

## **End User License EULA (EULA)**

Published April 28<sup>th</sup> 2020. Effective as of April 28<sup>th</sup>, 2020. These Terms replace and supersede all prior version. IF YOUR COMPANY HAS EXECUTED A LICENSE EULA WITH Wisnam, THIS EULA SHALL GOVERN AND SUPERSEDE ALL PRIOR EULAS AND IT IS LEGALLY BINDING.

**IMPORTANT – READ CAREFULLY:** Wisnam is willing to license to your company (hereinafter "You") the software and documentation ("Wisnam Products") only on the condition that your company accepts all of the terms in this EULA. Capitalized terms not defined herein shall have the meaning defined in Wisnam's quotations or correspondence.

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.

Capitalized terms used in this EULA are defined Section 10 below.

Wisnam reserves all the rights, copyright and intellectual property included.

### **1. Acceptance**

By installing and/or using the Wisnam Products, You are confirming your acceptance of the Software and agreeing to become bound by the terms of this EULA and acknowledge that it is enforceable as a written contract signed by you.

IF YOU DO NOT AGREE WITH THE TERMS AND CONDITIONS OF THIS EULA, PLEASE DO NOT INSTALL OR USE THE SOFTWARE, AND YOU MUST NOT ACCEPT THIS EULA.

### **2. License Types**

#### **2.1 Subscription License Grant:**

If you have a Subscription license, to the extent reflected in the Purchase Order or commercial quotation, subject to the terms and conditions of this EULA, Wisnam grants to You a nonexclusive, nontransferable (except as specified in Section 8.1), revocable license to use the Wisnam Products in accordance with Section 9. You may make a reasonable number of copies of any Wisnam Product documentation only for internal business use. The right to sublicense is not granted except the case you have obtained a prior authorization by Wisnam.

#### **2.2 Perpetual License Grant:**

If you have a Perpetual license, to the extent reflected in the Purchase Order or commercial quotation, subject to the terms and conditions of this EULA, Wisnam grants you a paid-up, perpetual (subject only to revocation as provided in this EULA), nonexclusive, nontransferable (except as specified in Section 8.1) license to use the Wisnam Products in accordance with Section 9. You may make a reasonable number of copies of any Wisnam Product documentation only for internal business use. The right to sublicense is not granted except the case you have obtained a prior authorization by Wisnam.

#### **2.3 General Licensed rights:**

You may use and install the Software solely in accordance with terms, conditions, payment requirements, usage limitations and restrictions set forth in (a) this EULA; (b) the documentation; and (c) the Purchase Order. In the event of any discrepancy between (i) the provisions set forth in this EULA and (ii) any Purchase Order, Documentation or written EULA between You and Wisnam, such Purchase Order, Documentation or written EULA shall prevail.

#### **2.4 License Restrictions:**

Except as expressly provided in Section 9 You agree that You have no right to: (i) modify the Wisnam Products or to permit any third party to do so; (ii) copy the Wisnam Products, except as strictly required to install the Wisnam Software and make a reasonable number of copies just for archival or backup purposes, or (iii) use the Wisnam Products to provide service-bureau, software rental, time sharing or any data services to any third party; (iv) decompile, reverse engineer, disassemble, attempt to derive the source code of, decrypt, create derivative works of the Software updates or any part thereof, rent, lease, lend, redistribute, or sublicense the Software or otherwise make the software available. Any attempt to do so is a violation of the rights of Wisnam and/or its licensors may be subject to prosecution and damages.

Any Wisnam Products ordered by You and licensed by Wisnam as a bundled unit must be used by You as a bundled unit. You have no right to use or reference, for purposes of development, any library or any portion thereof contained in the Wisnam Product. You acknowledge that Wisnam Products contain trade secrets of Wisnam, and in order to protect such trade secrets, You agree not to disassemble, decompile or reverse engineer the Wisnam Products, nor permit any third party to do so, except to the extent such restrictions are prohibited by applicable law.

In case of infringement or misappropriation of intellectual property rights or violation of applicable law, Wisnam should be indemnified from any occurred damages, attorney fees and costs included.

