

Optigo Visual Networks Terms and Conditions

These Optigo Visual Networks Terms and Conditions (“**Terms and Conditions**”) constitute part of an agreement by and between the Subscriber and Optigo Networks Inc. (“**Optigo Networks**”). 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. Agreement and Subscription.

1.1. The Agreement. Unless otherwise agreed by the Parties in a separate written and executed agreement:

- a) effective on the date that the Subscriber’s account is duly created in the Service, an agreement is formed between Optigo Networks and Subscriber, which agreement includes these Terms and Conditions, the Privacy Policy, and all Orders (the “**Agreement**”);
- b) after the date of the Agreement, each time an Order is duly made, it will become a part of this Agreement. If there is a conflict between these Terms and Conditions and an Order, such Order will govern but only in respect of such Order;
- c) the “**Subscriber**” is the Person named within the Organization Field when its account was first created, provided that if Optigo Networks believes in its sole discretion that Subscriber’s full legal name was not properly set out in the Organization Field, it may either work with one or more Authorized Users to confirm and correct Subscriber’s full legal name in the Service, or terminate this Agreement; and
- d) the Subscriber will be deemed to have set the User Type to “User Type (Building Owner or Facilities Management Company)” unless it otherwise sets the User Type within the Service. If and when Subscriber sets the User Type, it must do so honestly and correctly, choosing either “User Type (Building Owner or Facilities Management Company)” or “User Type (Third-Party Service Provider)”. Subscriber correctly and honestly setting the User type is a material term of this Agreement. If Optigo Network believes in its sole discretion that the User Type set for Subscriber is incorrect, Optigo Networks may elect to work with one or more Authorized Users to confirm and correct the User Type, unilaterally correct the User type and charge Subscriber for any additional Fees that may be due as a result of such correction, or terminate this Agreement.

1.2. Subscription and Add-Ons. Subject to the terms and conditions of the Agreement and the functionality of the Service:

- a) Subscriber is hereby granted a a limited, revocable, non-sublicensable, non-transferable, non-exclusive license to access and use the Service in accordance with the Agreement and the Documentation (the “**Subscription**”);
- b) the Subscription includes one Free Seat for which no Fees are required;
- c) Add-Ons may be added to the Subscription by an Authorized User via an Order for specific periods, such as a month or year (a “**Term**”). If the Term for a particular Add-On is not specified by the Order, it will be deemed to be for a year or such shorter period as Optigo Networks may determine in its sole discretion to facilitate a more efficient billing experience;
- d) Add-Ons may require Fees, as determined by Optigo Networks in its sole discretion and communicated to the Subscriber through the Service, a quote, an Order, or other reasonable means. Fees required for Add-Ons may be based on the Subscriber’s User Type as determined by Optigo Networks in its sole discretion and communicated to the Subscriber through the Service, a quote, an Order, or other reasonable means;
- e) Site Scopes provide access to additional diagnostic tools within the Service by being assigned to a particular OT Network. Once a Site Scope is assigned to an OT Network, Subscriber may un-assign and reassign it to a different OT Network after a set period has elapsed, as determined by Optigo in its sole discretion and communicated to the Subscriber through the Service, a quote, an Order, or other reasonable means. The number of Site Scopes required for an OT Network may depend on the Subscriber’s User Type and the number of Devices present in such OT Network, all as determined by Optigo Networks in its sole discretion and communicated to the Subscriber through the Service, a quote, an Order, or other reasonable means;
- f) Subscriber may remove or schedule the removal of one or more Add-Ons from the Subscription with an Order, which will take effect on the later of the date scheduled and the end of such Add-Ons’ Term(s);
- g) at the end of its Term, an Add-On will automatically renew for successive Terms of the same length as its current Term, unless Subscriber removes or schedules the removal of such Add-On from the Subscription before the end of its Term; and
- h) Optigo Networks may increase the Fees required for Add-Ons at any time by communicating the same to the Subscriber through the Service, a quote, an Order, or other reasonable means. Fee increases take effect

Optigo Visual Networks Terms and Conditions

immediately or at the date specified by Optigo Networks, provided that a Fee increase will not apply to an Add-On during its current Term, but will apply on the next automatic renewal of such Add-On after the Fee increase took effect.

