

GENERAL TERMS AND CONDITIONS OF THE WISEBIM AI FOR AUTODESK® REVIT® SOLUTION SUPPLY

WISEBIM SAS company, SAS with capital of 114,801 euros, registered at the RCS of Paris under the number 828 869 560, with registered office located 53B rue de la Roquette 75011 Paris, FRANCE, taken in the person of its legal representative (hereinafter referred to as the "Supplier") has developed a software solution intended for building professionals, making possible to produce digital BIM models from digitized 2D plans (hereinafter referred to as the "Solution").

This system, commonly called "BIM", according to designation "Building Information Modeling" is an information process based on a 3D model, offering professionals operating in facility management, architecture, engineering and dismantling industries the information and tools they need to plan, design, construct and manage buildings and infrastructure more effectively.

The Supplier's Solution is available in add-in mode in Autodesk® Revit® software, available online on the Autodesk® App Store website at the address <https://apps.autodesk.com/>.

The Supplier provides the Customer (as defined below) an access to the Solution by subscribing to one of the offers proposed by the Supplier (hereinafter referred to as the "Offer") on the Autodesk® App Store. The specific conditions of price and duration of access are mentioned on the Autodesk® App Store.

THE FOLLOWING IS THEREFORE NOW PROVIDED AND AGREED

1. DÉFINITIONS

The terms and expressions identified by a capital letter have the meanings defined below:

« Agreement »	means these "General Terms and Conditions of the WISEBIM AI FOR AUTODESK® REVIT® solution supply, the "General Conditions of Use of the Solution" as well as the special conditions of the Offer subscribed by the Customer available on the Supplier's website.
« Customer »	means any individual or entity subscribing to an Offer for his or its professional purposes and according to the purposes and conditions provided for herein.
« Personal Data »	means any information defined as such by the French General Data Protection Regulation n° 2016/679 of April 27, 2016 (the "GDPR").
« Supplier »	has the meaning given to it in the Preamble.
« Offer »	has the meaning given to it in the Preamble.
« Party(ies) »	refers to the Customer or the Supplier
« Services »	means all the functions and services offered by the Supplier under the Agreement, in particular the delivery of the Solution, maintenance and support services, as well as other specific services associated with the subscribed Offer.
« Solution »	has the meaning given to it in the Preamble.
« User(s) »	means any natural person to whom the Customer gives, under his responsibility and on his behalf, effective access to the Solution, by using its ID for Autodesk® Revit® and subject to the General Conditions of Use of the Solution.

2. CONTRACTUAL DOCUMENTS

The Agreement between the Parties includes the following contractual documents:

- This document entitled "General Terms and Conditions of the WISEBIM AI FOR AUTODESK® REVIT® Solution supply;
- The appendix "General Conditions of Use of the Solution";
- The specific conditions of the Offer subscribed by the Customer available online at: <https://apps.autodesk.com/>.

In the event of inconsistency between the General Terms and Conditions of WISEBIM AI FOR AUTODESK® REVIT® Solution supply and the specific conditions of the Offer subscribed by the Customer, the latter shall prevail

In the event of inconsistency between the provisions of the General Terms and Conditions of WISEBIM AI FOR AUTODESK® REVIT® Solution supply and / or the specific conditions of the Offer subscribed by the Customer and those of the General Conditions of Use of the Solution, the former shall prevail.

3. OBJECT

The purpose of this Agreement is to determine the conditions under which the Supplier provides the Services and grants the Customer access to the Solution.

4. DURATION

4.1 Duration

The Agreement comes into effect as soon as the Customer uses the Solution and is valid during the period defined in the specific conditions of the free trial or the Offer subscribed by the Customer.

4.2 Termination by the customer

The customer can terminate his subscription at any time on his user account. The contract will then automatically end on its expiration date.

5. SUPPLY OF THE SOLUTION

5.1 Access to the Solution

The Supplier makes the Solution available to the Customer during the period defined in the specific conditions of the Offer subscribed by the Customer.

