

Optigo Visual BACnet End User License Agreement

By clicking that you accept or agree to this Optigo Visual BACnet End User License Agreement (“EULA”), whether through the Service or via an Optigo website, or by otherwise using the Service, you hereby accept this EULA and agree that this EULA constitutes an agreement by and between you and Optigo Networks Inc. (“Optigo”). If you do not agree to this EULA, please do not click that you accept this EULA and you must not use the Service. Capitalized terms have the meaning(s) ascribed thereto in this EULA and include all grammatical variations thereof, provided that if a meaning is not ascribed herein to a particular capitalized term, it will have the meaning ascribed thereto in the Subscription Agreement. Now, for and in consideration of the mutual covenants and agreements contained herein, the sufficiency of which is confirmed by you and Optigo, the parties covenant and agree with each other as follows:

1. License to Use. You are hereby granted a limited, revocable, non-sublicensable, non-transferable, non-exclusive license to access and use the Service in accordance with this EULA, the Subscription Agreement, and the Documentation.
2. Access and Charges to Subscriber. You require a user account for access to the Service. Registration for and use of a user account require you to provide true, full, and complete information to and as requested by the Service, and to promptly update and keep such information current. You will immediately notify Subscriber and Optigo of any unauthorized use of the Service or your user account of which you become aware. You represent and warrant to Optigo that you have been authorized by Subscriber to create a user account and to access and use the Service. You acknowledge and agree that Subscriber will be responsible for your usage of the Service, including any fees, charges, or obligations created by you therein.
3. Compliance. You acknowledge and agree that your use of the Service is governed by this EULA, the limitations of the Service itself, the Documentation, and by the Subscription Agreement. Your use of the Service, including uploading of any Subscriber Data, must always be compliant with this EULA, the Subscription Agreement, the Documentation, the intended purpose of the Service, and with all laws. Please contact Subscriber if you wish to review the Subscription Agreement.
4. Prohibitions on Use. You hereby covenant, represent, and warrant with and to Optigo that you will not:
 - 4.1. use Optigo’s Product Suite in any way that that is prohibited by this EULA, the Documentation, or the Subscription Agreement, or that violates any local, provincial, federal, or foreign law or regulation, or that is fraudulent, false, misleading, defamatory, obscene, or pornographic;
 - 4.2. use any client software (for example, a desktop or mobile application) or hardware (for example, a physical capture tool) provided to you by Optigo for any purpose unrelated to the Service;
 - 4.3. upload to, or otherwise use the Service to collect, manage, or process, Personally Identifiable Information except as is strictly required to use the Service;
 - 4.4. upload to, or otherwise use within the Service, any Subscriber Data that you do not have all necessary rights, releases, and permissions to so use;
 - 4.5. abuse, interfere with, misuse, change, or disrupt Optigo’s Product Suite, including interfering with or circumventing mechanisms therein that are intended to limit your use thereof or require Subscriber to pay fees;
 - 4.6. 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 application programming interfaces, of Optigo’s Product Suite;
 - 4.7. use Optigo’s Product Suite 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;

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- 4.8. 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;
 - 4.9. 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;
 - 4.10. 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;
 - 4.11. rent, lease, reproduce, modify, adapt, create derivative works of, distribute, sell, sublicense, or transfer Optigo's Product Suite;
 - 4.12. provide access to Optigo's Product Suite to anyone except as may be expressly authorized in the Subscription Agreement;
 - 4.13. remove or obscure any proprietary or other notices contained in Optigo's Product Suite; or
 - 4.14. publicly disseminate negative information regarding the performance of Optigo's Product Suite.
5. **Changes and Removals.** Optigo may make changes to the Service from time to time and at any time, including by adding or removing features and functions. Optigo has no obligation to monitor any content, including Subscriber Data, uploaded to the Service. Optigo may remove Subscriber Data from the Service or suspend your user account if Optigo deems such action necessary or desirable. Optigo will have no liability to you for removing or deleting Subscriber Data from or suspending access to the Service as described in this section.
 6. **Requirements.** Your use of the Service requires, and may be negatively affected by, your access to hardware, software, and services (including internet access) that are not manufactured, produced, or otherwise provided by Optigo, even if recommended thereby, which are your sole responsibility to identify, obtain, maintain, and finance. Hardware and software requirements to access the Service may change over time. 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 you and the Subscriber are solely responsible for Subscriber Data and the consequences of using, disclosing, storing, or transmitting it hereunder.
 7. **Feedback.** If you 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 you and the Subscriber. Feedback will never be considered your or Subscriber's confidential information and nothing in this EULA will limit Optigo's right to independently use, develop, evaluate, modify, market, buy, or sell products and services, whether incorporating Feedback or otherwise.
 8. **Optigo retains all rights.** Subscriber is not granted a license to any software, including VB, by this EULA. 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 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. You 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 you, irrespective of the use of terms such as "purchase" or

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“sale” in connection therewith. Except as explicitly set out in this EULA, Optigo reserves all rights regarding the Optigo Product Suite.

