

## STANDARD TERMS AND CONDITIONS

These Terms and Conditions (“Terms and Conditions”) shall apply to all quotations, sales, Products and Services made or delivered by Azima Holdings, Inc., its subsidiaries and affiliates (“Azima”) to the customer described in the attached Statement of Work (“Customer”). All such quotations, sales, Products and Services are expressly limited and conditioned upon acceptance of these Terms and Conditions. If there is any conflict between any Statement of Work, purchase order, order form, etc., and these Terms and Conditions, these Terms and Conditions shall govern, and any other terms and conditions are specifically objected to.

1. DEFINITIONS. When used with initial capital letters in these Terms and Conditions, the following terms shall have the following definitions.

“Documentation” means those user manuals, reference manuals and guides, or portions thereof, which are distributed in conjunction with the Products, as described in the applicable Statement of Work.

“Plant” means the specific facility at which the Products are to be used for purposes of monitoring the Plant Assets, as described in the applicable Statement of Work.

“Plant Assets” means the pieces of capital equipment, as designated by the parties, located at the Plant.

“Products” means the wireless, remote monitoring system including the wireless-enabled sensors delivered to Customer under any Statement of Work, together with licensed access to ExpertALERT™ diagnostic software and any other necessary hardware, software and Documentation, for the purpose of monitoring the Plant Assets, all as described in the applicable Statement of Work.

“Services” means the services to be provided by Azima pursuant to any Statement of Work. “Statement of Work” means the specifications for the delivery and provision of Products and Services and related information, regardless of form, which incorporate these Terms and Conditions (either implicitly or explicitly) by reference. Each Statement of Work shall be signed by both parties and may be amended from time to time by a signed written agreement of duly authorized personnel of the parties.

“Third Party Materials” means any software or intellectual property owned by any third party which is included or embodied in any of the Products.

## 2. PROVISION OF SERVICES AND PRODUCTS

(a) Services. Azima shall provide the Services as described in any Statement of Work. Customer shall reasonably cooperate with Azima in performing the Services, including without limitation facilitating physical access to the Plant and providing documentation of Plant Assets as available. Any and all materials, documentation, enhancements, modifications and corrections, if any, to the Products, including the Documentation provided by Azima as part of any Service will be considered part of the “Products” or the “Documentation” for purposes of these Terms and Conditions. If Customer requests Services that are beyond the scope of the Statement(s) of Work then in effect, Azima may elect but shall not be obligated to provide the Services and the Services shall be provided pursuant to a separate Statement of Work or professional services agreement as appropriate.

(b) Products. Azima shall provide such Products as are called for in any Statement of Work. Customer shall have an unrestricted right to return hardware Products, provided that any such returns are shipped, at Customer's expense and risk, and received by Azima within thirty days of original delivery; provided further that any such return shall be subject to a twenty percent (20%) restocking charge. Subject to Customer's payment of the fees for such Products in accordance with these Terms and Conditions, Customer shall take all right, title and interest in hardware Products, subject to the rights of Azima and its suppliers in the intellectual property rights embodied in such Products.

(c) Restrictions. Customer agrees not to modify, de-compile, reverse engineer, reverse compile, modify or perform any similar type of operation on, or provide to any third party for use in the development, design or improvement of a third party product or solution, any Product sold, licensed or otherwise made available under these Terms and Conditions without the prior written consent of Azima.

(d) Third Party License. Azima shall assign or pass-through to Customer, to the extent permitted under the applicable agreement, any and all warranties and remedies available with respect to Third Party Materials. Customer acknowledges and agrees that Customer's sole right and remedy with respect to any defect in or failure of Third Party Materials to perform in accordance with any Statement of Work shall be limited to those remedies of Azima or Customer, to the extent assigned, against the vendor or manufacturer of the Third Party Materials (including, without limitation, the particular vendor's or manufacturer's warranty), which Azima shall (where appropriate) cooperate with Customer to enforce on Customer's behalf.

3. TERM. Unless otherwise specified in writing, the initial term of any Statement of Work shall commence on the date such Statement of Work is executed and shall continue for 12 months. Unless either party elects, by written notice provided at least sixty (60) days prior to expiration of the initial term or any renewal term, such Statement of Work will automatically renew for an additional 12 months period at the expiration of the initial term or any renewal term.