2. Authorized Users.

- 2.1. Authorized Users. Subscriber is responsible for identifying which individuals will constitute Authorized Users and for managing Authorized Users and their user permissions. 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, irrespective of whether an Authorized User's permissions were set incorrectly by any Authorized User. Subscriber will ensure that all Authorized Users comply with the Agreement, the Documentation, the EULA, and any other applicable Optigo Networks policies. Any limitation applicable to Subscriber or an Authorized User in the Agreement will apply equally to the other.
- 2.2. OptigoVN Accounts. Authorized Users may only access the Service using an OptigoVN account. Only Authorized Users may register for or otherwise use an OptigoVN Account. Subscriber may invite as many Authorized Users to create OptigoVN Accounts as it wishes, but Subscriber may not have more OptigoVN accounts than it has Seats. Registration for and use of an OptigoVN Account requires the Authorized User to agree to and comply with the EULA. Subscriber and Authorized Users will provide true, full, and complete information requested by the Service in the creation of a OptigoVN Account, and will update and keep such information current at all times.
- 2.3. Unauthorized Access. Subscriber will immediately notify Optigo Networks of any unauthorized use of the Service of which Subscriber becomes aware, including any unauthorized use of any OptigoVN Account.
- 2.4. Removals and Suspension. Optigo Networks has no obligation to monitor any content, including Subscriber Data, uploaded by Authorized Users to the Service. Nonetheless, Optigo Networks may remove Subscriber Data from the Service or suspend some or all Authorized Users' access thereto if Optigo Networks deems such action necessary based on a violation of the Agreement or in response to takedown requests that Optigo Networks receives. Optigo Networks will use commercially reasonable efforts to alert Subscriber when Optigo Networks expects to take such action and to give Subscriber a reasonable opportunity to cure the applicable breach, but if Optigo Networks determines that an Authorized User's actions endanger the operation of the Service or other users, Optigo Networks may suspend Subscriber's or the applicable Authorized User's access immediately without notice. During any suspension period: Terms and automatic renewals thereof will continue; and Subscriber will continue to be charged for the Service. Optigo Networks will have no liability to Subscriber for removing or deleting Subscriber Data from or suspending access to the Service as described in this Subsection.

3. The Service.

- 3.1. Nature of the Service. Subscriber acknowledges and agrees that:
 - a) the Service is subscription based and hosted on the cloud such that it is delivered over the internet;
 - b) Optigo Networks may subcontract some or all elements of the Service to third parties, provided that any such subcontracting arrangement will not relieve Optigo Networks 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;
 - d) Subscriber's obligations are not contingent on the delivery of any future functionality or features of the Product Suite or dependent on any oral or written public comments made by Optigo Networks regarding future functionality or features thereof, and Subscriber will not add any Add-Ons to the Subscription in reliance on future availability of any feature, upgrade, or enhancement to any of the Product Suite; and
 - e) Optigo Networks may make changes to the Service from time to time and at any time, including by adding or removing features and functions.
- 3.2. Hardware & Software Requirements. 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 to use the Service at acceptable speeds or at all. If Optigo Networks 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.