The Customer will designate the Users to whom he gives access to the Solution, subject to the respect by the Users of the General Conditions of Use of the Solution. As part of the access to the Solution and the Services, the Customer is responsible for the respect by its Users of the General Conditions of Use of the Solution.

The Customer is committed to subscribe to and make available to its Users necessary electronic communication services enabling a connection to the network otherwise no access to the Solution is possible.

Access to the Solution by the Customer and its Users can be done at any time excepting during the maintenance periods of the Solution, set at the discretion of the Supplier.

The Supplier cannot be considered as responsible for any inability to access or dysfunction of the solution for reasons external or not attributable to the Supplier.

5.2 Confidentiality of identifiers details

Access to the Solution by the User is carried out using its ID for Autodesk® Revit®.

The Customer must inform the Supplier without delay if he notices any security breach linked in particular to the communication or misappropriation of its ID for Autodesk® Revit®, so that the Supplier can take any appropriate measures without delay to solve the security problem.

6. LICENCE

The Supplier grants the Customer and its Users a personal, non-exclusive and non-transferable right to use the Solution, throughout the duration of the Agreement, for the whole world.

The Customer and its Users may only use the Solution in compliance with the General Conditions of Use of the Solution. Failing this may result in the removal of all access to the Solution without compensation.

Likewise, the Customer and its Users may only use the Solution while respecting the destination and purpose of its various functionalities, excluding any other use or purpose.

The Customer and its Users may under no circumstances make the Solution available to a third party, and strictly refrain from, but not limited to, any adaptation, modification, translation, arrangement, dissemination, decompilation of the Solution.

7. SUPPORT AND MAINTENANCE

7.1 Technical support

This service consists of providing the Customer and Users with the support and technical explanations necessary for the correct use of the Solution and providing all useful information to benefit from the Solution.

This assistance is provided by e-mail.

7.2 Corrective Maintenance

The Supplier shall take charge of maintaining the Solution in operational condition, and insure correction or bypassing of operational incidents.

In case of malfunction, difficulty or incident, the Customer may send the Supplier an intervention request including the most precise description of the encountered incident.

The Supplier's maintenance desk can be contacted by e-mail. The Supplier takes care of the resolution of incidents from Monday to Friday excluding public holidays, in a time slot between 9 a.m. and 4 p.m (GMT Paris).

The Supplier's maintenance service operates in English and French.

7.3 Technical updates and upgrades

The Supplier reserves the right to update and modify the Solution at all times.

The Supplier will provide the Customer with updates and new versions of the Solution, at no additional cost for the Customer.

In the event of a substantial change in the Solution's main functionalities, the Supplier will inform the Customer at least fifteen (15) days before the update of the Solution.

The Supplier has no obligation relating to any functional or technical modification to take into account a specific Customer need.

8. FINANCIAL CONDITIONS

8.1 Cost

The price applicable to the Services is defined in the Autodesk® App Store and it is indicated in united states dollars.

8.2 Payment

When buying the add-on from Autodesk App Store the Customer must refer to Autodesk Privacy Statement (<https://www.autodesk.com/company/legal-notices-trademarks/privacy-statement>) and Paypal Privacy Statement (<https://www.paypal.com/us/legalhub/privacy-full>)

In accordance with L.441-6 article of the French Commercial Code, a payment failure on the due date of an uncontested invoice will result in the invoicing of late interest equal to three (3) times the legal interest rate, calculated per each day of delay, until the date of actual payment, and a lump sum compensation of forty (40) euros.

Likewise, in case of late payment, the Supplier may automatically suspend the Customer's access to the Solution. However, this suspension cannot be considered as a termination of the Agreement by the Supplier, nor give rise to any right to compensation for the Customer.

In the case of a subscription, depending on the duration of the subscription chosen by the Customer, the subscription price is payable monthly or annually. Payment shall be made, in arrears (payment in advance), at the time of subscription to the Solution, and then each month or year, by direct debit until the subscription is terminated, whether the termination is at the Customer's initiative or that of the Supplier.

8.3 Methods of payment

Only payments by Paypal are accepted by the Supplier.

