PI Developers Club Agreement

(Updated: 8/2/2019)

IMPORTANT - READ CAREFULLY: OSIsoft is willing to license to your company ("Licensee") this software and documentation ("Software") only on the condition that your company accepts all of the terms in this Agreement. PLEASE READ THE TERMS CAREFULLY BEFORE CLICKING "AGREE", INSTALLING OR USING THE SOFTWARE, AS ANY SUCH ACTION WILL INDICATE YOUR COMPANY'S ASSENT TO THEM AND A REPRESENTATION THAT YOU HAVE FULL AUTHORITY TO BIND LICENSEE TO THIS AGREEMENT. OSIsoft LLC. ("OSIsoft") and Licensee hereby agree as follows:

Definitions:

Add-ins shall mean those programs which are programmed in Visual Basic for Applications as hosted by and executed within OSIsoft's PI ProcessBook and PI DataLink software.

Anonymous Connection shall mean a connection between a Developed Application and a production PI server through the use of the SDK or AF SDK which is not identified by a Globally Unique Identification.

CBT Software shall mean computer based training modules and associated streaming media

CTP shall mean Community Technology Previews which shall be subject solely to the Section 7 CTP Specific Licensing Terms

Developed Applications shall mean Open Applications, Add-ins and SDK-based Applications, collectively. Developed Applications may contain Sample Code, but no other Software and no OSIsoft Confidential Information.

Licensee Affiliate shall mean any entity that controls, is controlled by, or is under common control with Licensee, where "control" of an entity means ownership of more than fifty percent (50%) of the voting equity or beneficial interest of an entity.

Named User shall mean an individual who is designated by Licensee to OSIsoft as the user of the Software.

Open Applications shall mean those software programs developed that interoperate with OSIsoft software products through open standard protocols.

Sample Code shall mean those items of sample source code provided by OSIsoft contained in the OSIsoft Accelerators and similar software.

SDK-based Applications shall mean those software programs developed using or referencing OSIsoft's PI SDK or AF SDK Software.

Software shall mean all software programs, development tools and related documentation delivered through the PI Developers Club.

Term: The term of this PI DevClub Agreement is one (1) year from completion of the application and payment of the fee as specified by OSIsoft during the PI Developers Club registration process.

1. **License**

    1.1 **License Grant**. Subject to the terms and conditions of this PI Developers Club Agreement (this "*PI DevClub Agreement*"), OSIsoft grants to Licensee for the Term of this PI DevClub Agreement a nonexclusive license for the installation and use of the Software to design, develop, test and demonstrate Developed Applications. Except as otherwise expressly provided in Section 1.3, nothing in this PI DevClub Agreement permits Licensee to distribute any Software.

    1.2 **CBT License Grant.** Subject to the terms and conditions of this PI DevClub Agreement, OSIsoft grants to Licensee a nonexclusive license to use the CBT Software solely for the purpose of self-training for use by the Named User.

    1.3 **Developed Applications.**

(a) Ownership. Subject to the terms and conditions of this PI DevClub Agreement, as between OSIsoft and Licensee, Licensee shall own all rights, title and interest in and to the Developed Applications.

(b) Limitations on SDK-based Applications. All SDK-based Applications must meet OSIsoft's then-current technical standards and requirements applicable to Licensee's use and distribution of the SDK-based Applications. This PI DevClub Agreement does not grant any rights to SDK-based Applications developed prior to the Term or any SDK-based Application not subject to the appropriate license from OSIsoft.

(c) Application Registration. Subject to the terms and conditions of this PI DevClub Agreement, upon registration and acceptance by OSIsoft of a Developed Application with OSIsoft, Licensee shall be granted a GUID to be incorporated with the Developed Application. This GUID shall be added to the master GUID list to be recognized on all PI Servers whose license file is generated subsequent to the addition. The grant of a GUID is solely for identification purposes and does not grant any rights to distribution.

(d) Anonymous Connections. Anonymous connections to production PI Severs through the use of the OSIsoft SDK, AF SDK or OSIsoft API are unauthorized and can be disabled.

