

OSIsoft Agreement # \_\_\_\_\_

**Corporate Family Software License and Services Agreement**

\_\_\_\_\_  
 (“Effective Date”)

This Corporate Family Software License and Services Agreement (“agreement”) is between the parties signing below. “We,” “us” or “our” refers to OSIsoft, LLC, and “you” or “your” refers to your company as indicated below and your affiliates as defined in this agreement.

Company Name:	OSIsoft, LLC
Tax ID:	
Address:	1600 Alvarado Street San Leandro, CA 94577 USA
Sign:	Sign:
Name:	Name:
Title:	Title:
Date:	Date:

**License.** We do not sell our software or your copy of it – we only license it. Subject to the terms and conditions of this agreement, we grant you a nonexclusive, nontransferable license to use our software and accompanying documentation in accordance with the Product Usage Terms as specified at [www.osisoft.com](http://www.osisoft.com) that correspond with the software licenses you purchase from us. Any software you receive from us via file transfer protocol or other electronic delivery method is automatically governed by this agreement regardless of whether we reference this agreement during or in connection with any such electronic delivery, unless we state that another agreement applies. An affiliate means any legal entity that controls, is controlled by, or is under common control with you and that is added to this agreement. Control of an entity means having ownership of more than fifty percent (50%) of the shares or voting rights of such entity. You may add affiliates to this agreement by providing us physical or electronic written notice that contains the company name, address, contact information for a lead contact person and such other information that we may reasonably request. We have provided a form for these requests at: [www.osisoft.com](http://www.osisoft.com). If a company you add as an affiliate to this agreement no longer meets the ownership requirements stated above, you agree to promptly notify us in writing. You agree that any affiliate you add will be bound by this agreement and that you will be responsible if they breach this agreement.

**Online Services.** Any of our online services that you purchase or use will be governed by the agreement presented to you when you register for the applicable service.

**Audit Rights.** You agree that upon our request, you will provide us with a written certification that you are using our software pursuant to this agreement, and you will also allow us to audit your records and facilities to confirm that your use of our software is in compliance with this agreement. We will conduct our audit during regular business hours at your facilities and we will not unreasonably interfere with your business operations. If we discover that you are using our software beyond your purchased license levels, you agree that you will immediately pay for your over usage at our then-current list price. If the unpaid or underpaid fees exceed five percent (5%) of the total license fees owed by you during the twelve (12) consecutive month period preceding the audit, then you agree to reimburse us for the reasonable costs of conducting the audit.

**Support, Maintenance and Field Services.** We offer both (i) field services, including, for example, training classes, installation, migration and on-site training, and (ii) support and maintenance services as described in our Software Reliance Program (“SRP”) terms available from our website at [www.osisoft.com](http://www.osisoft.com). You may enroll in SRP by paying the then-current applicable fees. Orders for field services that will be provided by our local affiliate must be placed directly with that entity. If you purchase any field services from us or from our affiliates we warrant that the deliverables will comply with our applicable description of services for a period of 90-days following our performance. You agree to supply us with access to and use of all information, computer systems, and facilities reasonably necessary for us to render any on-site services under this agreement. We will comply with all reasonable safety rules and procedures you provide to us in advance.

**Ordering and Delivery.** This agreement will govern all of your orders for our software and SRP services that you submit directly to us or to one of our authorized resellers. In addition, this agreement shall govern any field services orders that you submit directly to us or our affiliates. Since this agreement states all of the terms and conditions applicable to each order, you and we both agree that any additional terms and conditions that may be included with your order will not apply. Each order will contain the information necessary for us to process it. We will inform you of what information we require in our quotes or on our website from time to time. Orders will only be binding on us once we expressly accept it or when we deliver what you ordered. You will be responsible for any contractors submitting orders to us on your behalf. We reserve the right to refuse, cancel or delay shipment to you if you (i) fail to make any payment as provided in this agreement or under the terms of payment set in any invoice or otherwise agreed to between you and us; (ii) fail to meet our credit or financial requirements; or (iii) otherwise fail to comply with the terms and conditions of this agreement. Our software and SRP deliverables shall be delivered at place (DAP INCOTERMS 2010) to your location. You understand that our software and services will evolve over time and that nothing in this agreement will prevent us from changing or discontinuing any product or service. Unless we notify you that you do not meet our then-current credit standards and policies, you will pay our invoices within thirty (30) days of the invoice date. If we notify you, invoices will be due upon receipt. All fees are non-cancelable, non-contingent and non-refundable except as expressly stated in this agreement. You will pay all amounts due under our invoices in U.S. currency, free of any and all currency controls or other restrictions. All past due amounts under our invoices will incur a charge the lower of 1.5% per month or the highest rate permitted by applicable law on the amount that is past due, beginning as of forty (40) days after the applicable due date. Except for taxes paid by us on our net income, unless otherwise agreed in this agreement, all amounts due pursuant to our invoices are net of, and you will be solely responsible for any shipping charges, use, sales, value-added, import or other taxes, fees, tariffs or duties associated with this agreement or your use of our software and/or SRP services. You will pay all these amounts in addition to the license and services fees we invoice you. For clarity, if you are required by applicable law to deduct or withhold taxes due to us, you will (i) withhold the legally required amount from payment; (ii) remit the withheld tax to the

applicable taxing authority; and (iii) within sixty (60) days of payment, deliver to us original documentation or a certified copy evidencing remittance of withheld tax. If you do not provide evidence of payment of withheld taxes, you will reimburse us for the tax withheld from payment to us. You will comply with all applicable law, including income tax treaties and protocols, in determining the amount of tax to withhold. This subsection does not apply when you order from one of our authorized resellers. However, you agree to comply with any payment term you may have agreed with such reseller.