9. GUARANTEES

The Supplier guarantees that it holds all the rights necessary to grant the Customer the right to use the Solution as stipulated in the Agreement.

The Supplier guarantees the Customer against any eviction, and in particular against any request or action by a third party alleging that all or part of the Solution infringes its intellectual property rights.

10. LIABILITY

10.1 Limitation of liability

The Supplier will only be liable for the repair of direct and foreseeable damages resulting from the performance of the Services. The Supplier may in no case be held liable for any indirect or unforeseeable damage to the Customer or to third parties, which

includes in particular any lost profit, any loss, inaccuracy or corruption of files or data, any commercial damage, any loss of turnover, business or profits, loss of goodwill, loss of opportunity, related to or arising from the non-performance or faulty performance of the Services.

The Supplier may not be held responsible for any consequences and any direct or indirect damage, related to the use of the Solution by the Customer and / or its Users, in violation of the General Conditions of Use of the Solution.

10.2 Limit of liability

In all cases where it could be sought, the Supplier's liability under the Agreement, for all cumulative damage suffered during a period of twelve (12) consecutive months, may not exceed the price of the Services paid by the Customer to the Supplier for the considered period.

10.3 Specific exclusions

The Solution was designed for professionals of the construction industry. Under no circumstances can the use of the Solution by a Customer be considered by the Customer or by a third party as an involvement of the Supplier, in any capacity whatsoever, in the context of any operation related to the site, nor an intervention by the Supplier in the act of building, designing, renovating, maintaining, operating, managing or dismantling.

The Supplier can in no way be considered as a subcontractor and / or prime contractor of the Customer.

The Solution is only a tool available to the Customer, and the Supplier is not responsible for the use made of it by the Customer, even if he is informed of this use.

The Customer guarantees the Supplier with regard to all claims, actions, lawsuits, proceedings, obligations, damages, settlements, penalties, fines, costs or charges, incurred by any third party whatsoever as a result of the actual or supposed use of the Solution by the Customer.

The Customer is warned of the technical hazards inherent in the Internet and of the network and therefore access interruptions that may result therefrom. Consequently, the Supplier will not be held responsible for any unavailability or slowdown of the Solution.

11. FORCE MAJEURE

Neither Party can be held responsible for any breach of its obligations under the Agreement, if such breach results from a case of force majeure.

Are considered as cases of force majeure, in addition to those usually retained by the jurisprudence of French courts and tribunals, and among others: wars, social unrest (strikes or lock-out situations), attacks, bad weather, epidemics, earthquakes, floods, water damage, fires, blockage of means of communication, transport or supply (including telecommunications network), etc.

The prevented Party must immediately inform the other Party of its inability to perform its contractual obligations. Force majeure suspends the obligations arising from the Agreement for the duration of its existence. However, if the force majeure should last for a period exceeding thirty (30) days, each of the Parties may terminate the Agreement, without this termination being considered as a breach. The termination, in such a case, must be notified by registered letter with acknowledgment of receipt and will take effect on the date of receipt of said letter.

12. CONFIDENTIALITY

The Parties shall consider as strictly confidential all information, communications, letters and emails, of any nature whatsoever and on any medium whatsoever, transmitted by one of the Parties to the other, from time to time of the execution of the Agreement.

Each of the Parties shall take all measures to ensure compliance with this obligation of confidentiality and refrains from disclosing to any natural or legal person, either directly or indirectly, the confidential information of which it becomes aware in the context of the Agreement, for purposes other than the execution of the Agreement.

Each of the Parties shall transmit the confidential information received only to members of its staff, responsible for participating in the performance of the Agreement, who have been informed of the confidential nature of this information.

The commitments entered into by the Parties under this article will survive the expiration of the Agreement for a period of five (5) years.