4. FEES AND PAYMENT. The fees for the Products and Services to be provided hereunder are set forth in the applicable Statement of Work. Unless otherwise specified in the Statement of Work, (i) all hardware shall be invoiced upon delivery, (ii) all non-subscription Services shall be invoiced upon the earlier of completion of installation of the related hardware or thirty (30) days after delivery of the Services, (iii) Subscription services will be billed annually in advance, and (iv) all payments shall be made within thirty (30) days of the date of invoice. Overdue balances will accrue interest at the rate of 1-1/2% per month (18% annually) or, if less, at the maximum rate allowed by law, calculated from the date due until paid. Fees are exclusive of all applicable taxes. Customer shall pay all taxes and governmental fees associated with the Products and Services ordered under these Terms and Conditions, excluding taxes on Azima's net income. Notwithstanding the above, unless otherwise set out in the applicable Statement of Work, prices in any Statement of Work shall apply to the initial term of such Statement of Work only; upon any automatic renewal (as provided in Section 3), all prices set out in any Statement of Work shall be increased by the greater of: (a) Five Percent (5%); or (b) the percentage increase in the U.S. Consumer Price Index (using the national average for all urban consumers, with a base period of 1982 – 1984 = 100); in each case based upon the price in effect at the beginning of the twelve month period then ending. Customers choosing payment by credit card may be liable for a 3% surcharge (not greater than Azima's cost of acceptance), where applicable. *Unless otherwise specified in the applicable Statement of Work, all fees are to be paid in U.S. dollars.*

## 5. INTELLECTUAL PROPERTY RIGHTS.

(a) *Defense of Claims.* Should the Products or the Services, or the operation of the Products or the Services, become, or in Azima's opinion be likely to become, the subject of infringement of any U.S. trademark, copyright or issued U.S. patent of any third party, Customer agrees to permit Azima, at its option and expense to procure for Customer the right to continue using the Products or the Services or to replace or modify them so that they become non-infringing. If neither of the foregoing options is available upon commercially reasonable terms, Azima may terminate the license for the infringing Products or cease offering the infringing Services. Azima shall have no liability for infringement based on (a) use of other than the current release of the Products, (b) any Third Party Materials incorporated in the Products, (c) modification of the Products by any party other than Azima, or (d) the combination or use of the Products or the Services with any other computer program, equipment, product, device, item or process not furnished by Azima, if the infringement would have been avoided by the use of the Products or the Services alone and in their current unmodified form. This section 5 states the entire liability of Azima with respect to infringement of patents, copyrights, trademarks or any other form of intellectual property right by any product, service or otherwise arising under these terms and conditions.

(b) *Ownership of Intellectual Property.* Notwithstanding any provision of these Terms and Conditions or any Statement of Work to the contrary, as between Customer and Azima, Azima (or the third-party from which Azima obtained the rights to distribute the Products) owns and retains all title and ownership of all intellectual property rights in the Products and the Services, including all sensors, software, firmware, software master diskettes, copies of software, master diskettes, Documentation and related materials that are provided, acquired, produced or shipped by Azima under these Terms and Conditions or any Statement of Work. Customer agrees not to provide the Documentation or the Products, or any part or components thereof, to any third party without the prior written consent of Azima.

(c) *Ownership of Data.* All data relating to the performance and maintenance of industrial machinery and systems collected by Azima in connection with Azima's performance under any Statement of Work shall be owned by Customer; provided that Customer grants Azima the irrevocable, perpetual, nonexclusive, worldwide, royalty-free right and license to use, reproduce, display, distribute internally or externally and prepare derivative works based upon any such data collected from Customer. Azima shall not use or publish such data in any way which identifies Customer as the source of that data without the prior written consent of Customer. Upon request from Customer, Azima will provide an electronic copy of any such data collected from Customer. Customer agrees not to provide any such data to any third party for use in the development, design or improvement of a third party product or solution.

