

Optigo Visual BACnet Terms and Conditions

These Optigo Visual BACnet Terms and Conditions (“**Terms and Conditions**”) constitute an agreement by and between the Subscriber and Optigo. Capitalized terms have the meaning(s) ascribed thereto in these Terms and Conditions and the broader Agreement. Now, for and in consideration of the mutual covenants and agreements contained herein, the sufficiency of which is confirmed by each Party, the Parties covenant and agree with each other as follows:

1. Definitions. As used in the Agreement:

- 1.1. “**Add-Ons**” means plugins, extensions, add-ons or other software products or services that interoperate with or are integrated into Optigo’s Product Suite;
- 1.2. “**Affiliate**” refers to Person which, directly or indirectly, is Owned or Controlled by the applicable Party to the Agreement;
- 1.3. “**Agreement**” means these Terms and Conditions;
- 1.4. “**Anonymous Data**” means Subscriber Data and insights derived from Subscriber Data that has been edited to the extent required to remove information, including Personally Identifiable Information, through which a Person may be reasonably identified;
- 1.5. “**API**” means application programming interface;
- 1.6. “**Authorized Device**” means a specific Device that is located at the Physical Location underlying an applicable Site;
- 1.7. “**Authorized User**” means one of Subscriber’s (or of Subscriber’s Affiliates’) employees, contractors, officers, directors, or agents that is authorized by Subscriber to create or use an Optigo Account. References to “**Authorized User**” in the Agreement will be deemed to also be references to Subscriber;
- 1.8. “**Confidential Information**” means all information received by one Party (the “**Recipient**”) to the other Party (the “**Discloser**”) during the Subscription Term, verbally or in writing, that is designated as confidential when such disclosure is made, and includes: (i) the terms and conditions, but not the existence, of the Agreement, including the Fees and other amounts payable by Subscriber hereunder; (ii) Personally Identifiable Information disclosed in compliance with the Agreement; and (iii) Subscriber Data that is not Anonymous Data. Confidential Information does not include information if: (i) it was already in the possession of Discloser at the time of disclosure; (ii) it is generally available to the public or after disclosure becomes generally available to the public; (iii) it has been received by Discloser from a third party without restriction on disclosure; or (iv) it is independently developed by Discloser without violation of the terms of the Agreement. The burden of proving that information may be disclosed because it does not fall within the definition of Confidential Information shall be on the Recipient.
- 1.9. “**Consulting Services**” means professional services provided by Optigo to Subscriber, including training services, installation, integration, or other consulting services, in connection with or otherwise supporting Optigo’s Product Suite but which themselves are not considered part of Optigo’s Product Suite herein;
- 1.10. “**Control**” refers to the power to direct the management or affairs of a Person, including an applicable Party to the Agreement;
- 1.11. “**Dedicated Cloud**” means to be hosted on an isolated cloud infrastructure exclusively provisioned to the Subscriber as its single tenant;
- 1.12. “**Device**” means a physical or virtualized hardware device that utilizes the BACnet communication protocol;

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- 1.13. “**Documentation**” means the documentation published by Optigo respecting Optigo’s Product Suite or Consulting Services, including APIs, SDKs, VB, and the Service, and which Optigo may amend, supersede, delete, create, or publish at any time in its sole discretion;
- 1.14. “**EULA**” means the most recent version of the Visual BACnet End User License Agreement located at <https://optigo.net/visualbacnet-EULA>, which Optigo may change in its sole discretion from time to time and at any time;
- 1.15. “**Feedback**” means comments, information, questions, data, ideas, description of processes, or other information about Optigo’s current or potential products and services, including Optigo’s Product Suite or Consulting Services;
- 1.16. “**Fees**” means the fees payable by Subscriber for the Subscription;
- 1.17. “**Laws**” means applicable local, provincial, state, federal and international laws and regulations, including those related to export control and electronic communications;
- 1.18. “**Optigo Account**” means a user account created by or for an Authorized User to use and access the Service pursuant to the Agreement, the EULA, and the Documentation;
- 1.19. “**Optigo’s Product Suite**” means any of Optigo’s products and services other than Consulting Services, including VB, the Service, an Optigo website, and any products, services, information, or other material purchased or obtained through such products or services;
- 1.20. “**Owned**” means the beneficial ownership of at least 50% of the voting equity securities or other equivalent voting interests of a Person.
- 1.21. “**Party**” means either Optigo or Subscriber, as applicable, and “**Parties**” means both Optigo and Subscriber;
- 1.22. “**Permitted Reviewer**” means the respective directors, officers, employees, contractors and advisors of Recipient and its Affiliates that have a bona fide need to know the specific Confidential Information, and who have each entered into a written nondisclosure agreement on terms no less onerous than those contained herein obligating it to protect the Confidential Information. Third parties used by Optigo in connection with Subsections 2.4.b), 7.3, and 7.6 constitute Permitted Reviewers of Optigo;
- 1.23. “**Person**” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, governmental authority, or other similar entity;
- 1.24. “**Personally Identifiable Information**” means any personal data, personal information, or personally identifiable information related to an individual, and includes credit or debit card numbers, financial account numbers or wire instructions, government issued identification numbers (including Social Security Numbers, Social Insurance Numbers, passport numbers), biometric information, personal health information (or other information protected under any applicable health data protection laws), personal information of children protected under any child data protection laws, and any other information or combinations of information that falls within the definition of “special categories of data” under any applicable law relating to privacy and data protection;
- 1.25. “**Physical Location**” means a physical location housing a BACnet network, which can include an entire building, a floor or other part thereof, or a campus of connected buildings, provided that the maximum extent and allowable size of what may constitute a Physical Location will be subject to Optigo’s sole discretion;