## **2.5 Limited Rights:**

Your rights in the Wisnam Products will be limited to those expressly granted in this Section. You are entitled to use Wisnam Products only for the power plants and up to the MW and number of users indicated in the commercial offer. You may not distribute or make the Software available over a network where it could be used by multiple devices at the same time. You should contact Wisnam in case You need an extension of license of use.

Wisnam reserves all other rights, title, interest and licenses, including, without limitation, all patent, copyright, trademark, service mark, trade secret, and trade name rights therein. All Wisnam Products are provided with the commercial license rights and restrictions described in this EULA.

## **2.6. Audit Rights:**

Upon Wisnam's written request, You shall furnish Wisnam with a certification signed by an officer of yours verifying that the Wisnam Products are being used pursuant to the terms of this EULA. In addition, upon prior written notice, Wisnam may audit Your use of the Wisnam Products to ensure that You are in compliance with the terms of this EULA. Any such audit shall be conducted during regular business hours at Your facilities and shall not unreasonably interfere with Your business activities. You shall provide Wisnam access to Your relevant records and facilities. If an audit reveals that You have underpaid fees to Wisnam, You shall be invoiced for such underpaid fees based on Wisnam's fee structure in effect at the time the audit is completed.

You shall promptly deliver to Wisnam any unpaid fee for any errors or omissions disclosed by such audit. You shall pay Wisnam an additional fee of twenty-five percent (25%) of the applicable unpaid fee disclosed by the audit as liquidated damages and not as a penalty, to compensate for Your overuse of the Wisnam Products. If the underpaid fees exceed five percent (5%) of the license fees previously paid by You, then You shall also pay Wisnam's reasonable costs of conducting the audit.

## **3. Warranties.**

### **3.1 Limited Warranty:**

Wisnam warrants that, for a period of one (1) year after delivery of the Wisnam Products, Wisnam Products will function in accordance with Wisnam's accompanying documentation in all material respects. As Your sole and exclusive remedy and Wisnam's entire liability for any breach of the foregoing warranty, Wisnam will repair or replace, at no additional charge to You, any Wisnam 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 Wisnam modifies the Wisnam Products in any way.

EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, WISNAM MAKES NO WARRANTIES OF ANY KIND EITHER EXPRESS OR IMPLIED, AND WISNAM 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 EULA, Wisnam will maintain in force insurance for (a) Worker's Compensation and Employer's Liability Insurance (b) General Liability Insurance. All insurance will be in compliance with requirements from statutory regulations in the applicable state.

### **3.3 Proof of Coverage:**

At Your request, Wisnam will furnish You 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 You at least ten (10) days prior to such change or cancellation.

## **4. Liability and indemnity exclusions**

Wisnam will have no liability and You will be solely and entirely responsible for infringement claims of any kind arising from: (i) any use of the Wisnam Products by You or by any third party to which You, for any reason, have made the Product available beyond the scope of this EULA; (ii) Your use of the Wisnam Products in combination with any products not developed by Wisnam, if the basis for the claim is such combined use; (iii) Your failure to use updated or modified versions of the Wisnam Products provided or made available by Wisnam without additional charge; or (iv) Wisnam's compliance with designs or specifications provided by You.

THE PROVISIONS OF THIS SECTION 4 SET FORTH WISNAM SOLE AND EXCLUSIVE OBLIGATIONS AND YOUR SOLE AND EXCLUSIVE REMEDIES WITH RESPECT TO INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.

## **5. Limitations of Liability.**

EVEN IF ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE OR OTHERWISE AND REGARDLESS OF WHETHER A CLAIM ARISES UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF WARRANTY, STRICT LIABILITY OR OTHERWISE, AND WHETHER OR NOT WISNAM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES, IN NO EVENT SHALL WISNAM BE LIABLE FOR: (i) ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGES OF ANY KIND (INCLUDING LOSS OF USE, DATA, BUSINESS OR PROFITS); (ii) CLAIMS THAT ARE COVERED BY THE INSURANCE POLICIES SPECIFIED IN SECTION 4, AS CARRIED BY WISNAM, SHALL WISNAM'S TOTAL LIABILITY EXCEED THE COVERAGE AMOUNTS SPECIFIED THEREIN; NOR (iii) CLAIMS THAT ARE NOT COVERED BY THE INSURANCE POLICIES SPECIFIED IN SECTION 3 AS CARRIED BY WISNAM, SHOULD WISNAM'S TOTAL CUMULATIVE LIABILITY HEREUNDER EXCEED THE TOTAL LICENSE FEES PAID BY YOU TO WISNAM UNDER THIS EULA OR ONE HUNDRED THOUSAND EUROS (€100,000), WHICHEVER IS LESS. The parties expressly agree that the allocation of risk contained in this Section is an essential basis of this EULA.