Optigo Visual Networks Terms and Conditions

- 3.3. Subscriber's Development of Plugins. From time to time, Optigo Networks may publish SDKs or APIs and associated Documentation to allow Subscriber to develop Plugins. Subscriber may not distribute its Plugins to third parties except in accordance with the Documentation and only with Optigo Networks' prior written consent, which may be withheld in its sole discretion. Subscriber acknowledges and agrees that APIs may not be always available or at all.
- 3.4. Feedback. From time to time, Authorized Users may submit Feedback to Optigo Networks. Optigo Networks 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 Networks' right to independently use, develop, evaluate, modify, market, buy, or sell products and services, whether incorporating Feedback or otherwise.
- 3.5. Support and Maintenance. Optigo Networks will provide Subscriber with a level of support and maintenance for the Service as set out in its support and maintenance policy.
- 3.6. Prohibitions on Use. Subscriber hereby covenants, represents, and warrants that none of Subscriber, or Authorized User will or has:
- a) use the Product Suite in any way that violates any Law or that is fraudulent, false, misleading, defamatory, obscene, or pornographic;
 - b) use the Product Suite in any way that is prohibited by the Agreement, the Documentation, or the EULA;
 - c) indicate to Optigo Networks that Subscriber is an incorrect User Type;
 - d) interfere with or circumvent mechanisms in the Product Suite intended to limit Subscriber's use thereof, or otherwise use the Service in a way to avoid payment of Fees;
 - e) abuse, interfere with, misuse, change, or disrupt the Product Suite, including the use thereof by third parties;
 - f) 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 the Product Suite;
 - g) use the Product Suite or Consulting Services to develop produce, build, or market a product or service substantially similar to the Product Suite, or copy any features, functions, or graphics of the Product Suite;
 - h) use the 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;
 - i) 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 the Product Suite, including viruses or programming routines intended to damage, surreptitiously intercept, or expropriate any system, data, or Personally Identifiable Information;
 - j) create a security vulnerability, denial of service attack or other disruptive activity, consume excessive bandwidth, or otherwise cause harm to the Product Suite, or Optigo Networks' other customers and users;
 - k) rent, lease, reproduce, modify, adapt, create derivative works of, distribute, sell, sublicense, or transfer the Product Suite;
 - l) provide access to the Product Suite to anyone except an Authorized User;
 - m) remove or obscure any proprietary or other notices contained in the Product Suite; or
 - n) publicly disseminate defamatory information regarding the Product Suite or Consulting Services.

4. Termination.

- 4.1. Termination. The Agreement will remain in full force and effect until terminated in compliance with this Section. The Agreement:

Optigo Visual Networks Terms and Conditions

- a) may be terminated by either Party for convenience by providing 60 days' notice thereof to the other Party;
- b) 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;
- c) 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;
- d) may be terminated by either Party in compliance with Section 10.1; and
- e) may be terminated by Optigo Networks in compliance with Subsection 17.

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

- a) the Subscription, including all Add-Ons added thereto will terminate;
- b) Optigo Networks may delete or disable Subscriber Data, all OT Networks, and all OptigoVN Accounts associated with Authorized Users at any time and without notice;
- c) Subscriber's obligation to pay Fees, as well as Sections (including the Subsections thereof) and Subsections 3.3, 3.4, 3.6, 4.2, 5, 6, 7, 9, 10, and 11 will survive the termination of the Agreement;
- d) if such termination was initiated by Subscriber under Subsection 4.1.a) or by Optigo Networks under any of Subsections 1.1.c), 1.1.d), or 4.1.b), Subscriber must promptly pay to Optigo Networks a lump sum amount comprising all unpaid Fees in respect of all Add-Ons in effect immediately prior to termination, as if such Add-Ons were allowed to continue to the end of their current Terms; and
- e) if such termination was initiated by Optigo Networks under Subsection 4.1.a) or by Subscriber under any of Subsections 4.1.b), 10.1, or 17, Optigo Networks must promptly refund to Subscriber any Fees actually paid by Subscriber for any Terms cut short by the termination, pro-rated based on the number of days remaining in such Terms. Except as is explicitly required by this Subsection, Optigo Networks is not required to provide a refund or credit to Subscriber in respect of any Fees paid hereunder.