It is expressly stipulated that the confidentiality obligations provided in the Agreement will not apply with regard to confidential information disclosed by a Party but which:

- would be widely known to the public at the time of transmission, or would become so afterwards, regardless of any breach of the duty of confidentiality;

- would be known by the Party for which it was intended before it was transmitted to it by the other Party, provided that the receiving Party can validly justify having had prior knowledge of it;
- would have been communicated by a third party in a lawful manner and received in good faith;
- have been the subject of a request from an administration or the judicial authority; or
- constitute information the use or disclosure of which has been specifically authorized in writing by the other Party

13. DATA

13.1 Storage

The Customer's attention is drawn to the need to keep a copy of all information communicated and stored on the Supplier's servers as part of the use of the Services and the Solution.

The Supplier excludes all liability in the event of loss or theft of data resulting from a malicious or fraudulent act or technical incidents of any kind.

The Supplier is not responsible for the content of this data and in particular excludes any liability whatsoever in the event of processing by the Customer and / or its Users of data the nature of which would be contrary to the laws and regulations in force.

13.2 Data reversibility

At the end of the Agreement, the Customer has a period of seven (7) days (renewable once at the Customer's request) to retrieve all of the data stored, exchanged, communicated by the Customer on the Supplier's servers in the context of the use of the Services and the Solution by the Customer, subject to the stipulations of article 14.3 below.

13.3 Data retention by the Supplier

The Supplier may store a copy of the data communicated by the Customer in the context of the use of the Solution and the Services by the Customer, for a period of up to 5 years. The Supplier undertakes to put in place the appropriate security measures.

13.4 Customer property

The Supplier does not claim ownership of the information, whatever its medium or content, that the Customer displays, downloads, enters, provides, communicates, submits, stores during the use by the Customer and / or its Users, Services and Solution.

However, the Customer agrees and accepts that by displaying, downloading, entering, providing, submitting content and information, whatever its medium, in the context of the use of the Services and the Solution, the Customer grants in doing so to the Supplier the non-exclusive and royalty-free permission to use, copy, distribute, transmit, display, modify, delete, publish and translate such content to the extent reasonably necessary to enable the Supplier to provide and operate the Services and the Solution and to develop its technologies by developing new services and options relating to the Solution.

13.5 Personal data

When using the Solution and the Services by the User and for the purposes of making the Solution available and providing the Services, Personal Data concerning Users are:

- ID and email address of the User to Autodesk® Revit® software;
- information relating to his visits and use of the Solution (in particular connection and traffic data);

These Personal Data are processed in the legitimate interest of the Supplier consisting in the administration, management of the Solution and the proper provision of the Services.

These data will be stored for a maximum period of 5 years.

This Personal Data may in certain cases be communicated to service providers and subcontractors, in particular the Supplier's IT (storage / hosting, CRM, emailing, etc.). The Supplier may also be required to communicate this Personal Data to public and / or judicial authorities, at their request, for the purposes of prevention, research, discovery and prosecution of criminal offenses.

Under the conditions of the regulations, Users can assert, at any time, their right to access, rectify and erase their Personal Data, their right to limit and oppose processing and their right to the portability of their Personal Data and to communicate the fate of their Personal Data in the event of death. These rights can be exercised by writing to contact@wisebim.fr.

The User can also submit a complaint to the National Commission for Computing and Liberties (CNIL) on the following page: <https://www.cnil.fr/fr/plaintes>, in the event that he considers that a Processing of Personal Data does not comply with applicable regulations.

14. INTELLECTUAL PROPERTY

All rights, titles and interests relating to the Solution including any element relating to the visuals, appearance and functional elements of the Solution, any source code, computer code (including HTML), application, audio, music, video and other media, drawing, animation, interface, documentation, graphic elements and logo relating to the Solution, are the exclusive property of the Supplier. The "WISEBIM" brand constitute the property of the Supplier.

Autodesk® and Revit® brands constitute the property of Autodesk®

The User must respect the intellectual property rights of the Supplier. He must in particular take care not to reproduce and distribute all or part of the elements making up the Solution.

Any disassembly, decompilation, extraction, copy of any of the elements constituting the Solution, in whole or in part, without the Supplier's authorization is strictly prohibited.

Anyone who does not respect this prohibition would incur criminal and civil liability and could be prosecuted in particular on the basis of counterfeiting.