1.4   **Sample Code.** Subject to the terms and conditions of this PI DevClub Agreement, solely with respect to Sample Code, OSIsoft also grants Licensee a limited, nonexclusive, royalty-free license to: (a) use and modify the Sample Code for the sole purposes of designing, developing, and testing Developed Applications, and (b) to reproduce and distribute the Sample Code, along with any modifications thereof, in object and/or source code form.

1.5   **License Restrictions**.

 (a)   Software. This License grants no rights to develop applications which interface through the OSIsoft API. Licensee agrees that: (i) the Software may only be used by Named Users, (ii) Named Users may only be changed, transferred, assigned, added or deleted through the PI Developers Club web site or other such means as OSIsoft may designate, and (iii) each Named User requires a separate subscription to PI Developers Club. Licensee agrees that it has no right to: (i) use the OSIsoft Software in production or otherwise to process data from Licensee's business operations, (ii) modify the Software or to permit any third party to do so, (iii) copy the Software, except as strictly required to install the OSIsoft Software and make a reasonable number of copies for archival or backup purposes, or (iv) use the Software to provide service-bureau, software rental, time-sharing or any data services to any third party. Licensee acknowledges that except for the Sample Code, the Software contains trade secrets of OSIsoft, and in order to protect such trade secrets, Licensee agrees not to disassemble, decompile or reverse engineer such Software, nor permit any third party to do so, except to the extent such restrictions are prohibited by applicable law.

(b)   CBT Software. Licensee agrees that they have no right to: (i) modify the CBT Software or to permit any third party to do so; (ii) copy the CBT Software, (iii) use the CBT Software to provide service-bureau, software rental, time-sharing or any data services to any third party, or (iv) use the CBT Software in production or to otherwise conduct your business operations. The CBT Software is licensed as and must be used as a bundled unit. No components may be separated from the CBT Software package. You agree not to disassemble, decompile or reverse engineer the CBT Software, nor permit any third party to do so. Your rights in the CBT Software will be limited to those expressly granted in this Section 1, and OSIsoft reserves all other rights, title, interest and licenses therein. The CBT Software contains OSIsoft confidential information (***"Confidential Information"***) which you agree not to use or disclose except as expressly permitted herein.

(c)   Sample Code.   Licensee's rights to the Sample Code are conditioned upon Licensee: (i) not incorporating Identified Software into, or combining Identified Software with, the Sample Code or a derivative work thereof; and (ii) not distributing Identified Software in conjunction with the Sample Code or a derivative work thereof. "Identified Software" means software which is licensed pursuant to terms that directly or indirectly (A) create, or purport to create, obligations for OSIsoft with respect to the Sample Code or derivative work thereof or, (B) grant, or purport to grant, to any third party any rights or immunities under OSIsoft's intellectual property or proprietary rights in the Sample Code or derivative work thereof. Identified Software includes, without limitation, any software that requires as a condition of its use, modification and/or distribution, that any other software incorporated into, derived from or distributed with such software must also be (1) disclosed or distributed in source code form; (2) licensed for the purpose of making derivative works; or (3) redistributable at no charge.

(d)   Sample Code Redistribution. If Licensee chooses to redistribute the Sample Code, Licensee agrees: (i) to distribute the Sample Code only as a part of a Developed Application; (ii) not to use OSIsoft's name, logo, or trademarks to market the Developed Application; (iii) to display Licensee's own valid copyright notice which shall be sufficient to protect OSIsoft's copyright in the Sample Code; (iv) to indemnify, hold harmless, and defend OSIsoft from and against any claims or lawsuits, including attorney's fees, that arise or result from the use or distribution of the Sample Code; and (v) not to permit further distribution of the Sample Code by Licensee's end users.

(e)   User Based Licenses. Users of Developed Applications must have the appropriate server/client licenses in place for runtime connection to any PI server.