5. Intellectual Property Rights.

5.1. Optigo Networks retains all rights. Subscriber is not granted a license to any software, including OptigoVN, by the Agreement or otherwise. The Product Suite, all related or underlying technology, and any modifications or derivative works of the foregoing (including that based on or incorporating Feedback), and Optigo Networks' other copyrights, patents, and trademarks are owned or licensed by Optigo Networks, are protected by intellectual property laws, and Optigo Networks 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 Networks. 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 Networks reserves all rights regarding the 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 Networks 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 and related support to Subscriber;
- b) debug software problems related to the Service; and
- c) create Anonymous Data for Optigo Networks' business purposes, including the creation or improvement of products and services (including the Product Suite and Consulting Services), provision of technical support, and improvement of its processes and procedures. Optigo Networks holds all right, title, and interest in and to Anonymous Data.

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

Optigo Visual Networks Terms and Conditions

- a) it has obtained and will obtain all necessary rights, releases, and permissions to provide all Subscriber Data to Optigo Networks and the Service, and to grant the rights granted by Subscriber to Optigo Networks in the Agreement;
- b) Subscriber Data and its transfer 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; and
- d) use of the Service necessarily involves transmission of Subscriber Data over networks that Optigo Networks does not Own, operate, or Control, and Optigo Networks is not responsible for any of Subscriber Data lost, altered, intercepted, or stored across such networks. Optigo Networks 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 Networks' security measures or those of Optigo Networks' third-party service providers. Optigo Networks 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 Networks, its Affiliates, officers, directors, employees, consultants, agents, suppliers, and resellers from 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 an Order, but which Optigo Networks did not appropriately charge to Subscriber in connection therewith;
- d) Subscriber's use of Third-Party Products; and
- e) the unauthorized use of an OptigoVN Account.

6.2. Procedure for Indemnification. In the event of an Action for which Optigo Networks wishes to claim indemnification hereunder, Optigo Networks 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 Networks; (ii) requires Optigo Networks to make an admission; or (iii) imposes liability not covered by these indemnifications or places restrictions on Optigo Networks without Optigo Networks' prior written consent.

7. Payment.

7.1. Fees. Subscriber will timely pay Optigo Networks the Fees set out in, and in accordance with, the Agreement. All Fees are in US dollars. Fees are due upon invoice or as otherwise specified by the Service. Other than as expressly set forth in Subsection 4.2.e), Fees and all amounts owing or paid by Subscriber hereunder are non-refundable, non-transferable, non-cancelable, and non-creditable.

7.2. Credit Card Payments. If Subscriber pays Fees by credit card, Subscriber hereby authorizes Optigo Networks to charge Subscriber's credit card or bank account for all such Fees, including any Fees required under future Orders. Subscriber further authorizes Optigo Networks to use a third-party to process payments, and consents to the disclosure of Subscriber's payment information to such third-party.

7.3. Non-Payment. If Optigo Networks is unable to collect Fees owed by Subscriber when due, Optigo Networks 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 Networks in connection with such collection activity, including collection fees, court costs and attorneys' fees. Optigo Networks 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.