**Limited Warranty.** We warrant that, for a period of one (1) year after delivery, our software will function in accordance with the accompanying documentation in all material respects. As your sole and exclusive remedy and our entire liability for any breach of this limited warranty, we will repair or replace, at no additional charge to you, any of our software that fails to meet it. We also warrant that we either own all right, title and interest to our software, or have sufficient rights to grant you the licenses provided in this agreement. These limited warranties shall automatically become null and void if anyone other than us modifies our software in any way. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION, WE MAKE NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, AND WE EXPRESSLY DISCLAIM ANY AND ALL SUCH OTHER WARRANTIES, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT AND NONINFRINGEMENT. IF YOUR LOCAL LAW DOES NOT ALLOW OUR EXCLUSION OF IMPLIED WARRANTIES, THEN ANY IMPLIED WARRANTIES, GUARANTEES, OR CONDITIONS LAST ONLY DURING THE TERM OF THE LIMITED WARRANTY AND ARE LIMITED AS MUCH AS YOUR LOCAL LAW ALLOWS. IF YOUR LOCAL LAW REQUIRES A LONGER LIMITED WARRANTY TERM, DESPITE THIS AGREEMENT, THEN THAT LONGER TERM WILL APPLY, BUT YOU CAN EXERCISE ONLY THE REMEDIES THAT ARE DESCRIBED IN THIS AGREEMENT.

**Defense of Infringement Claims.** We will defend any action brought against you to the extent that it is based upon a claim that our software infringes any patent, copyright or trade secret (as defined by the United States Uniform Trade Secret Act), 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) you promptly notify us in writing of the claim; (ii) you grant us sole control of the defense and settlement of the claim; and (iii) you provide us with all assistance, information and authority reasonably required for the defense and settlement of the claim, at our expense. If your use of any of our software is, or in our opinion is likely to be, subject to the type of infringement claim specified above, we may, at our sole option and expense: (i) procure for you the right to continue using our software; (ii) replace or modify our software so it is non-infringing, but retains substantially the same functionality; or (iii) if neither (i) nor (ii) can be accomplished despite our reasonable efforts, then we may terminate your rights and our obligations under this agreement with respect to such software and refund to you the unamortized portion of the license fees paid for such software based on a straight-line three (3) year depreciation from the date you received the software. We will have no liability for infringement claims of any kind arising from (i) any use of our software beyond the scope of this agreement or any accompanying documentation; (ii) your use of our software in combination with any products not developed by us, to the extent the claim is such combined use; (iii) your failure to use updated or modified versions of our software provided or made available by us without additional charge; or (iv) our compliance with designs or specifications of a published standard or as provided by you. THE PROVISIONS OF THIS SECTION SET FORTH OUR SOLE AND EXCLUSIVE OBLIGATIONS AND YOUR SOLE AND EXCLUSIVE REMEDIES WITH RESPECT TO INFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF OTHERS.

**Limitations of Liability.** EXCEPT FOR LIABILITY ARISING FROM OUR DEFENSE OF INFRINGEMENT CLAIMS OBLIGATIONS EXPRESSLY PROVIDED IN THIS AGREEMENT, EVEN IF ANY REMEDY SET FORTH HEREIN FAILS ITS ESSENTIAL PURPOSE AND REGARDLESS OF WHETHER A CLAIM ARISES UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF WARRANTY, STRICT LIABILITY OR OTHERWISE, AND WHETHER OR NOT WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES, IN NO EVENT SHALL WE BE LIABLE FOR LOSS OF PROFIT, LOSS OF USE, LOSS OF DATA, LOSS OF REVENUE, LOSS OF CONTRACTS, INCREASED COSTS AND EXPENSES, WASTED EXPENDITURE, COST OF REPLACEMENT, OR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL LOSSES OF ANY KIND. OUR TOTAL CUMULATIVE LIABILITY TO YOU WILL NOT EXCEED THE TOTAL LICENSE FEES PAID BY YOU TO US UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY BEFORE THE LIABILITY AROSE, OR TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000), WHICHEVER IS GREATER. Both you and we agree that the allocation of risk contained in this Section is an essential basis of this agreement.