## **6. Confidential Information.**

"Confidential Information" means the Wisnam Products and any business (including any pricing information provided by Wisnam) or technical information that is marked by a disclosing party as "confidential" or "proprietary" at the time of disclosure. Your Confidential Information shall also include information related to Your operations that You disclose to Wisnam in connection with this EULA in whatever form. Wisnam's Confidential Information shall also include without liability any interfaces developed using Wisnam's Software. In addition to the above, Confidential Information shall also include, and the Recipient shall have a duty to protect, other confidential and/or sensitive information disclosed by Discloser in writing and in any other manner so that all information disclosed by the Discloser to the Recipient shall be identified as Confidential Information whether or not such information is marked as proprietary and confidential. 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.**

**7.1 Payments for Perpetual Licenses.** If You have a Perpetual License, You agree to pay fees for the Perpetual License (the “*Perpetual License Fees*”) as described in the Purchase Order or commercial quotation and based upon the rates and amounts set forth in the Purchase Order and in the commercial quotation. This EULA will remain in effect perpetually unless and until terminated pursuant to this Section. Wisnam may terminate this EULA if You breach any material term, and such breach remains uncured for thirty (30) days after receiving notice thereof. You may terminate this EULA with a prior notice of three (3) months.

In the event of any termination of this EULA, 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, You will return or at Wisnam’s request destroy all copies of the Wisnam Products within its possession or control.

Maintenance and Support Fees are not included in the Perpetual License Fees.

**7.2 Payments for Subscription Licenses.** If licensed under a Subscription License, You agree to pay the initial, and, thereafter, the recurring fees for the Subscription License (the “*Subscription License Fees*”) as described in the Purchase Order or commercial quotation and based upon the rates and amounts set forth in the Purchase Order or commercial quotation.

Maintenance and Support Fees are included in the Subscription License Fees. You also agree to pay any other fees or charges listed on an Order Form for additional professional services or other services (collectively, the “*Other Fees*”) separately and upfront, in addition to the Subscription License Fees.

Termination of the Subscription license is subject to the terms stated in the Software As a Service Agreement signed by the Parties.

### **7.3: General terms:**

To the extent You will request additional licenses (i.e. in the event You wish to increase the MW of the license) the pricing shall be subject to the pricing indicated in the new commercial quotation or Purchase Order.

Termination of this EULA 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 EULA.

## **8. General**

### **8.1 Assignment, Independent Contractors, Notices and Force Majeure:**

You shall not assign this EULA except the case Wisnam consents in writing to such assignment which consent shall be withheld at Wisnam’s sole discretion. You hereby acknowledge that as a condition to such consent, Wisnam may require any assignee to update all Wisnam Products to the then-current version and purchase one year of Total Care Plan services at Wisnam’s then current rate. Except as otherwise specified in writing by Wisnam in its consent to assign this EULA, orders submitted by the Assignee will be in accordance with Wisnam’s current fee structure. Any attempted assignment, whether by operation of law, as a result of any change in control of You or otherwise without complying with this Section shall be null and void. The parties to this EULA 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 EULA 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. Wisnam will not be responsible for any failure or delay in its performance under this EULA due to causes beyond its reasonable control.

## **8.2 Disputes and Governing Law:**

This EULA is governed and construed by the laws of Italy. Place of performance and jurisdiction shall be in the court of Catania, CT, Italy.

All notifications and declarations pursuant to this EULA shall be in writing. Facsimile shall be considered as writing. E-mail shall be considered as writing.