Optigo Visual Networks Terms and Conditions

- 7.4. 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 Networks, Subscriber must pay to Optigo Networks the amount of such Taxes in addition to any amounts owed to Optigo Networks 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 Networks any such exemption information, and Optigo Networks 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.
- 7.5. Audit Rights. Optigo Networks, including through a third-party auditor of Optigo Networks' choice, may audit Subscriber's use of the Service from time to time during the term of this Agreement 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 Networks or its auditor in connection with such audit. If the audit reveals an underpayment by Subscriber, including in connection with the wrong User Type being used to determine Fees due hereunder, Optigo Networks may immediately invoice Subscriber therefor and the amount of such underpayment will constitute Fees that are, among other things, subject to Subsection 7.3 hereunder from the date when they were actually incurred. Optigo Networks 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 Networks for all costs of the audit.
8. Purchase Orders & License Keys.
- 8.1. Purchase Orders. The determination of whether a document meets the definition of a Purchase Order hereunder will be made by Optigo Networks in its sole discretion. A Purchase Order will not constitute an Order. An accepted Purchase Order to create or modify a Subscription will be deemed as an offer to purchase a License Key in respect thereof, and will be subject to the limitations on License Keys set out herein. A Purchase Order, even if deemed a License Key, may not operate to supersede, modify, or otherwise form a part of this Agreement, even if its terms and conditions indicate otherwise. Without limiting the generality of the foregoing, if Subscriber submits a Purchase Order to Optigo Networks that purports to order the same or substantially similar items as those purchased or subscribed for in an Order, whether before or after the applicable date herein, such Purchase Order will not supersede, modify, or otherwise form a part of this Agreement, Optigo Networks' acceptance thereof will not create an obligation for Optigo Networks to provide the same items to Subscriber twice or for Subscriber to pay twice, and unless otherwise explicitly communicated by Subscriber and agreed to by Optigo Networks, such Purchase Order will be deemed for the purposes of this Agreement to have been issued by Subscriber solely to satisfy Subscriber's internal procurement and record-keeping requirements.
- 8.2. License Keys. A license key that is created by Optigo Networks and, if and when activated, can add or change the number of Add-Ons to the Subscription, is referred to as a "**License Key**" herein. A License Key may only add or change the number of Add-Ons to the Subscription, and any other terms or conditions purported to be part of a License Key will be of no force or effect. For greater certainty, a Purchase Order that is deemed to be a License Key will only function to add or change the number of Add-Ons to the Subscription when the License Key is activated, and any other terms or conditions in the applicable purchase order will not form part of the License Key or the Agreement. License Keys are created by Optigo Networks and are interpreted by Optigo Networks in its sole discretion, and in the event of a disagreement between Optigo Networks and the Subscriber as to the contents or function of a License Key, Optigo Networks' determination will be final and binding. A License Key must be duly activated to operate and may only be activated pursuant to the requirements and processes created by Optigo Networks, including through the process contained within the Service, via a written request from Subscriber to Optigo Networks, or by written communication to the purchaser thereof in its documents of purchase and sale that the License Key will be deemed activated on some other event, including in the case of a Purchase Order that indicates a License Key will be activated upon invoicing by Optigo Networks. Optigo Networks may change the process to activate a License Key at any time and from time to time, in its sole discretion. A License Key will expire on the last of (a) the date that is one year from issuance; (b) a date indicated in the License Key or the documents of purchase and sale thereof; or (c) if the License Key includes Add-Ons with one or more explicit date Terms, on the same date as the last such Term to expire. A License Key has no cash value.
9. Confidentiality.
- 9.1. Confidential Information. As used herein, "**Confidential Information**" means all information received by one Party (the "**Recipient**") to the other Party (the "**Discloser**") during the term of this Agreement, 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. Confidential Information does not include (a) Anonymous Data or (b) 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

Optigo Visual Networks Terms and Conditions

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.

- 9.2. 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.
- 9.3. Permitted Reviewer Definition. As used herein, “**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 Networks in connection with Subsections 3.1.b), 7.2, and 7.5 constitute Permitted Reviewers of Optigo Networks.
- 9.4. 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.
- 9.5. 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 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 Networks uses to operate OptigoVN 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.