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- 1.26. “**Privacy Policy**” means the most recent version of Optigo’s privacy policy located at <https://optigo.net/privacy>, which Optigo may change in its sole discretion from time to time and at any time;
- 1.27. “**Remedy Period**” has the meaning ascribed thereto in Section 9.1;
- 1.28. “**SDK**” means software development kit;
- 1.29. “**Seats**” means the maximum number of Optigo Accounts that may exist at any one time during the Subscription Term;
- 1.30. “**Service**” means VB as a service, as more fully described in the Agreement;
- 1.31. “**Site**” means a digital representation of some or all of the Devices located at one Physical Location;
- 1.32. “**Site Term**” means the length of time for which a Site is created by an Authorized User within the Service, and unless otherwise determined by the Authorized User will be one year;
- 1.33. “**Subscriber**” means Microsoft Corporation;
- 1.34. “**Subscriber Data**” means any data, content, code, video, images, or other materials of any type that Subscriber uploads, submits, or otherwise transmits to the Service, including a Device Analysis File;
- 1.35. “**Subscription**” means a limited, revocable, non-sublicensable, non-transferable, non-exclusive license to access and use the Service in accordance with the Agreement and the Documentation;
- 1.36. “**Subscription Term**” has the meaning ascribed thereto in Subsection 2.1.a);
- 1.37. “**Taxes**” means applicable sales, use, excise and other taxes and applicable export and import fees, customs duties and similar charges;
- 1.38. “**Third Party Products**” means hardware, software, and services (including internet access) that are not manufactured, produced, or otherwise provided by Optigo, even if recommended thereby;
- 1.39. “**View-Only Account**” means a user account created by Subscriber for an individual other than an Authorized User, providing such individual with limited access to the Service as described more fully in the Agreement and the Documentation; and
- 1.40. “**VB**” means Visual BACnet, including the intellectual property, technology, hardware, and software that power Visual BACnet and its successors, and is used by Optigo to deliver the Service to Subscriber.
2. The Service.
- 2.1. Details of Subscription.
- a) Subject to the terms and conditions herein, Optigo hereby grants to Subscriber a Subscription for a term of 3 years, commencing on the date that the first Authorized User accesses the Service (the “**Subscription Term**”).
- b) The Service will be hosted directly or indirectly by Optigo on a Dedicated Cloud.
- c) The Subscription will terminate on the last day of the Subscription Term.
- d) The Service will include an unlimited number of Seats.

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- e) The Service will include one Site with up to 18,000 Authorized Devices.
- 2.2. Subscription Term Supersedes Other Time Periods. If the Service provides a time limited feature other than in connection with the Subscription Term, for example the ability to create a Site or activate a feature for a certain amount of time, such time limit may not extend past the Subscription Term, and will terminate at the conclusion of the Subscription Term. No reduction in Fees, refund, or credit will be applicable if the time limit applicable to a feature within the Service is cut short by the end of the Subscription Term.
- 2.3. Client Software and Hardware. If Optigo provides the Subscriber with client software (for example, a desktop or mobile application) or hardware (for example, a physical capture tool) in connection with the Service, Subscriber may only use such software with the Service, subject to the Agreement and the Documentation.
- 2.4. Nature of the Service. Subscriber acknowledges and agrees that:
 - a) the Service is subscription based and hosted on and delivered over the cloud;
 - b) Optigo may subcontract some or all elements of the Service to third parties, provided that any such subcontracting arrangement will not relieve Optigo of any of its obligations hereunder;
 - c) the Service has not been designed to process or manage Personally Identifiable Information, and Subscriber may not upload to, or otherwise use the Service to collect, manage or process Personally Identifiable Information except as is strictly required in connection with creating an Optigo Account;
 - d) Optigo's obligations are not contingent on the delivery of any future functionality or features of Optigo's Product Suite or dependent on any oral or written public comments made by Optigo regarding future functionality or features thereof;
 - e) Optigo may make changes to the Service from time to time and at any time, including by adding or removing features and functions; and
 - f) certain rights provided to Authorized Users in the Agreement may require a valid Optigo Account to access.
- 2.5. Requirements to Access. Subscriber's use of the Service requires, and may be negatively affected by, Subscriber's access to Third Party Products, which are Subscriber's sole responsibility to identify, obtain, maintain, and finance. The Third Party Products required for Subscriber to use the Service are subject to change at any time without notice, and such changes may require Subscriber to make updates and upgrades to its Third Party Products at its sole cost and responsibility in order to use the Service at acceptable speeds or at all.
- 2.6. Subscriber's Development of Add-Ons. From time to time, Optigo may publish SDKs or APIs and associated Documentation to allow Subscriber to develop Add-Ons. Subscriber may not distribute its Add-Ons to third parties except in accordance with the Documentation and only with Optigo's prior written consent, which may be withheld in its sole discretion. Subscriber acknowledges and agrees that APIs may not be available at all times or at all.
- 2.7. Feedback. From time to time, Authorized Users may submit Feedback to Optigo. Optigo will hold all right, title, and interest in and to Feedback and may freely use, copy, disclose, license, distribute and exploit any Feedback in any manner without any obligation, royalty, or restriction based on intellectual property rights or otherwise, to anyone including the Authorized User that originally submitted the Feedback. Feedback will never be considered Subscriber's Confidential Information and nothing in the Agreement will limit Optigo's right to independently use, develop, evaluate, modify, market, buy, or sell products and services, whether incorporating Feedback or otherwise.