1.6   **Limited Rights**. Licensee's rights in the Software will be limited to those expressly granted in this Section 1, and OSIsoft reserves all other rights, title, interest and licenses therein. All Software provided to the U.S. Government pursuant to solicitations issued on or after December 1, 1995 are provided with the commercial license rights and restrictions described in this PI DevClub Agreement. All Software provided to the U.S. Government pursuant to solicitations issued prior to December 1, 1995 are 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.

1.7   **Audit Rights**. Upon OSIsoft's written request, Licensee shall furnish OSIsoft with a certification signed by an officer of Licensee verifying that the Software is being used pursuant to the terms of this PI DevClub Agreement. In addition, upon prior written notice, OSIsoft may audit Licensee's use of the Software to ensure that Licensee is in compliance with the terms of this PI DevClub 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 Software. If the results of the audit disclose any breach of this PI DevClub Agreement, Licensee shall also pay OSIsoft's reasonable costs of conducting the audit.

1.8   **Electronic Delivery.** OSIsoft may issue Licensee a password authorization to access and download the Software. Licensee agrees only its employees authorized to use the OSIsoft Software in accordance with this PI DevClub Agreement will have access to such passwords. WARNING: THE OSISOFT SOFTWARE MAY HAVE A TIME-OUT FEATURE THAT WILL CAUSE IT TO BECOME INOPERABLE AND ANY DATA STORED IN THE OSISOFT SOFTWARE TO BECOME INACCESSIBLE AT ANY TIME WITHOUT ADDITIONAL WARNING. WITHOUT LIMITING THE GENERALITY OF THIS PI DevClub AGREEMENT, OSISOFT WILL NOT BE RESPONSIBLE FOR ANY CLAIMS OR DAMAGES WHICH MAY ARISE OR RELATE TO THIS TIME-OUT FEATURE AND Licensee WILL INDEMNIFY AND HOLD OSISOFT HARMLESS FROM ANY CLAIMS WHICH ARISE OR RELATE TO SUCH TIME-OUT TAKING EFFECT. In the event the OSIsoft Software times-out during the term of this PI DevClub Agreement, OSIsoft will make new copies of replacement OSIsoft Software available to Licensee upon notice.

2. **Technical Support.** Licensee will be enrolled in the PI Developers Club, then-current Technical Support Program as described on the PI Developers Club web site.

3. **No Warranty or Liability**. The OSIsoft Software is being supplied to Licensee "AS IS" without any warranty of any kind. OSIsoft DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE and NONINFRINGEMENT.
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4. **Ownership and Confidentiality**. The OSIsoft Software is licensed, not sold, to Licensee. Licensee's rights in the OSIsoft Software will be limited to those expressly granted in this PI DevClub Agreement. OSIsoft retains all right, title and interest in and to the OSIsoft Software including all worldwide intellectual property rights therein. Licensee will not delete or alter any proprietary notices or labels appearing on or in the OSIsoft Software. "*Confidential Information*" means OSIsoft Software or any materials created with reference to the OSIsoft Software including, without limitation, benchmark tests. "*Confidential Information*" shall also mean OSIsoft's non-public or proprietary technical information, future business plans, marketing strategies and product roadmaps that are marked as confidential or with a similar legend. OSIsoft does not represent or warrant the accuracy or completeness of the information so disclosed or that OSIsoft will (or will not) make any products or services available. The entire risk arising out of the use of such Confidential Information remains with Licensee. OSIsoft may change or cancel its plans at any time. Licensee may not use or disclose to third parties OSIsoft's Confidential Information except as expressly permitted in this PI DevClub Agreement. Licensee will use all reasonable measures to maintain the confidence of all such Confidential Information, which measure in no event will be less than the measures that Licensee takes to protect their own confidential information of similar importance. These obligations shall be in addition to, not in lieu of, any other confidentiality obligations Licensee may have pursuant to any other agreement currently in effect with OSIsoft. 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.