The parties agree that, in the event of a dispute or alleged breach of this EULA or an individual contract, they will work together in good faith, first to try to resolve the matter internally by escalating it to higher levels of management and, then if necessary, to use a mutually agreed alternative dispute resolution technique prior to resorting to litigation. This provision shall not apply to disputes involving confidentiality or infringement of intellectual property in which case either party shall be free to seek available remedies.

Nothing herein contained shall in any way create any association, partnership, joint venture or the relation of principal and agent between the Parties hereto or be construed to evidence the intention of the Parties to constitute such.

If any provision of this EULA shall be found to be invalid or unenforceable for legal or factual reasons the invalidity or unenforceability of such provisions shall not affect the other provisions of this EULA and all provisions of this EULA not affected by such invalidity or unenforceability shall remain in full force and effect. The Parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic and legal objective of the EULA. This applies as well in case of an omission or invalidity of the whole EULA.

## **8.3 Compliance with Laws; Government Approvals and Severability:**

Your use of the Wisnam Products will comply with all laws, rules, and regulations of the Italy and other countries that may be applicable to the Wisnam Products. Without limiting the generality of the foregoing, You acknowledges that the distribution and use of Wisnam Products and any technical data related thereto (collectively "Wisnam Technology") may be subject to export control laws and regulations. You will not export or re-export, directly or indirectly, any Wisnam Technology, to any destination for any use that is restricted by the applicable 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.

You may not use the Wisnam Products to operate or control any inherently dangerous application.

Notwithstanding the preceding sentence, You may use the Wisnam Products in a commercial nuclear power facility so long as You do not use the Wisnam Products: (i) in any manner where failure of the Wisnam Products would affect the operability of Your facility or affect Your 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.

You shall indemnify and hold Wisnam harmless from any and all claims, liability, costs, damages and losses arising out of or related use of the Wisnam Products in violation of this section. Wisnam shall have no responsibility to test, certify, validate or to take any other action regarding the Wisnam Products with the Nuclear Regulatory Commission or any other governmental agency. Obtaining such approvals, if any, will be the sole responsibility of You.

Within ninety (90) days of the Effective Date, You must, at Your expense, obtain and arrange for the maintenance of all government approvals, if any that may be necessary to make this EULA effective in the locations where the Wisnam Products are used by You.

If for any reason any part of this EULA is found unenforceable, the remainder of this EULA will be enforced to the maximum extent permissible.

#### **8.4 Use of Name in Customer List:**

You consent to Wisnam's use of Your corporate name in its marketing literature and customer lists. You may withdraw such consent at any time with reasonable notice.

#### **8.5 Use of acquired DATA by Wisnam**

You consent to Wisnam the anonymous use of the data acquired by Wisnam Software for statistical purposes and in order to increase the functionalities of Wisnam Products. These data may also be aggregated by Wisnam. For any question regarding the use of data handling practice or for deny the consent, the You can contact Wisnam.

#### **8.6 Entire EULA, Waiver and Language:**

This EULA is the entire EULA between Wisnam and You with respect to all Wisnam products and services and their use, superseding any prior EULAs (except for EULAs which pertain to trial or beta software) or understandings related to any Wisnam products or services. This EULA cannot be amended except by a writing which specifically references this EULA and is signed by both parties. In no event will any purported amendment or EULA be binding on Wisnam, unless executed by a Wisnam officer. The failure by either party to enforce any provision of this EULA will not constitute a waiver of future enforcement of that or any other provision. The parties hereto have agreed that this EULA and any documentation, EULAs and/or correspondence ancillary thereto have to be written in English. This EULA 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.

### **9. Wisnam Products Usage Terms**

The following usage terms will apply only to the extent that You orders each type of Wisnam Product as specified by Wisnam in its then current fee structure or otherwise.

#### **9.1 Client Software /Server Products:**

Your use of Wisnam Products cannot exceed the number of Individual Licenses specified in accepted orders and licensed pursuant to this EULA and it cannot also exceed the number of licensed MW or number of users as indicated in the commercial offer. Your use of Wisnam Products cannot exceed the number of Data Points created (as measured by the Wisnam Software), Data Connections or Users as applicable and specified in accepted orders and licensed under this EULA. Server Software modules and Data Points designated by You in an order for use with one Server Software module cannot be moved to or otherwise used with any other Server Software module without Wisnam's express consent. The Wisnam Products may not be used to programmatically interoperate with third party applications or You developed applications unless You has purchased the Server Software for such usage. Additionally, except as otherwise expressly provided in this EULA, once Data Points have been designated by You in an order for use with a Server Software module, You cannot return such Data Points to Wisnam for any credit or refund of any kind. Your use of Interfaces will not exceed the number of Data Connections specified in accepted orders and licensed pursuant to this EULA.