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- 2.8. Support and Maintenance. Optigo will provide Subscriber with a level of support and maintenance for the Service as set out in its support and maintenance policy.
- 2.9. Prohibitions on Use. Subscriber will ensure that use of the Service by all Authorized Users, and all Subscriber Data, is always compliant with the intended purpose of the Service and all Laws. Subscriber hereby covenants, represents, and warrants that none of Subscriber, Authorized User, or any user of a View-Only Account will:
- a) use Optigo's Product Suite in any way that violates any local, provincial, federal, or foreign law or regulation, or that is fraudulent, false, misleading, defamatory, obscene, or pornographic;
 - b) use Optigo's Product Suite in any way that is prohibited by the Agreement, the Documentation, or the EULA;
 - c) interfere with or circumvent mechanisms in Optigo's Product Suite intended to limit Subscriber's use thereof, or otherwise use the Service in a way to avoid payment of Fees;
 - d) abuse, interfere with, misuse, change, or disrupt Optigo's Product Suite, including the use thereof by third parties;
 - e) modify, disassemble, decompile, translate, prepare derivative works of, reverse engineer or otherwise attempt to obtain or derive the source code, underlying ideas, algorithms, file formats, or non-public APIs, of Optigo's Product Suite;
 - f) use Optigo's Product Suite or Consulting Services to develop produce, build, or market a product or service substantially similar to Optigo's Product Suite, or copy any features, functions or graphics of Optigo's Product Suite;
 - g) use Optigo's Product Suite to communicate any message or material that is harassing, libelous, threatening, obscene, indecent, would violate anyone's the intellectual property or publicity or privacy rights, that would give rise to civil liability, or that constitutes or encourages conduct that could constitute a criminal offense, under any applicable law or regulation;
 - h) upload or transmit any software, content, or code that does or is intended to damage, harm, disable, overburden, impair, destroy, disrupt or adversely affect the performance of Optigo's Product Suite, including viruses or programming routines intended to damage, surreptitiously intercept or expropriate any system, data or Personally Identifiable Information;
 - i) create a security vulnerability, denial of service attack or other disruptive activity, consume excessive bandwidth, or otherwise cause harm to Optigo's Product Suite, or Optigo's other customers and users;
 - j) rent, lease, reproduce, modify, adapt, create derivative works of, distribute, sell, sublicense, or transfer Optigo's Product Suite;
 - k) provide access to Optigo's Product Suite to anyone except an Authorized User or in connection with a View-Only Account;
 - l) remove or obscure any proprietary or other notices contained in Optigo's Product Suite; or
 - m) publicly disseminate negative information regarding the performance of Optigo's Product Suite or Consulting Services.

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3. Authorized Users.

