

## EMAGIN TERMS OF SERVICE

By accepting these Emagin Terms of Service (“**Agreement**”) during your account registration or subscription process, or by accessing or using the Services (as defined below), you confirm your acceptance of this Agreement. If you do not agree, you do not have the right to access or use our Services.

You agree to this Agreement on behalf of the company or other legal entity for which you are acting (for example, as an employee or contractor) or, if there is no company or legal entity, on behalf of yourself as an individual (in either case, “**You**”). You represent and warrant that You have the right and authority (as well as the capacity—for example, You are of sufficient legal age) to act on behalf of and bind such entity (if any) and Yourself.

This Agreement applies to Your account with Innovyze LLC, a Delaware limited liability company, or another Innovyze entity if set forth in the Order Form (“**Innovyze**”) and Innovyze’s proprietary Emagin software-as-a-service offering (“**Services**”), and constitutes a binding contract between the Parties. “**Party**” and “**Parties**” means You and Innovyze either collectively or individually.

### 1. BASELINE FOR SERVICES; IMPLEMENTATION

#### 1.1 Baseline Period.

1.1.1 Commencing on the date You accept this Agreement (“**Effective Date**”) and continuing for a period of thirty (30) days’ thereafter (the “**Baseline Period**”), Innovyze will make a version of the Services (“**Baseline Services**”) available to You for purposes of determining the pricing for the Services. The performance (energy and chemical consumption along with any other savings included in targeted savings as set forth in the Order Form) of plant operations of the Baseline Services utilized during the Baseline Period will be compared against the performance over periods during which the plant operations do not utilize the Baseline Service. This calculation will be based on data sets or feeds from those of Your facilities (“**Installation Sites**”) mutually agreed upon by the Parties. The fees for the Services will be the amounts set forth in the Order Form, unless Your savings from the use of the Baseline Services during the Baseline Period at the applicable Installation Site is less than the targeted savings set forth in the Order Form, in which case during the Initial Term such fees will be proportionally reduced to reflect the difference between the targeted savings and the actual savings. After the Initial Term, the fees for Services may be adjusted pursuant to Section 2.1.

1.1.2 To the extent You supply any such data during the Baseline Period, the data will be deemed Your Data (as defined below) for purposes of this Agreement. Innovyze will provide You with reasonable training and assistance to enable Your use and evaluation of the Baseline Services.

#### 1.2 Implementation Period.

1.2.1 Following the expiration of the Baseline Period, Innovyze will proceed with the full implementation of the Services at each Installation Site. The Parties will target completion of the full implementation of the Services within the sixty (60) day period following the expiration of the Baseline Period (the “**Implementation Period**”).

1.2.2 Innovyze will use commercially reasonable efforts to perform the tasks and activities with respect to the implementation of the Services at the Installation Site during the Implementation Period (“**Implementation Services**”).

### 2. SERVICES; RESTRICTIONS

2.1 Services. Subject to the terms of this Agreement, Innovyze grants to You a non-exclusive, non-transferable, and non-sublicensable right, during the Term (as defined below), to access and use the Services by and through Your employee, contractor, consultant or agent (“**Authorized User**”) for Your internal business purposes solely at the Installation Sites. Services during the Initial Term (as defined below) are provided pursuant to the terms and conditions of this Agreement and an ordering document or online order form approved by Innovyze that is entered into between You and Innovyze and that specifies the Services to be provided hereunder (the “**Order Form**”),

including the pricing and the other terms, conditions, and limitations set forth therein.

2.2 Restrictions. You may access and use the Services exclusively as related to the Installation Sites. You will not directly or indirectly: (i) make any Services available to anyone other than Your Authorized Users; (ii) offer, use, or otherwise exploit the Services, whether or not for a fee, in any managed service provider offering, platform as a service offering, service bureau, or other similar product or offering; (iii) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code, or any software, documentation or data related to the Services; (iv) modify or make derivative works based on the Services; (v) copy or create Internet “links” to the Services or “frame” or “mirror” any of the Services; or (vi) access the Services in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Services, or (c) copy any features, functions or graphics of the Services. You will be directly responsible and liable for any violations of this Agreement by any person or entity that You allow to access the Services, including Authorized Users. Innovyze may immediately suspend Your use of and access to the Services if You or Your Authorized Users (i) use the Services in breach of the foregoing restrictions or (ii) use the Services in a way that in Innovyze’s judgment threatens the security, integrity or availability of the Services.

2.3 Unauthorized Use. You will promptly notify Innovyze in writing of any unauthorized use of the Services of which You become aware. You will ensure that Authorized Users do not share login credentials, whether among Authorized Users or with third parties. In the event You become aware of any such unauthorized use by any third party that obtained access through You or any of Your Authorized Users, You will promptly notify Innovyze and take all steps necessary to terminate such unauthorized use. You will provide Innovyze with such cooperation and assistance related to any such unauthorized use as Innovyze may reasonably request. You acknowledge that in order to protect the transmission of information, data, media or other content provided by You or any Authorized User for use with the Services (“**Your Data**”), it is Your responsibility to use a secure encrypted connection to communicate with the Services.

2.4 Access to the Services. You will be solely responsible for maintaining and operating all workstations, operating systems, Internet access, and hardware (“**Your Systems**”) necessary for Authorized Users to access and use the Services and all aspects of the physical, technical, and administrative security of Your Systems.

