software" on OSIssoft's price list are not subject to this Agreement. OSIssoft acts only as a distributor for Third Party Software and all licensing terms, support and warranty service, if any, will be provided by the third party vendor for this type of software. Except for OSIssoft's failure to deliver the Third Party Software in accordance with Licensee's accepted Orders, notwithstanding any provision in this Agreement, in no event will OSIssoft be liable to Licensee or to any third party for damages of any kind arising from or related to the Third Party Software.

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"OSIssoft Software" means all those software products delivered to Licensee or licensee's designee including without limitation, (i) those that are designed and designated by OSIssoft to operate on a network server computer ("Server Software"), a client computer ("Client Software"), or as an interface with certain hardware monitoring devices, third party software and multiple copies of Server Software ("Interface"); and (ii) all related documentation, bug fixes and updates delivered to Licensee by OSIssoft or its designee.

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"Licensee Customers" means customers of Licensee for whom Licensee may generate, store or process Licensee Data.

"Users" means the number of individuals who are authorized to access a copy of Server Software.