- 3.1. Optigo Accounts. An Optigo Account is required for an Authorized User to access the Service. Only Authorized Users may register for or otherwise use an Optigo Account. Registration for and use of an Optigo Account requires the Authorized User to agree to and comply with the EULA. The number of Optigo Accounts that are active at any time may not exceed the number of Seats. Subscriber and the applicable Authorized User will provide true, full, and complete information requested by the Service in the creation of a Optigo Account, including user identification and contact details, and will always update and keep such information current during the Subscription Term.
- 3.2. Authorized Users. Subscriber is responsible for identifying which individuals will constitute Authorized Users and for managing Authorized Users. Subscriber is responsible for all actions of Authorized Users related to the Agreement, all of which will be deemed to be actions taken by Subscriber for the purposes of the Agreement. Subscriber will ensure that all Authorized Users comply with the Agreement, the Documentation, the EULA, and any other applicable Optigo policies. Any limitation applicable to Subscriber or an Authorized User in the Agreement will apply equally to the other.
- 3.3. View-Only Accounts. Subscriber is responsible for identifying which individuals will be granted a View-Only Account and for managing such individuals and accounts. Subscriber is responsible for all actions taken by a View-Only Account, all of which will be deemed to be actions taken by Subscriber for the purposes of the Agreement. Subscriber will ensure that all users of View-Only Accounts comply with the Agreement, the Documentation, the EULA, and any other applicable Optigo policies. Any limitation applicable to Subscriber or an Authorized User in the Agreement will apply equally to a user of a View-Only Account. Subscriber and the applicable individual using a View-Only Account will provide true, full, and complete information requested by the Service in the creation of a View-Only Account, including user identification and contact details, and will always update and keep such information current during the Subscription Term.
- 3.4. Unauthorized Access. Subscriber will immediately notify Optigo of any unauthorized use of the Service of which Subscriber becomes aware, including any unauthorized use of any Optigo Account or View-Only Account.
- 3.5. Removals and Suspension. Optigo has no obligation to monitor any content, including Subscriber Data, uploaded by Authorized Users to the Service. Nonetheless, Optigo may remove Subscriber Data from the Service or suspend some or all Authorized Users' or View-Only Accounts' access thereto if Optigo deems such action necessary based on a violation of the Agreement or in response to takedown requests that Optigo receives. Optigo will use commercially reasonable efforts to alert Subscriber when Optigo expects to take such action and to give Subscriber a reasonable opportunity to cure the applicable breach, but if Optigo determines that an Authorized User's or View-Only Accounts' actions endanger the operation of the Service or other users, Optigo may suspend Subscriber's or the applicable user's access immediately without notice. Subscriber will continue to be charged for the Service during any suspension period. Optigo will have no liability to Subscriber for removing or deleting Subscriber Data from or suspending access to the Service as described in this section.

4. Termination.

- 4.1. Termination. The Agreement will remain in full force and effect until terminated in compliance with this Section. The Agreement:
- a) will automatically terminate on the expiry of the Subscription Term;
 - b) may be terminated by either Party for convenience by providing 60 days' notice thereof to the other Party;

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- c) may be terminated either Party for cause, if the other Party breaches any of the material terms of the Agreement, including Subscriber's obligation to pay Fees in a timely fashion, but does not materially cure such breach within 30 days after notice thereof;
- d) may be terminated by either Party if the other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, cessation of business, liquidation, or assignment for the benefit of creditors;
- e) may be terminated by either Party in compliance with Section 9.1; and
- f) may be terminated by Optigo in compliance with Subsection 16.

4.2. Consequences of Termination. Upon the termination of the Agreement:

- a) the Subscription Term will terminate;
- b) all Sites on the Service will become inactive;
- c) no Authorized User will have any right to use or access the Service or any information or materials that Optigo otherwise makes available to Subscriber under the Agreement;
- d) Optigo may delete Subscriber Data and any Sites at any time and without notice;
- e) Sections (including the Subsections thereof) and Subsections 1, 2.6, 2.7, 2.9, 4.2, 5, 6, 7, 8, 9, and 10 will survive the termination of the Agreement; and
- f) no refund, credit, transfer, or other payment will be due from Optigo to Subscriber.

5. Intellectual Property Rights.

5.1. Optigo retains all rights. Subscriber is not granted a license to any software, including VB, by the Agreement. Optigo's Product Suite, all related or underlying technology, and any modifications or derivative works of the foregoing (including that based on or incorporating Feedback), and all of Optigo's other copyrights, patents, and trademarks are owned or licensed by Optigo, are protected by intellectual property laws, and Optigo and its licensors retain all right, title and interest therein and thereto. Subscriber will not copy, rent, lease, sell, distribute, or create derivative works based on the foregoing in whole or in part, by any means, except as expressly authorized in writing by Optigo. The Service is made available on a limited license or access basis, and no ownership right in or to the Service is conveyed to Subscriber, irrespective of the use of terms such as "purchase" or "sale" in connection therewith. Except as explicitly set out in the Agreement, Optigo reserves all rights regarding the Optigo Product Suite.

5.2. Rights to Subscriber Data. Subscriber retains all right, title and interest in and to Subscriber Data. Subscriber hereby grants to Optigo an unlimited, transferable, world-wide, royalty-free, fully paid-up, assignable, and irrevocable right to use the Subscriber Data to collect, transmit, store, process, access, copy, display, reproduce, use, and transmit Subscriber Data to:

- a) provide the Service to Subscriber;
- b) debug software problems and provide technical support to Subscriber; and
- c) create Anonymous Data for Optigo's business purposes, including the creation or improvement of products and services (including Optigo's Product Suite and Consulting Services), provision of technical support, and improvement of its processes and procedures. Optigo will hold all right, title, and interest in and to Anonymous Data.