5. **Term and Termination**. This PI DevClub Agreement will remain in effect for the Term, unless terminated pursuant to this Section. Either party may terminate this PI DevClub 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 PI DevClub Agreement, Licensee agrees to destroy copies of the Software and any other Confidential Information within its possession and control within three (3) business days. Licensee may terminate its license to the Software under this PI DevClub Agreement at any time by destroying all copies of the Software and Confidential Information within its possession or control. Termination of this PI DevClub 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 1.7 and 3 through 6 will survive the termination of this PI DevClub Agreement.

6. **General**

6.1   **Assignment, Independent Contractors, Notices and Force Majeure**. Licensee may not assign this PI DevClub Agreement or Software licensed under this PI DevClub Agreement. Any attempted assignment, whether by operation of law, as a result of any change in control (as control is defined under "Affiliate") of Licensee or otherwise shall be null and void. The parties to this PI DevClub 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 PI DevClub 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. OSIsoft will not be responsible for any failure or delay in its performance under this PI DevClub Agreement due to causes beyond its reasonable control.

6.2   **Disputes and Governing Law**. Any dispute arising out of or relating to this PI DevClub 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 Software 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 PI DevClub 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 PI DevClub Agreement shall be entitled to recover all attorneys' fees and costs including, without limitation, arbitration fees and fees of experts.

6.3 **Compliance with Laws; Government Approvals and Severability**. Licensee's use of the Software will comply with all laws, rules, and regulations of the United States and other countries that may be applicable to the Software. Without limiting the generality of the foregoing, Licensee acknowledges that the distribution and use of Software 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. Any falsification of Licensee information during the registration process shall be ground for immediate termination of the PI DevClub Agreement. 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 Software to operate or control any inherently dangerous application. Notwithstanding the preceding sentence, Licensee may use the Software in a commercial nuclear power facility so long as Licensee does not use the Software: (i) in any manner where failure of the Software 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 Software in violation of this section. OSIsoft shall have no responsibility to test, certify, validate or to take any other action regarding the Software 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 PI DevClub Agreement effective in the locations where the Software are used by Licensee. If for any reason any part of this PI DevClub Agreement is found unenforceable, the remainder of this PI DevClub Agreement will be enforced to the maximum extent permissible.

6.4 **Name and Mark Usage**. Licensee consents to OSIsoft's use of Licensee's non-stylized corporate name in its marketing literature related to the PI Square Community and PI Developers Club. Licensee may withdraw such consent at any time with reasonable notice. In no event may Licensee use any OSIsoft trademark, trade name, service mark, logo or brand under the terms of the PI DevClub Agreement without OSIsoft's express written consent. In the event the Licensee joins OSIsoft's Partner Program, Licensee consents to the use of Licensee's trademarks, service marks and or logos in OSIsoft's marketing literature related to OSIsoft's Partner Program. Licensee shall have the right to review any public use of the marks or logo and may withdraw such consent at any time upon reasonable notice.

6.5 **Entire Agreement, Waiver and Language**. This PI DevClub Agreement is the entire agreement between OSIsoft and Licensee with respect to PI Developers Club, superseding any prior agreements (except for agreements which pertain to trial or beta software) or understandings related to any Software or services. This PI Developers Club Agreement cannot be amended except by (i) a writing which specifically references this PI DevClub Agreement and is signed by both parties; or (ii) in the same manner in which this PI DevClub Agreement was executed. 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 PI DevClub Agreement will not constitute a waiver of future enforcement of that or any other provision. The parties hereto have agreed that this PI DevClub 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 acessoire soient rédigés en anglais. This PI DevClub 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.

7.0 CTP Specific Licensing Terms.

LICENSE. Subject to the terms of this Agreement, OSIsoft grants to you a nonexclusive license to use the CTP, in binary executable form, for evaluation and trial use purposes only, and not for general production use. You may not use, copy, modify, or transfer the CTP, in whole or in part, except as expressly provided for in this Agreement. You acknowledge that the CTP is a confidential trade secret of OSIsoft and/or its suppliers and you agree not to reverse engineer, disassemble or decompile the CTP, except to the extent applicable laws specifically prohibit such restrictions.

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