10. LIMITED WARRANTIES AND LIABILITIES.

- 10.1. Limited Performance Warranty. During the term of this Agreement, Optigo Networks warrants that the Service will operate as described in the Documentation in all material respects. If Subscriber notifies Optigo Networks of any breach of the foregoing warranty, Optigo Networks will use commercially reasonable efforts to correct such non-conformance. If Optigo Networks has not corrected such non-conformance within ninety (90) days from the date on which Subscriber notified Optigo Networks of the same (the “**Remedy Period**”), then Subscriber may terminate the Agreement by providing Optigo Networks with written notice within thirty (30) days after the end of the Remedy Period. Optigo Networks 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 the Product Suite by anyone other than Optigo Networks; (iii) modification of the Product Suite in accordance with specifications or instructions provided by Subscriber; or (iv) use of the Product Suite in violation of or outside the scope of the Agreement. THIS SECTION STATES OPTIGO NETWORKS’ ENTIRE LIABILITY AND SUBSCRIBER’S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM PROVIDED FOR UNDER THIS SECTION.
- 10.2. WARRANTY DISCLAIMER. EXCEPT AS EXPLICITLY SET FORTH HEREIN, OPTIGO NETWORKS (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 PRODUCT SUITE, DATA SYNCHED TO OR MADE AVAILABLE FROM THE SERVICE, OR THE CONSULTING SERVICES FOR ANY PURPOSE. TO THE EXTENT PERMITTED BY LAW, THE PRODUCT SUITE AND CONSULTING SERVICES ARE PROVIDED “AS IS” WITHOUT WARRANTY OR CONDITION OF ANY KIND. OPTIGO NETWORKS DISCLAIMS ALL WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY, WITH REGARD TO 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 OR WARRANTIES THAT MAY NOT BE OTHERWISE DISCLAIMED OR LIMITED HEREUNDER, THE DURATION OF STATUTORILY REQUIRED RIGHTS AND WARRANTIES SHALL BE LIMITED TO THE SHORTEST PERIOD PERMITTED BY LAW. TO THE MAXIMUM EXTENT PERMITTED BY LAW, OPTIGO NETWORKS DOES NOT MAKE ANY REPRESENTATION OR WARRANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF

Optigo Visual Networks Terms and Conditions

PRODUCT SUITE, OR ANY CONTENT THEREIN OR GENERATED THEREWITH, OR OF THE CONSULTING SERVICES, OR THAT: (A) THE USE OF THE PRODUCT SUITE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE; (B) THE PRODUCT SUITE WILL OPERATE IN COMBINATION WITH ANY THIRD-PARTY PRODUCTS; (C) THE PRODUCT SUITE OR CONSULTING SERVICES WILL MEET SUBSCRIBER'S REQUIREMENTS OR EXPECTATIONS); (D) ANY DATA, INCLUDING SUBSCRIBER DATA, STORED IN THE PRODUCT SUITE WILL BE ACCURATE OR RELIABLE OR THAT ANY SUCH STORED DATA WILL NOT BE LOST OR CORRUPTED; (E) ERRORS OR DEFECTS IN THE PRODUCT SUITE WILL BE IDENTIFIED OR CORRECTED; OR (F) THE PRODUCT SUITE IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

- 10.3. 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 NETWORKS (2) SUBSCRIBER'S EXPRESS INDEMNIFICATION OBLIGATIONS IN THE AGREEMENT, OR (3) VIOLATIONS OF SECTIONS 5.1 OR 9 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 NETWORKS (INCLUDING FOR THIS SECTION ITS AFFILIATES, AGENTS, LICENSORS, AND SUPPLIERS) DISCLAIMS ALL LIABILITY WITH RESPECT TO THIRD-PARTY PRODUCTS USED BY SUBSCRIBER. OPTIGO NETWORKS 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 NETWORKS' REASONABLE CONTROL. NOTWITHSTANDING THE FOREGOING, THE LICENSORS AND SUPPLIERS OF SERVICES AND PRODUCTS UNDERLYING THE PRODUCT SUITE WILL HAVE NO LIABILITY OF ANY KIND UNDER THE AGREEMENT.
- 10.4. AGREEMENT TO LIMITATIONS. SUBSCRIBER ACKNOWLEDGES AND AGREES THAT, ABSENT ITS AGREEMENT TO SUBSECTIONS 10.1, 10.2, AND 10.3, OPTIGO NETWORKS WOULD NOT ENTER INTO THE AGREEMENT OR OTHERWISE PROVIDE THE SERVICE TO SUBSCRIBER.

11. Governing Law and Claims.

- 11.1. 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.
- 11.2. Mediation and Arbitration. Except regarding a claim made by Optigo Networks regarding the collection of Fees or any amounts that Subscriber may owe to Optigo Networks, 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.
- 11.3. 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.
- 11.4. 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.

12. Notices. Any communication or notice hereunder may only be sent:

- 12.1. by Optigo Networks to Subscriber via a message to one or more Authorized Users within the Service; or
- 12.2. by email:
- a) by Subscriber to Optigo Networks at **Legal@Optigo.net**; or

Optigo Visual Networks Terms and Conditions

b) by Optigo Networks to Subscriber to one or more of the email addresses associated with OptigoVN Accounts; 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.