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5.3. Subscriber Data Requirements. Subscriber acknowledges, represents, warrants, and covenants that:

- a) it has obtained and will obtain all necessary rights, releases, and permissions to provide all Subscriber Data to Optigo and the Service, and to grant the rights granted by Subscriber to Optigo in the Agreement;
- b) Subscriber Data and its transfer to and use as contemplated hereunder do not violate any Laws or rights of any third party, including any intellectual property rights, rights of privacy, or rights of publicity, and any use, collection and disclosure authorized herein is not inconsistent with the terms of any applicable privacy policies;
- c) Subscriber Data does and will not contain any Personally Identifiable Information except as is strictly required in connection with creating an Optigo Account or View-Only Account; and
- d) use of the Service necessarily involves transmission of Subscriber Data over networks that Optigo does not Own, operate, or Control, and Optigo is not responsible for any of Subscriber Data lost, altered, intercepted, or stored across such networks. Optigo does not guarantee that its security procedures are or will be error-free, that transmissions of Subscriber Data will always be secure or that unauthorized third parties will never be able to defeat Optigo's security measures or those of Optigo's third party service providers. Optigo assumes no responsibility or liability for Subscriber Data, and Subscriber will be solely responsible for Subscriber Data and the consequences of using, disclosing, storing, or transmitting it hereunder.

6. Subscriber Indemnification.

6.1. Indemnification. Subscriber will, at its expense, indemnify, defend and hold harmless Optigo, its Affiliates, officers, directors, employees, consultants, agents, suppliers, and resellers from any and all third party claims, suits, actions, proceedings, liability, damages, losses, and costs (including attorneys' fees) (an "**Action**") related to:

- a) Subscriber's unauthorized or illegal use of the Service;
- b) Subscriber's noncompliance with or breach of the Agreement, including with respect to the content of Subscriber Data;
- c) Taxes that were applicable to Subscriber in connection with this Agreement but which Optigo did not appropriately charge to Subscriber in connection therewith;
- d) Subscriber's use of Third Party Products; and
- e) the unauthorized use of an Optigo Account.

6.2. Procedure for Indemnification. In the event of an Action for which Optigo wishes to claim indemnification hereunder, Optigo will: notify Subscriber in writing in sufficient time for Subscriber to respond thereto without prejudice; give Subscriber sole control of the defense or settlement of such an Action; and provide Subscriber (at Subscriber's sole expense) with any and all information and assistance reasonably requested by Subscriber to handle the defense or settlement of the Action. Subscriber will not accept any settlement that (i) imposes an obligation on Optigo; (ii) requires Optigo to make an admission; or (iii) imposes liability not covered by these indemnifications or places restrictions on Optigo without Optigo's prior written consent.

7. Payment.

7.1. Fees. Subscriber will timely pay Optigo the Fees set out in, and in accordance with, the Agreement. All Fees will be paid in US dollars. Fees are due when invoiced by Optigo.

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- 7.2. No Refunds, Transfers, or Cancellations of Fees. Other than as expressly set forth herein, Fees and all amounts directly or indirectly owing or paid by Subscriber hereunder are non-refundable, non-transferable, non-cancelable, and non-creditable.
- 7.3. Credit Card Payments. If Subscriber is paying Optigo by credit card, Subscriber hereby authorizes Optigo to charge Subscriber's credit card or bank account for all Fees. Subscriber further authorizes Optigo to use a third party to process payments, and consents to the disclosure of Subscriber's payment information to such third party.
- 7.4. Non-Payment. In the event Optigo is unable to collect Fees owed by Subscriber when due, Optigo may take any steps it deems necessary or desirable to collect such Fees, and Subscriber will be responsible for all costs and expenses actually incurred by Optigo in connection with such collection activity, including collection fees, court costs and attorneys' fees. Optigo may collect interest at the lesser of 1.5% per month or the highest amount permitted by law on any amounts not paid when due.
- 7.5. Taxes. Prices set out herein, including those on which Fees are based, exclude Taxes, which will be added to an applicable invoice related to the jurisdiction where the payment is either made or received. To the extent that any such Taxes are payable by Optigo, Subscriber must pay to Optigo the amount of such Taxes in addition to any amounts owed to Optigo hereunder unless Subscriber has obtained an exemption from relevant Taxes as of the time such Taxes are levied or assessed, in which case, Subscriber may provide to Optigo any such exemption information, and Optigo will use commercially reasonable efforts to provide such invoicing documents as may enable Subscriber to obtain a refund or credit for the amount so paid from any relevant revenue authority if such a refund or credit is available.
- 7.6. Audit Rights. Optigo, including through a third party auditor of Optigo's choice, may audit Subscriber's use of the Service from time to time during the Subscription Term to ensure compliance with the Agreement after providing not less than two weeks' notice thereof to Subscriber. Subscriber will provide all reasonable assistance to Optigo or its auditor in connection with such audit. If the audit reveals an underpayment by Subscriber, Optigo may immediately invoice Subscriber therefor and the amount of such underpayment will constitute Fees that are, among other things, subject to Subsection 7.4 hereunder. Optigo will bear all costs of the audit, provided that if the audit reveals that the amount of underpayment by Subscriber in respect of any one-year period is equal to or greater than 5% of the Fees actually paid by (or invoiced to) Subscriber during such period, Subscriber will reimburse Optigo for all costs of the audit.
8. Confidentiality.
- 8.1. Restrictions on use of Confidential Information. Recipient will: (i) protect Confidential Information as it does its own valuable and sensitive information of a similar nature, but in no event less than reasonable care; (ii) not use Confidential Information for any purpose outside the scope of the Agreement; (iii) not disclose Confidential Information except to a Permitted Reviewer or as otherwise permitted herein.
- 8.2. Compelled Disclosure. Recipient may disclose Confidential Information if required to do so under any federal, state, or local law, statute, rule or regulation, stock exchange, subpoena or legal process; provided, however, that: (i) Recipient will provide Discloser with prompt notice of any request that it disclose Confidential Information, sufficient to allow Discloser to object to the request or seek an appropriate protective order or, if such notice is prohibited by law, Recipient will use good faith efforts to disclose only the minimum amount of Confidential Information required to be disclosed under the applicable legal mandate; and (ii) Recipient will refer the request to Discloser and will provide reasonable assistance to Discloser, at Discloser's cost, in opposing such disclosure or seeking a protective order, unless Recipient is explicitly prohibited from doing so by law or court order.
- 8.3. Return or Destruction of Confidential Information. Upon the request of Discloser on or after the termination of the Agreement, Recipient will return or destroy all of Discloser's Confidential