9. Indemnification. You will, at your 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) related to: your unauthorized or illegal use of the Service; your noncompliance with or breach of this EULA; your use of third party products in connection with the Service; and the unauthorized use of your user account. If Optigo wishes to claim indemnification hereunder, Optigo will: notify you in writing in sufficient time for you to respond thereto without prejudice; give you sole control of the defense or settlement thereof; and provide you (at your sole expense) with all information and assistance reasonably requested by you to handle the defense or settlement thereof. You 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.
10. 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 OR DATA SYNCHED TO OR MADE AVAILABLE FROM THE SERVICE, FOR ANY PURPOSE. TO THE EXTENT PERMITTED BY LAW, OPTIGO’S PRODUCT SUITE 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, INCLUDING WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, FUNCTIONALITY, AND NON-INFRINGEMENT. IF YOU HAVE 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 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 WILL MEET YOUR 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 CORRECTED; OR (F) OPTIGO’S PRODUCT SUITE IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. YOU ACKNOWLEDGE AND AGREE THAT, ABSENT YOUR AGREEMENT TO THIS SECTION, OPTIGO WOULD NOT ENTER INTO THIS EULA WITH YOU OR OTHERWISE PROVIDE ACCESS TO THE SERVICE TO YOU.
11. LIMITATION OF LIABILITY. OPTIGO (WHICH FOR THE PURPOSES OF THIS SECTION INCLUDES ITS AFFILIATES, AGENTS, EMPLOYEES, DIRECTORS, OFFICERS, LICENSORS, AND SUPPLIERS) SHALL NOT 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 THIS EULA), 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. OPTIGO (INCLUDING FOR THIS SECTION ITS AFFILIATES, AGENTS, LICENSORS, AND SUPPLIERS) DISCLAIMS ALL LIABILITY WITH RESPECT TO THIRD PARTY PRODUCTS USED BY YOU. 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

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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 THIS EULA. NOTWITHSTANDING THE OTHER TERMS OF THIS EULA, IF OPTIGO IS DETERMINED TO HAVE ANY LIABILITY TO YOU, THE AGGREGATE LIABILITY OF OPTIGO WILL BE LIMITED TO \$1. YOU ACKNOWLEDGE AND AGREE THAT, ABSENT YOUR AGREEMENT TO THIS SECTION, OPTIGO WOULD NOT ENTER INTO THIS EULA WITH YOU OR OTHERWISE PROVIDE ACCESS TO THE SERVICE TO YOU.

12. Governing Law, Arbitration, and No Class Actions. This EULA 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. Any claim relating to this EULA must be referred to binding arbitration that will take place in Vancouver, British Columbia, Canada, before a single arbitrator under the rules of the ADR Institute of Canada. You 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.
13. General. This EULA 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 this EULA or the rights and obligations of you or Optigo hereunder. Time is of the essence of this EULA and the transactions contemplated hereby. You may not assign this EULA in whole or in part. This EULA will enure and be binding upon your and Optigo's respective successors and assigns. 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. As used herein, "including" and all grammatical variants thereof refers to including without limitation. If any provision of this EULA is held to be invalid or unenforceable in whole or in part, the valid or enforceable portion thereof, and the remaining provisions of this EULA, will remain in full force and effect. You and Optigo are independent contractors, and no agency, partnership, franchise, joint venture or employee-employer relationship is intended or created by this EULA. Nothing in this EULA, 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 this EULA. You conviennent avoir expressément demandé que le EULA soit rédigé en anglais. You acknowledge and agree that you have expressly required that this EULA be drafted in the English language.
14. Notices. You may only send a legal communication or notice hereunder via Subscriber pursuant to the notices provisions of the Subscription Agreement. Optigo may send a communication or notice to you hereunder within the service or to Subscriber pursuant to the Subscription Agreement.
15. Amendment. This EULA 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 EULA will become effective and binding the next business day after it is posted. If you continue to use the Service after an updated EULA is so posted, you will be deemed to have accepted it; if you do not so accept it, you must discontinue use of the Service and contact the Subscriber.
16. Due Authority. You represent, warrant, and covenant with and to Optigo that you have the full legal power and authority to enter into this EULA, and that this EULA constitutes a binding contract enforceable against you in accordance with its terms.
17. Definitions. As used in this EULA:
 - 17.1. **"Documentation"** means the documentation published by Optigo respecting Optigo's Product Suite, including application programming interfaces, software development kits, VB, and the Service, and which Optigo may amend, supersede, delete, create, or publish at any time in its sole discretion;

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- 17.2. “**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;
- 17.3. “**Optigo’s Product Suite**” means any of Optigo’s products and services, including VB, the Service, an Optigo website, and any products, services, information, or other material purchased or obtained through such products or services;
- 17.4. “**Person**” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, governmental authority, or other similar entity;
- 17.5. “**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;
- 17.6. “**Service**” means VB as a service, as more fully described in this EULA, the Documentation, and the Subscription Agreement;
- 17.7. “**Subscriber**” has the meaning ascribed thereto in the Subscription Agreement;
- 17.8. “**Subscriber Data**” means any data, content, code, video, images, or other materials of any type that you upload, submit, or otherwise transmit to the Service;
- 17.9. “**Subscription Agreement**” means the agreement between Optigo and the Subscriber pursuant to which Subscriber has subscribed for the Service, and under which such subscription you are accessing the Service; and
- 17.10. “**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.