13. **Publicity Rights.** Optigo Networks may use Subscriber's name and logo and identify Subscriber as an Optigo Networks customer on Optigo Networks' website and other promotional materials.
14. **Currency.** All dollar figures set out in the Agreement refer to US dollars.
15. **Time is of the Essence.** Time is of the essence of the Agreement and the transactions contemplated hereby.
16. **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.
17. **Amendment.** Except as set out in this Section, no amendment of the Agreement will be valid unless effected by an Order. These Terms and Conditions, the EULA, and the Privacy Policy, may be revised or replaced unilaterally by Optigo Networks at any time, and from time to time, by posting a revised version at the applicable online or offline location, which will become effective upon posting. If a revised version of these Terms and Conditions materially limits Subscriber's rights or materially increases Subscriber's obligations hereunder, until the earlier of 30 days after the publication of such revised version or the date on which any Authorized User agrees to the revised Terms and Conditions within the Service, Subscriber may notify Optigo Networks that it wishes to terminate the Agreement, which termination will take effect as soon as practicable after such notice.
18. **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.
19. **Enurement.** The Agreement will enure and be binding upon the Parties' respective successors and assigns.
20. **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.
21. **Force Majeure.** Except for the timely payment of Fees hereunder, 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.
22. **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 Terms and Conditions and Agreement, and include all grammatical variations thereof. Section headings are provided for convenience only and will not be considered in interpreting the Agreement.
23. **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.
24. **Due Authority.** Each Party represents, warrants, and covenants with and to the other that:
 - 24.1. it has the full legal power and authority to enter into the Agreement;
 - 24.2. Authorized Users have the power and authority to bind the Subscriber in accordance with this Agreement and the user permissions in the Service; and
 - 24.3. the Agreement constitutes a binding contract enforceable against such Party.
25. **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.
26. **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.

Optigo Visual Networks Terms and Conditions

27. 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 for a refund pursuant to the terms and conditions set out herein.
28. Definitions. As used herein:
- 28.1. “**Add-Ons**” means a feature that may be added to a Subscription, including Additional User Seats, Free Seats, and Site Scopes;
 - 28.2. “**Additional User Seat**” refers to the entitlement to create one OptigoVN Account pursuant to the Agreement, the EULA, and the Documentation;
 - 28.3. “**Affiliate**” refers to Person which, directly or indirectly, is Owned or Controlled by the applicable Party to the Agreement;
 - 28.4. “**Anonymous Data**” means 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, and all insights derived therefrom;
 - 28.5. “**API**” means application programming interface;
 - 28.6. “**Authorized User**” means Subscriber and, unless otherwise set out in an applicable Order(s), 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 OptigoVN Account;
 - 28.7. “**Consulting Services**” means professional services provided by Optigo Networks to Subscriber, including training services, installation, integration, or other consulting services, in connection with or otherwise supporting the Product Suite but which themselves are not considered part of the Product Suite herein;
 - 28.8. “**Control**” refers to the power to direct the management or affairs of a Person;
 - 28.9. “**Device**” means a physical or virtualized hardware device that is part of a BACnet network;
 - 28.10. “**Documentation**” means the documentation published by Optigo Networks respecting the Product Suite or Consulting Services, including APIs, SDKs, OptigoVN, and the Service, and which Optigo Networks may amend, supersede, delete, create, or publish at any time in its sole discretion;
 - 28.11. “**EULA**” means the most recent version of the OptigoVN End User License Agreement located at www.optigo.net/optigovn-end-user-license-agreement, which Optigo Networks may change in its sole discretion from time to time and at any time;
 - 28.12. “**Feedback**” means comments, information, questions, data, ideas, description of processes, or other information about Optigo Networks’ current or potential products and services, including the Product Suite and Consulting Services;
 - 28.13. “**Fees**” means the fees payable by Subscriber in respect of the Subscription, as are more fully specified in an applicable Order;
 - 28.14. “**Free Seat**” means the entitlement to create one OptigoVN Account pursuant to the Agreement, the EULA, and the Documentation;
 - 28.15. “**Laws**” means applicable local, provincial, state, federal and international laws and regulations, including those related to export control and electronic communications;
 - 28.16. “**OptigoVN**” means Optigo Visual Networks, including the intellectual property, technology, hardware, and software that power Optigo Visual Networks and its successors, and is used by Optigo Networks to deliver the Service to Subscriber;
 - 28.17. “**OptigoVN 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;
 - 28.18. “**Order**” means:
 - a) an action taken by an Authorized User within the Service to create the Subscriber’s account on its first login;