Any total or partial representation of the site by any means whatsoever without express authorization is prohibited and constitutes an infringement punishable by articles L335-2 and following of the French Intellectual Property Code, i.e. five years' imprisonment and a fine of 500,000 euros.

Criminal penalties for copyright infringement are three years' imprisonment and a fine of 300,000 euros. When the crimes were committed by an organized gang, the penalties are increased to five years in prison and a fine of 500,000 euros.

The User is informed and accepts that by displaying, downloading, entering, providing, submitting content and information, whatever its medium, as part of the use of the Services and the Solution, the Supplier benefits from the non-exclusive and royalty-free permission to use, copy, distribute, transmit, display, modify, delete, publish and translate such content to the extent reasonably necessary to enable Supplier to provide and operate the Services and the Solution and to do evolve its technologies by developing new services and options relating to the Solution.

15. ADVERTISING

The Supplier may communicate the name of the Customer on its advertising and commercial media.

16. SUBCONTRACTING

The Supplier reserves the right to subcontract part or the totality of its obligations under the Agreement.

17. GENERAL PROVISIONS

In the event that one or more clauses of the Agreement would come to be declared null by a court decision or would prove impossible to implement, the validity of the other provisions will not be affected and the Parties undertake to negotiate in good faith a replacement provision.

The titles of the articles of the Agreement are included as a convenience. By express agreement between the Parties, these titles may in no case be used to interpret any provision whatsoever of the Agreement.

The fact that a Party does not claim the application of any provision of this Agreement or tolerate its non-performance temporarily or permanently, may in no case be interpreted as a waiver by this Party to exercise the rights it holds hereunder.

The Parties recognize that they are acting as independent co-contractors. The Agreement may not have the effect of creating between itself a company or association of any kind.

The Agreement may not be assigned or transmitted in any form whatsoever without the prior written consent of the other Party. The Supplier nevertheless reserves the right to transfer the Agreement as part of the transfer of its activities.

This Agreement is also drawn up in French. In case of contradiction, only the French version will prevail between the Parties.

18. APPLICABLE LAW - JURISDICTION

The Agreement is governed by the provisions of French law.

The Parties agree by express agreement that any dispute which may arise in connection with the formation, interpretation or execution of the Agreement will fall under the exclusive jurisdiction of the Paris Commercial Court.

APPENDIX: GENERAL CONDITIONS OF USE OF THE WISEBIM AI FOR AUTODESK® REVIT® SOLUTION

1. DEFINITION

« Personal Data »	means any information defined as such by the General Data Protection Regulation n° 2016/679 of April 27, 2016 (the "GDPR").
« Supplier »	means the company WISEBIM SAS which makes the Solution available to the Users through the Autodesk® App Store.
« Offer »	means one of the subscription offers provided by the Supplier to access the Solution.
« Services »	refers to all the functions and services provided by the Supplier under the Agreement, in particular the provision of the Solution, the provision of maintenance and support services, as well as other specific services associated with the Subscribed Offer.
« Solution »	refers to the add-in solution in Autodesk® Revit®, developed and made by the Supplier, intended for building professionals, making it possible to produce elements directly in Autodesk® Revit® from digitized 2D plans. The name of the add-in solution is "WiseBIM AI for Autodesk® Revit®".
« User(s) »	refers to any individual or entity subscribing for professional purposes and according to the purposes and conditions provided for herein, to an Offer.

2. OBJECT

The purpose of these General Conditions of Use of the Solution is to define the rights and obligations of Users in the context of their use of the Solution.

These General Conditions of Use are deemed to have been accepted by Users upon their first use of the Solution. These General Conditions of Use may be modified at any time in order to be adapted to the technological, commercial and legal environment. Users will be informed of any substantial modification to their subscription e-mail. The General Conditions of Use as amended must be accepted in order to continue to use the Solution.

3. TERMS OF ACCESS

As part of the User access to the Solution, the following information is required:

- User's ID for Autodesk® Revit®
- User's e-mail address

4. FREE 30-DAY TRIAL

To prevent any abuse, during the free trial period, the Supplier reserves the right to restrict access to the Solution beyond the automatic generation of 15 models.