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Information provided that: (i) Recipient will be permitted to retain copies of Discloser's Confidential Information solely for archival, audit, disaster recovery, legal and/or regulatory purposes; and (ii) Recipient will not be required to search archived electronic back-up files of its computer systems (including the systems on which Optigo uses to operate VB and the Service) for Confidential Information in order to purge the same from its archived files; provided further, that any Confidential Information so retained by Recipient will (x) remain subject to the obligations and restrictions contained in the Agreement, (y) will be maintained in accordance with Recipient's document retention policies and procedures, and (z) Recipient will not use the retained Confidential Information for any other purpose.

9. LIMITED WARRANTIES AND LIABILITIES.

9.1. Limited Performance Warranty. During the Subscription Term, Optigo warrants that the Service will operate as described in the Documentation in all material respects. If Subscriber notifies Optigo of any breach of the foregoing warranty, Optigo will use commercially reasonable efforts to correct such non-conformance. If Optigo has not corrected such non-conformance within ninety (90) days from the date on which Subscriber notified Optigo of the same (the "**Remedy Period**"), then either Party may terminate the Agreement by providing the other Party written notice within thirty (30) days after the end of the Remedy Period. If Subscriber terminates the Agreement for this reason, Optigo will promptly refund any prepaid but unused Fees covering use of the Service after termination. Optigo will not have any obligation or liability under this Section if the non-conformance is caused by or based on: (i) any combination of the Service with any Third Party Products; (ii) modification of Optigo's Product Suite by anyone other than Optigo; (iii) modification of Optigo's Product Suite in accordance with specifications or instructions provided by Subscriber; or (iv) use of Optigo's Product Suite in violation of or outside the scope of the Agreement. THIS SECTION STATES OPTIGO'S ENTIRE LIABILITY AND SUBSCRIBER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM PROVIDED FOR UNDER THIS SECTION.

9.2. WARRANTY DISCLAIMER. EXCEPT AS EXPLICITLY SET FORTH HEREIN, OPTIGO (WHICH FOR THE PURPOSES OF THIS SUBSECTION INCLUDES ITS AFFILIATES, AGENTS, EMPLOYEES, DIRECTORS, OFFICERS, LICENSORS, AND SUPPLIERS) MAKES NO REPRESENTATIONS OR WARRANTIES ABOUT THE SUITABILITY, RELIABILITY, AVAILABILITY, TIMELINESS, SECURITY, ACCURACY OR COMPLETENESS OF OPTIGO'S PRODUCT SUITE, DATA SYNCHED TO OR MADE AVAILABLE FROM THE SERVICE, OR THE CONSULTING SERVICES FOR ANY PURPOSE. TO THE EXTENT PERMITTED BY LAW, OPTIGO'S PRODUCT SUITE AND CONSULTING SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OR CONDITION OF ANY KIND. OPTIGO DISCLAIMS ALL WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY, WITH REGARD TO OPTIGO'S PRODUCT SUITE AND THE CONSULTING SERVICES, INCLUDING WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, FUNCTIONALITY, AND NON-INFRINGEMENT. IF SUBSCRIBER HAS OTHER STATUTORY RIGHTS THAT MAY NOT BE OTHERWISE DISCLAIMED OR LIMITED HEREUNDER, THE DURATION OF STATUTORILY REQUIRED WARRANTIES SHALL BE LIMITED TO THE SHORTEST PERIOD PERMITTED BY LAW. TO THE MAXIMUM EXTENT PERMITTED BY LAW, OPTIGO DOES NOT MAKE ANY REPRESENTATION OR WARRANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF OPTIGO'S PRODUCT SUITE, OR ANY CONTENT THEREIN OR GENERATED THEREWITH, OR OF THE CONSULTING SERVICES, OR THAT: (A) THE USE OF OPTIGO'S PRODUCT SUITE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE; (B) OPTIGO'S PRODUCT SUITE WILL OPERATE IN COMBINATION WITH ANY THIRD PARTY PRODUCTS; (C) OPTIGO'S PRODUCT SUITE OR CONSULTING SERVICES WILL MEET SUBSCRIBER'S REQUIREMENTS OR EXPECTATIONS); (D) ANY DATA, INCLUDING SUBSCRIBER DATA, STORED IN OPTIGO'S PRODUCT SUITE WILL BE ACCURATE OR RELIABLE OR THAT ANY SUCH STORED DATA WILL NOT BE LOST OR CORRUPTED; (E) ERRORS OR DEFECTS IN OPTIGO'S PRODUCT SUITE WILL BE IDENTIFIED OR