6. CONFIDENTIAL INFORMATION. Any Confidential Information provided under any Statement of Work shall be held and maintained in strict confidence by the receiving party. Each party agrees to protect the other party's confidentiality of the information in a manner consistent with the way a reasonable person would protect similar Confidential Information. "Confidential Information" means the information and materials noticed or marked by Azima or Customer as confidential and proprietary. "Confidential Information" does not include information that (i) is already known to the receiving party at the time it is disclosed and has not been obtained wrongfully, (ii) becomes publicly known without fault of the receiving party, (iii) is independently developed by the receiving party, (iv) is approved for release in writing by the disclosing party, (v) is disclosed without restriction by the disclosing party to a third party, or (vi) is disclosed as required by law. Without limiting the foregoing, the parties acknowledge the Products and or the Services contain the Confidential Information of the Azima.

7. DISCLAIMER OF WARRANTIES. Subject to Section 2(d) with respect to the Third Party Materials, Azima warrants that hardware Products will be free from defects in materials and workmanship for a period of twelve (12) months, beginning on the date of delivery to Customer. This warranty does not cover damage due to external causes, including accident, abuse, misuse, problems with electrical power, servicing not authorized or performed by Azima, usage not in accordance with the Documentation, failure to perform required preventive maintenance, and problems caused by use of parts and components not provided by Azima. As Customer's sole remedy, and Azima's sole liability, under this warranty, Azima will (at its option) repair or replace Products covered under this limited warranty that are returned to Azima's facility within the warranty period. Customer must ship the products back to Azima in their original or equivalent packaging, prepay shipping charges, and insure the shipment or accept the risk of loss or damage during shipment. If Azima repairs or replaces a Product, its warranty term is not extended. The products and services provided under any statement of work, including any reports provided to customer, are intended to provide operational recommendations only and are intended to supplement, but not replace manual inspections of the plant assets. Except for the warranty provided in this section 7 and the third party warranties described in section 2(d), the products and services are provided "as is," without any warranty whatsoever, including without limitation implied warranties of non-infringement, merchantability and fitness for any particular purpose.

8. LIMITATION OF REMEDIES. Notwithstanding anything to the contrary in these terms and conditions or any statement of work, and except with respect to any damages arising out of customer's violation of Azima's (or third party) intellectual property rights or a breach by either party of the confidentiality provisions herein, neither Azima nor customer will be liable to the other party for any indirect, incidental, or consequential damages (including without limitation damage to customer machinery or lost profits) arising out of the subject matter of these terms and conditions, regardless of the form of action (whether in contract, tort or otherwise) and whether or not such damages are foreseeable. Azima's aggregate liability to customer for all cases and controversies arising out of the subject matter of these terms and conditions and all statements of work entered into pursuant to these terms and conditions, regardless of the form of action, shall not exceed the amount received by Azima from customer during the previous twelve (12) months for the product or the service giving rise to the latest claim.

#### 9. TERMINATION.

(a) Termination for Cause. Either party may terminate any Statement of Work, by written notice, for material breach by the other party provided the non-breaching party gives thirty (30) days' written notice of breach and the breaching party fails to cure the breach within such thirty (30) day period.

(b) Termination by Azima. Azima may terminate any Statement of Work if Customer fails to meet its payment obligations under these Terms and Conditions or such Statement of Work and this failure continues for ten (10) days following receipt of written notice from Azima.

(c) Termination by Customer without Cause. Contracts of one (1) year or less duration, customer may terminate any Statement of Work without cause upon 90 days prior written notice and by making payment for 90 days of pro-rata contract value. Contracts with duration longer than one (1) year are calculated as balance due + 50% of remaining contract value.

(d) *Effect of Termination on Obligations.* Termination of any Statement of Work will not affect any pre-termination obligations of either party under these Terms and Conditions or such Statement of Work, and any termination is without prejudice to the enforcement of any undischarged obligations existing at the time of termination; provided, that in any termination by Azima for cause pursuant to Section 9(a), or by either party pursuant to Section 9(b) or Section 9(c), all payments described in any Statement of Work, whether or not otherwise payable, shall become immediately due and payable in full as if the full term of the Statement of Work had been completed.