5. LAWFUL CONTENT

As part of the use of the Solution, the User undertakes not to distribute or send any content:

- contravening the laws in force;
- harmful, illegal, dangerous, abusive, slanderous, pornographic, defamatory, invasive of privacy or likely to harm children;
- who harass, degrade, intimidate or have a hateful character towards an individual or a group because of his religion, his sex, his sexual orientation, his race, his ethnicity, his age or his handicap;
- usurping the identity of a third party;
- containing personal information belonging to another person and without their consent;
- false, deceptive, seeking to misinform or create a diversion;
- infringing the terms of a patent, registered trademark, trade secret, copyright or other property right of any other person, or content which the user does not have the right to make available from the public in accordance with a legal provision, a contractual or fiduciary relationship;
- promoting illegal services or offering the sale of products which is prohibited or regulated by current legislation, including all items whose sale is prohibited or regulated by French law;
- containing computer viruses or any other computer code, files and programs intended to destroy or reduce the proper functioning of any computer equipment (software or hardware) or telecommunications;
- which interrupt normal connections by sending an excessive number of messages to the service (flooding attack) or which generally interrupt normal access to the service;
- who use false email addresses or false headers or generally manipulate identifiers in order to conceal the origin of the content transmitted via the service.

6. SYNCHRONIZATION

The User is reminded of the importance of synchronizing / updating the Solution each time the Services are accessed in order to have the latest information and up-to-date data.

The Supplier excludes all liability in the event of access to erroneous or obsolete information due to a lack of synchronization or updating of the Solution.

7. SPAM PROHIBITION

As part of the communication features of the Services and the Solution, the User is reminded that it is forbidden to send unsolicited advertising messages. The use of the Supplier's communication terminals by "chain letters", "junk mail", "spam" is strictly prohibited.

8. INTELLECTUAL PROPERTY

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Any disassembly, decompilation, extraction, copy of any of the elements constituting the Solution, in whole or in part, without the Supplier's authorization is strictly prohibited.

Anyone who does not respect this prohibition would incur criminal and civil liability and could be prosecuted in particular on the basis of counterfeiting.

Any total or partial representation of the site by any means whatsoever without express authorization is prohibited and constitutes an infringement punishable by articles L335-2 and following of the French Intellectual Property Code, i.e. five years' imprisonment and a fine of 500,000 euros.

Criminal penalties for copyright infringement are three years' imprisonment and a fine of 300,000 euros. When the crimes were committed by an organized gang, the penalties are increased to five years in prison and a fine of 500,000 euros.

The User is informed and accepts that by displaying, downloading, entering, providing, submitting content and information, whatever its medium, as part of the use of the Services and the Solution, the Supplier benefits from the non-exclusive and royalty-free permission to use, copy, distribute, transmit, display, modify, delete, publish and translate such content to the extent reasonably necessary to enable Supplier to provide and operate the Services and the Solution and to do evolve its technologies by developing new services and options relating to the Solution.

9. PERSONAL DATA PROCESSING

When using the Solution and the Services by the User and for the purposes of making the Solution available and providing the Services, Personal Data concerning Users are:

- ID and email address of the User to Autodesk® Revit® software;
- information relating to his visits and use of the Solution (in particular connection and traffic data);

These Personal Data are processed in the legitimate interest of the Supplier consisting in the administration, management of the Solution and the proper provision of the Services.

These data will be stored for a maximum period of 5 years.

This Personal Data may in certain cases be communicated to service providers and subcontractors, in particular the Supplier's IT (storage / hosting, CRM, emailing, etc.). The Supplier may also be required to communicate this Personal Data to public and / or judicial authorities, at their request, for the purposes of prevention, research, discovery and prosecution of criminal offenses.

Under the conditions of the regulations, Users can assert, at any time, their right to access, rectify and erase their Personal Data, their right to limit and oppose processing and their right to the portability of their Personal Data and to communicate the fate of their Personal Data in the event of death. These rights can be exercised by writing to contact@wisebim.fr.

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