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CORRECTED; OR (F) OPTIGO'S PRODUCT SUITE IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

- 9.3. LIMITATION OF LIABILITY. NEITHER PARTY (WHICH FOR THE PURPOSES OF THIS SECTION INCLUDES THEIR AFFILIATES, AGENTS, EMPLOYEES, DIRECTORS, OFFICERS, LICENSORS, AND SUPPLIERS) SHALL BE LIABLE FOR ANY LOSS OF USE, LOST OR INACCURATE DATA, FAILURE OF SECURITY MECHANISMS, INTERRUPTION OF BUSINESS, COSTS OF DELAY, OR ANY INDIRECT, SPECIAL, INCIDENTAL, RELIANCE OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS, REVENUE, DATA OR BUSINESS OPPORTUNITIES ARISING OUT OF OR RELATED TO THE AGREEMENT), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE. THIS SECTION SHALL NOT APPLY TO (1) AMOUNTS OR FEES OWED BY SUBSCRIBER TO OPTIGO (2) SUBSCRIBER'S EXPRESS INDEMNIFICATION OBLIGATIONS IN THE AGREEMENT, OR (3) VIOLATIONS OF SECTIONS 5.1 OR 8 HEREOF. IF, NOTWITHSTANDING THE OTHER TERMS OF THE AGREEMENT, IF EITHER PARTY IS DETERMINED TO HAVE ANY LIABILITY TO THE OTHER PARTY, THE AGGREGATE LIABILITY OF A PARTY WILL BE LIMITED TO A SUM EQUAL TO THE TOTAL AMOUNTS AND FEES PAID OR PAYABLE BY SUBSCRIBER FOR THE SERVICE IN THE TWELVE-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO A CLAIM; PROVIDED HOWEVER THAT OPTIGO (INCLUDING FOR THIS SECTION ITS AFFILIATES, AGENTS, LICENSORS, AND SUPPLIERS) DISCLAIMS ALL LIABILITY WITH RESPECT TO THIRD PARTY PRODUCTS USED BY SUBSCRIBER. OPTIGO SHALL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES AND OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR OTHER SYSTEMS OUTSIDE OPTIGO'S REASONABLE CONTROL. NOTWITHSTANDING THE FOREGOING, THE LICENSORS AND SUPPLIERS OF SERVICES AND PRODUCTS UNDERLYING OPTIGO'S PRODUCT SUITE WILL HAVE NO LIABILITY OF ANY KIND UNDER THE AGREEMENT.
- 9.4. AGREEMENT TO LIMITATIONS. SUBSCRIBER ACKNOWLEDGES AND AGREES THAT, ABSENT ITS AGREEMENT TO SUBSECTIONS 9.1, 9.2, AND 9.3, OPTIGO WOULD NOT ENTER INTO THE AGREEMENT OR OTHERWISE PROVIDE THE SERVICE TO SUBSCRIBER.

10. Governing Law and Claims.

- 10.1. Governing Law. The Agreement and all disputes or claims arising out of or in connection with it will be governed by the laws of the Province of British Columbia and the federal laws of Canada applicable therein, without reference to British Columbia's choice of law rules.
- 10.2. Mediation and Arbitration. Except regarding a claim made by Optigo regarding the collection of Fees or any amounts that Subscriber may owe to Optigo, any claim relating to the Agreement must be referred to private and confidential mediation and, if the claim is not resolved, to binding arbitration. Mediation and arbitration, if necessary, will take place in Vancouver, British Columbia, Canada, before a single mediator and a single arbitrator, under the rules of the ADR Institute of Canada.
- 10.3. No Class Action. The Parties expressly waive any right to bring any action, lawsuit, or proceeding as a class or collective action, private attorney general action, or any other proceeding in which any party acts or proposes to act in a representative capacity.
- 10.4. Contract for Services. The Agreement is a contract for the provision of services and not a contract for the sale of goods. The provisions of the Uniform Commercial Code (UCC), the Uniform Computer Information Transaction Act (UCITA), the United Nations Convention on Contracts for the International Sale of Goods, or any substantially similar legislation as may be enacted, will not apply to the Agreement or the rights and obligations of the Parties hereunder.