**Confidential Information.** Confidential information means our software and any accompanying documentation, in addition to any business information (including any pricing information) or technical information that is marked as “confidential” or “proprietary” at the time we provide it to you. Your confidential information also includes proprietary information related to your operations in whatever form that you disclose to us in connection with this agreement. Our confidential information shall also include, without limitation, any software you develop that references our confidential information. Neither you nor we may use the other’s confidential information except as expressly provided in this agreement, and you and we will use commercially reasonable measures to maintain each other’s confidential information in confidence. In all events you and we both agree that these measures will be at least as protective as those you and we each take in protecting our own confidential information of similar importance. Confidential information will not include information which: (i) is, or becomes, publicly available without a breach of this agreement; (ii) the receiver of the information lawfully knew without an obligation to keep confidential; (iii) is received from another source who, to the best of receiver’s knowledge, can disclose it lawfully to the receiver; (iv) is independently developed; (v) is a comment or suggestion either you or we volunteer about the other’s business, products or services; or (vi) you or we have approved in writing for use or publication.

**Transfer or Assignment of Software.** You must obtain our written consent prior to: (i) moving our software from one location to another or (ii) assigning this agreement or any software licenses to any third party or affiliate. Assignment will include any direct or indirect change in control (as defined in the first paragraph of this agreement) you or your affiliates may undergo. We may condition our consent to include updating our software to the then-current version, paying our then-current license fees, and purchasing a one-year subscription to SRP at our then-current rate. For an assignment or transfer to a third party or an affiliate, we may require your proposed assignee to execute our then-current license agreement. Except as otherwise specified in writing by us with our written consent, orders submitted by any assignee shall be in accordance with our then-current list price. Any attempted assignment, whether by operation of law or as a result of any change in control or otherwise without complying with this paragraph, will be null and void.

**Export Compliance.** You acknowledge that your use or disclosure of our software, accompanying documentation, and related technical data (collectively “OSIsoft Technology”) are subject to U.S. export laws and regulation that may restrict the export and re-export of software and technology of U.S. origin and that you will comply with all applicable U.S. laws, rules, and regulations. You agree that, if you, your parent, or any corporate affiliate that owns, directly or

indirectly, 50% or more of you becomes subject to U.S. sanctions, we may terminate this agreement as required by U.S. law and retrieve OSIsoft Technology from you and/or your facility within the time required by U.S. law.

**Term and Termination.** This agreement will remain in effect unless one of us terminates as provided in this paragraph. You may voluntarily terminate your license to our software under this agreement at any time by destroying all copies of our software and accompanying documentation within your possession or control. Either of us may terminate this agreement if the other breaches any material term, and such breach remains uncured for thirty (30) days after receiving written notice of it. In the event of any termination of this agreement, you and we both agree to return, or at the other's request, destroy, all of the other party's confidential information within ten (10) business days. At our request you agree to return or destroy all copies of our software and accompanying documentation that you possess or control. Termination of this agreement by either you or us will be a nonexclusive remedy for breach, without prejudice to any other right or remedy you or we may have. You do not need to terminate this agreement in order to pursue remedies (including damages) against us in the event you believe we have breached this agreement. The paragraphs entitled "Audit Rights", "Limitation of Liability", "Confidential Information" and "General" will survive the termination of this agreement.

**General.** You and we are each other's independent contractors. Neither you nor we have the power to bind the other or incur obligations on the other's behalf without the other's prior written authorization. Unless otherwise specified in this agreement, all notices required or permitted under this agreement shall be sent to the receiving party's address specified above (or such other address specified by the receiving party in writing) and will be deemed effective upon receipt. We shall not be liable for any failure or delay in our performance under this agreement due to causes beyond our reasonable control. If you or we have a dispute relating to this agreement, including without limitation its existence, validity or termination, you and we agree that it will be submitted 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 both you and us. If you and we cannot agree on the selection of an arbitrator, then the AAA shall appoint the arbitrator. The arbitration will be in San Francisco, California, and shall be conducted in English. The arbitrator will apply the substantive law of California, and shall provide detailed written findings of fact and conclusions of law in support of any award or decision. Judgment upon any such award or decision may be enforced in any court of competent jurisdiction. Notwithstanding the foregoing, we may file an action in any court of competent jurisdiction to enforce our intellectual property rights in our software, accompanying documentation, and related services without first submitting our claim to arbitration. The prevailing party in any action or arbitration shall be entitled to recover all attorneys' fees and costs including, without limitation, arbitration fees and fees of experts. 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. You consent to our use of your non-stylized corporate name in our marketing literature and customer lists. You may withdraw such consent at any time with written notice. This agreement is the entire agreement between you and us with respect to all of our software, documentation and services. It supersedes and replaces any prior understanding or agreements (except agreements pertaining to our trial or beta software) related to any of our software, documentation or services, from the effective date forward. Neither you nor we may amend this agreement except in writing with express reference to this agreement and is signed by both you and us. In no event will any purported amendment or agreement be binding on us unless it is signed by one of our corporate officers. The failure by either you or us to enforce any provision of this agreement shall not waive future enforcement of that or any other provision. You and we hereby agree that this agreement and any documentation, agreements and/or

correspondence ancillary thereto be written in English. 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.



**OSI**soft