Optigo Visual Networks Terms and Conditions

- b) an action taken by an Authorized User within the Service to add, remove, or modify one or more Add-Ons to the Subscription;
 - c) an activated License Key; or
 - d) another written agreement between the Parties that Optigo Networks determines in its sole discretion to be an Order;
- 28.19. **“Organization Field”** means the text input field within the Service that allows a Person, including an Authorized User, creating the Subscriber’s account to input the full legal name of the Subscriber;
- 28.20. **“OT Network”** means a digital representation that exists in the Service, representing some or all of the Devices located at one Physical Location;
- 28.21. **“Owned”** means the beneficial ownership of at least 50% of the voting equity securities or other equivalent voting interests of a Person.
- 28.22. **“Party”** means either Optigo Networks or Subscriber, as applicable, and **“Parties”** means both Optigo Networks and Subscriber;
- 28.23. **“Person”** means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, governmental authority, or other similar entity;
- 28.24. **“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;
- 28.25. **“Physical Location”** means a physical location housing a BACnet network;
- 28.26. **“Plugins”** means plugins, extensions, or other software products or services that interoperate with or are integrated into the Product Suite;
- 28.27. **“Privacy Policy”** means the most recent version of Optigo Networks’ privacy policy located at <https://optigo.net/privacy>, which Optigo Networks may change in its sole discretion from time to time and at any time;
- 28.28. **“Product Suite”** means any of Optigo Networks’ products and services other than Consulting Services, including OptigoVN, the Service, an Optigo Networks website, and any products, services, information, or other material purchased or obtained through such products or services;
- 28.29. **“Purchase Order”** means an offer, whether accepted or unaccepted, that is provided to Optigo Networks in the form of a purchase order, to purchase Consulting Services, one or more of the Product Suite including a License Key, or adding Add-Ons to a Subscription;
- 28.30. **“Remedy Period”** has the meaning ascribed thereto in Section 10.1;
- 28.31. **“SDK”** means software development kit;
- 28.32. **“Seats”** means the total number of Free Seats and Additional User Seats in the Subscription;
- 28.33. **“Service”** means OptigoVN as a service, as more fully described in the Agreement;
- 28.34. **“Site Scope”** refers to digital tools to analyze an OT Network;
- 28.35. **“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;
- 28.36. **“Taxes”** means applicable sales, use, excise and other taxes and applicable export and import fees, customs, duties, and similar charges;

Optigo Visual Networks Terms and Conditions

- 28.37. “**Third-Party Products**” means hardware, software, and services (including internet access) that are not manufactured, produced, or otherwise provided by Optigo Networks, even if recommended thereby; and
- 28.38. “**User Type**” means either User type (Building Owner or Facilities Management Company) or User type (Third-Party Service Provider). If the User Type is not otherwise set by Subscriber, it will be deemed as User Type (Building Owner or Facilities Management Company);
- 28.39. “**User Type (Building Owner or Facilities Management Company)**” means a limitation whereby Subscriber may only use the Service for OT Networks at Physical Locations that it owns or manages pursuant to delegated authority from the building owner; and
- 28.40. “**User Type (Third-Party Service Provider)**” means a limitation whereby Subscriber may only use the Service for OT Networks at Physical Locations that it neither owns nor manages.