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11. Notices. Any communication or notice hereunder may only be sent:
 - 11.1. by Optigo to Subscriber via a message within the Service; or
 - 11.2. by either Party to the other via email in writing to the applicable email address set out in the Agreement and will be deemed to have been properly delivered on the next business day after sending. Email addresses for communication and notice may be updated from time to time in writing delivered to the other Party.
12. Publicity Rights. Optigo may use Subscriber's name and logo and identify Subscriber as an Optigo customer on Optigo's website and other promotional materials.
13. Currency. All dollar figures set out in the Agreement refer to US dollars.
14. Time is of the Essence. Time is of the essence of the Agreement and the transactions contemplated hereby.
15. Entire Agreement. The Agreement sets forth the entire agreement and understanding of the parties regarding the subject matter hereof, and there are no conditions, agreements, representations, warranties, or understandings, express or implied, except as are explicitly set out herein.
16. Amendment. Except as set out in this Section, no amendment of the Agreement will be valid unless effected by a written instrument signed by both Parties. These Terms and Conditions, the EULA, and the Privacy Policy, may be revised or replaced unilaterally by Optigo at any time, and from time to time, by posting a revised version at the applicable online or offline location. The applicable revised version of the foregoing will become effective and binding the next business day after it is posted. If a revised version of these Terms and Conditions materially limits Subscriber's rights or materially increases Subscriber's obligations hereunder, Subscriber may notify Optigo within 30 days after the publication thereof that Subscriber objects to the revised version, in which case the Agreement will continue to include the Terms and Conditions as they existed immediately prior to the publication of the revised version(s) thereof until the end of the Subscription Term. Notwithstanding the foregoing, if Optigo determines in its sole discretion that it cannot reasonably provide the Service to Subscriber under the Terms and Conditions in effect prior to the revised version about which Subscriber has objected, then the Agreement will terminate upon Optigo giving notice to Subscriber, and Optigo must immediately refund any prepaid but unused Fees regarding the Service to Subscriber.
17. Assignment. Except as provided in the Agreement, neither Party may assign the Agreement in whole or in part without the prior written consent of the other Party, except that either Party may assign the entirety of the Agreement without such consent in connection with a merger, acquisition, corporate reorganization, change of Control, or sale of all or substantially all its assets. Any attempted assignment or transfer in violation of the foregoing will be null and void.
18. Enurement. The Agreement will enure and be binding upon the Parties' respective successors and assigns.
19. Waiver. No failure or delay in exercising any right or remedy or failure to object will be a waiver of such right or remedy or any other right or remedy. A waiver on one occasion will not be a waiver of any right or remedy on any future occasion. All waivers must be in writing.
20. Force Majeure. Neither Party shall be responsible for the failure or delay of performance of any obligation or provision of the Agreement if caused by: an act of war, hostility, terrorism, or sabotage; act of God; electrical, internet, or telecommunication diminishment or outage that is not caused by the obligated Party; government restrictions; labour disruptions; failure of the networks of other companies; casualties; civil disturbances; blockades; epidemics; fires; natural disasters; refusal of a license by a governmental authority; or other event outside the reasonable control of the obligated Party.
21. Interpretation. As used herein, "**including**" and all grammatical variants thereof refers to including without limitation. Capitalized terms have the meaning(s) ascribed thereto in the Agreement and include all grammatical

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variations thereof. Section headings are provided for convenience only and will not be considered in interpreting the Agreement.

22. Severability. If any provision of the Agreement is held to be invalid or unenforceable in whole or in part, the valid or enforceable portion thereof, and the remaining provisions of the Agreement, will remain in full force and effect.
23. Due Authority. Each Party represents, warrants, and covenants with and to the other that:
 - 23.1. it has the full legal power and authority to enter into the Agreement;
 - 23.2. the Agreement (including all components thereof) is and will be entered into by an employee or agent of such Party that has all necessary authority to bind such Party to the terms and conditions thereof; and
 - 23.3. the Agreement constitutes a binding contract enforceable against such Party.
24. Relationship of the Parties. The Parties are independent contractors, and no agency, partnership, franchise, joint venture or employee-employer relationship is intended or created by the Agreement.
25. No Third Party Beneficiaries. Nothing in the Agreement, express or implied, is intended to or will confer upon any third party Person any right, benefit or remedy of any nature whatsoever under or by reason of the Agreement.
26. English Language. Subscriber conviennent avoir expressément demandé que le contrat soit rédigé en anglais. Subscriber acknowledges that it has expressly required that the Agreement be drafted in the English language. Subscriber expressly waives the application of 2125 of the Civil Code of Québec and agrees that it may not be eligible or a refund pursuant to the terms and conditions set out herein.