#### 10. United States Export Control and Anti-kickback.

(a) Customer shall not export or re-export Products to any country, person, entity or end user subject to any export restrictions under United States law, as may be in effect from time to time. Restricted countries currently include, but are not limited to, Cuba, Iran, North Korea, Sudan and Syria.

(b) Customer shall comply with all applicable laws dealing with payments, gifts or gratuities that are illegal under U.S. and/or other applicable laws, and Customer shall not offer, make or give any payments, gifts or gratuities to any official of government or of any agency or instrumentality of government or to any political party, party official or candidate for political office, or to any customer employee, for the purpose of influencing or inducing government action.

#### 11. GENERAL PROVISIONS.

(a) *Jurisdiction.* These Terms and Conditions and each Statement of Work shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, U.S.A. without reference to its conflicts of laws provisions. Any dispute, controversy, claim or difference arising out of these Terms and Conditions or any Statement of Work shall be resolved by the American Arbitration Association (“AAA”) before a single arbitrator. Judgment on the award may be entered by any court having jurisdiction. The arbitration shall be conducted in Boston, Massachusetts. The arbitrator shall not limit, expand or modify the terms of these Terms and Conditions or any Statement of Work or award damages in excess of compensatory damages as permitted hereunder, and each Party waives any claim to such excess damages. Except as provided in Section 11(f), each Party shall bear its own expenses and an equal share of the compensation of the arbitrator and the fees charged by AAA. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to these Terms and Conditions or any Statement of Work entered into pursuant hereto.

(b) *Survival of Terms.* Sections 2(b), (c) and (d), and 5 through 11 of these Terms and Conditions shall survive with respect to any terminated Statement of Work and continue in effect and shall inure to the benefit of and be binding upon the parties and their legal representatives, heirs, successors, and permitted assigns.

(c) *Waiver.* Either party’s waiver of any breach or failure to enforce, or insist upon strict performance of any of the terms and conditions of these Terms and Conditions at any time shall not in any way affect, limit or waive such party’s right at any time thereafter to enforce and compel strict compliance with every term and condition thereof.

(d) *Superior Agreement.* These Terms and Conditions, including any Statements of Work other exhibits, constitutes the complete agreement between the parties hereto and supersedes all prior communications and agreements between the parties with respect to the subject matter hereof. These Terms and Conditions may be amended or modified only by a writing signed by each party.

(e) Assignment. These Terms and Conditions are not assignable by Customer, in whole or in part, without Azima’s prior written consent. Any attempted assignment without Azima’s written consent will be null and void.

(f) Announcements. At the request of either party, the parties will work together in good faith to develop in a timely fashion the text of a press release or other announcement that is mutually acceptable to both parties.

(g) Attorneys’ Fees. In any litigation or arbitration between the parties, each party shall be entitled to have its legal fees and expenses paid by the other party if and to the extent the first party is adjudged (or in the case of arbitration, determined by the arbitrator) to be successful in its claim.

(h) Notice. All communications and notices relating to these Terms and Conditions shall be sent by international overnight or second day courier, postage prepaid (effective two business days delivery or attempted delivery) or delivered personally or by telecopy/fax (effective upon the earlier of actual delivery or three (3) days after postmark date of confirmation), to the respective addresses set forth on the signature page hereof, or to the other addresses as either party shall designate by notice given as aforesaid. Either party may change its address by giving the other notice thereof in the manner provided in this Paragraph.

(i) Severability. If any term, provision, covenant or condition of these Terms and Conditions is held invalid or unenforceable for any reason, the remainder of the provisions will continue in full force and effect.

(j) Non-Solicitation. During the term of a Statement of Work and for a period of twelve (12) months thereafter, Customer agrees to refrain from recruiting employees and/or contractors of Azima and from soliciting such employees and/or contractors for the purpose of any form of recruitment. Customer agrees and acknowledges that if Customer recruits, solicits or hires such employees and/or contractors within such twelve (12) month period, Customer shall pay Azima an amount representing one full year of compensation payable by Customer to such Azima employee and/or contractor, with such amount fully due and payable on the date such employee and/or contractor agrees to perform services, either as an employee or independent contractor, of Customer.

**For \_\_\_\_\_ (Customer):**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**For Azima:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_