You may not use the Software to submit or link to any content that: infringes or violates the intellectual property or other rights of any person or entity; interferes with the operation of the Software or other Wisnam products or services; violates anyone's privacy or publicity rights; breaches any duty of confidentiality that you owe to any person or entity; is vulgar, offensive, inappropriate, harassing, defamatory, abusive, lewd, pornographic, obscene or otherwise objectionable; contains or installs any viruses, worm, bugs, Trojan horses, malware or other code, files or programs designed or having the capability to disrupt, damage or limit the functionality of any software or hardware, contains false or deceptive language or comparative claims regarding Wisnam or third parties' products, advertising, commercial referrals, spam, chain letters, or any other solicitation, including solicitation of lawsuits;

In using this type of Wisnam Software, You will not exceed the number of users and MW specified in accepted orders and licensed under this EULA.

## **9.2 Development Systems (currently includes any Wisnam Products designated by Wisnam or You for development, configuration or support purposes):**

Wisnam Products are licensed solely for Your internal development and support purposes on a single computer. Such Wisnam Products cannot be used in production or otherwise used to process any data generated from Your business operations.

## **9.3 Third Party Software:**

Software designated by Wisnam as “Third Party Software” is not subject to this EULA. Wisnam 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 Wisnam's failure to deliver the Third Party Software in accordance with Your accepted orders, notwithstanding any provision in this EULA, in no event will Wisnam be liable to You or to any third party for damages of any kind arising from or related to the Third Party Software.

## **10. Usage Definitions**

“Wisnam” means:

Wisnam SRL  
Via Sclafani 40/B  
95040 Acireale (CT) - Italy  
VAT N°: 04378440871

“Wisnam Software” means all those software products delivered to You or You’s designee including without limitation, (i) those that are designed and designated by Wisnam 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 You by Wisnam or its designee.

“Product” means and includes all those Software or any other Products or Services delivered to You or Your designee by Wisnam.

“Concurrent Users” mean individuals who are accessing the same copy of Server Software at the same time.

"Data Point" means a tag or module that is created and exists in certain Server Software modules that is used to setup, configure or store data-points or data structures.

“Data Connection” means a link between the data generated from one copy of Wisnam Software and another copy of Wisnam Software or a third party data source.

“Individual Licenses” means the number of client computers onto which You may install Client Software. One Individual License may be used on up to two client computers to facilitate home office use or remote access so long as one Individual License is not used by two individuals at the same time. Individual Licensed Software cannot be used to export data from the Wisnam Software and serve such data directly or indirectly to another client or CPU computer.

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

“Purchase Order” means the order form pursuant to which you place an order.

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

## **11. Interpretation**

In this EULA except where the context otherwise requires explicitly:  
headings are for ease of reference only and cannot be interpreted in detriment to the meaning explicitly stated in the EULA;  
the singular includes the plural and vice versa, and a gender includes other genders;  
another grammatical form of a defined word or expression has a corresponding meaning;  
a reference to a clause, paragraph or annex is to a clause or paragraph of, or annex to, this EULA, and a reference to this EULA includes any annex;  
a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;  
a reference to a person includes a natural person, legal entity, partnership, body corporate, association, governmental or local authority or agency or any other entity, as the case may be;  
a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;  
the meaning of general words is not limited by specific examples introduced by “including”, “for example” or similar expressions;  
unless otherwise provided for in this EULA, reference to days means calendar days. If a day on or by which an obligation shall be performed or an event shall occur is not a business day, the obligation shall be performed or the event shall occur on the following business day  
months are made up of thirty (30) days and years of three hundred and sixty five (365) days, in both occasions calendar

## **12. Notices**

All notices required under this EULA are to be sent in writing.