2.5 Support and Maintenance. Unless an Order Form provides otherwise, support and maintenance for the Services (“**Support and Maintenance Services**”) will be provided by Innovyze in accordance with the following:

2.5.1 Personnel Training. Innovyze will provide product training (via on-site seminars or webinars) for key project stakeholders at Your site upon the prescribed installation/launch date of the Services, as well as on the anniversary of the launch date during each year of the Initial Term, to enable You to promote the use of the Services’ digital analytics and software capabilities and to perform employee training, technical assistance and support. Such product training will be provided to You by Innovyze at mutually agreed upon times and locations. You may request additional training and You will be responsible for all related out-of-pocket costs and expenses incurred by Innovyze, including with respect to travel, airfare and lodging expenses of Innovyze personnel.

2.5.2 Model Retraining. Innovyze will retrain the machine learning models utilized by the Services if (i) Innovyze determines that prediction performance has deteriorated; or (ii) Your process infrastructure changes require a retraining. Any such model retraining will be subject to additional fees, as will be mutually agreed by the Parties.

2.5.3 Additional Data Streams. You may request that Innovyze include an unlimited number of additional data streams (tags) from any additional monitoring units on as needed basis, and Innovyze will use commercially reasonable efforts to integrate such additional data streams. Any such data streams will be subject to additional fees, as will be mutually agreed by the Parties.

2.5.4 Release Logs. Innovyze will provide You with updates on new software releases when they are made available to Innovyze customers generally. Release logs will be issued as part of Innovyze’s helpdesk.

2.5.5 Support Services. Innovyze will provide an online helpdesk support system that will enable: (a) You to raise issues (“**Tickets**”) regarding performance deficiencies of the Services; (b) Innovyze’s acknowledgement and diagnosis of such performance deficiencies; and (c) Innovyze’s communication of the commercially reasonable

efforts it is using to achieve resolution of any performance deficiencies of the Services. The table below summarizes the target response time (the time it takes for Innovyze to acknowledge a receipt of a Ticket and provide an estimated resolution time), as well as the target resolution time (the time it takes to resolve the issue raised in the Ticket). The target response and resolution times are categorized based on the severity of the identified deficiency. Innovyze will use commercially reasonable efforts to meet the target response times and the target resolution times set forth in this Section 2.5.5, but will have no liability to You in connection with any failure on the part of Innovyze to meet the target response times and target resolution times.

Priority	Description	Target Response Time	Target Resolution Time
<b>Critical</b>	The Services are down causing critical impact to business operations if the Services are not restored promptly. No work-around is available.	24 Hours	3 Days
<b>High</b>	The Services are severely degraded impacting significant aspects of business operations. No workaround is available.	2 Days	4 Days
<b>Medium</b>	Problem which causes inconvenience or degraded performance that must be rectified soon. Many people affected but work-around in place. Initial problem still needs to be resolved.	2 Days	8 Days
<b>Low</b>	Problem situation other than the above, mainly cosmetic.	2 Days	12 Days

2.6 Your Data. You acknowledge and agree that (i) You have sole responsibility to determine which Authorized Users are provided access to the Services and which of Your Data such Authorized Users may access via the Services; (ii) Innovyze has no obligation to monitor any of Your Data; (iii) Innovyze does not control, interpret, verify or endorse Your Data that You or Your Authorized Users make available on the Services; (iv) Innovyze is not responsible for the accuracy, completeness, appropriateness, copyright compliance or legality of any of Your Data accessible using the Services; and (v) You are solely responsible for any Authorized User's transmission of Your Data to the Services. You are solely responsible for the development, content, operation, maintenance, and use of Your Data. You hereby represent and warrant on behalf of Yourself and Your Authorized Users that (a) You have all of the rights in Your Data necessary for the uploading, use, display, publishing, sharing and distribution of Your Data in the course of using the Services; and (b) the storage, display, publication, performance, integration, use and transmission of Your Data through the Services does not violate any Law or this Agreement. Notwithstanding any terms to the contrary herein, Innovyze will have the right to de-identify and aggregate Your Data ("**Usage Data**") and Innovyze will own and have the unlimited right to use, create derivative works of, distribute and otherwise exploit, without restriction, the Usage Data, without notification to You and without Your prior consent. "**Law(s)**" means all national, federal, state and local laws, statutes, rules, court orders, regulations and ordinances applicable to a Party and/or its Affiliates, as applicable. "**Affiliate(s)**" means, with respect to a Party, any entity that is in Control of, Controlled by, or under common Control with such Party. "**Control**" and "**Controlled**" mean the direct or indirect ability: (i) to vote more than fifty percent (50.0%) of the outstanding voting interests; or (ii) to direct or cause the direction of general management decisions, including, without limitation, through a management agreement.

2.7 Data Security. Innovyze agrees to maintain appropriate administrative, technical and physical safeguards for all of Your Data in its possession ("**Security Safeguards**"). The Security Safeguards will be designed to: (i) ensure the confidentiality of Your Data; (ii) protect against any anticipated threats or hazards to the security or integrity of Your Data; and (iii) protect Your Data against unauthorized access.

2.8 Professional Services. Innovyze will perform such consulting, implementation, training, or other professional services as may be set forth in a Statement of Work between the Parties (“**Professional Services**”). “**Statement of Work**” means a document referencing this Agreement, mutually agreed upon by Innovyze and You, and describing the scope of the Professional Services to be provided by Innovyze and the specific terms and conditions relating thereto. Each such Statement of Work will be governed and controlled by the terms and conditions of this Agreement and will be interpreted and construed consistently with the terms and conditions of this Agreement, provided that, in the event of a conflict or inconsistency between the terms and conditions of this Agreement and the terms and conditions of a Statement of Work, the terms and conditions of this Agreement will govern and control, except to the extent the applicable Statement of Work expressly states that such Statement of Work controls over a specific provision of this Agreement, and then only with respect to such Statement of Work. If the performance of Professional Services requires that Innovyze perform work on Your premises, Innovyze agrees to comply with all Your policies and procedures with respect to performing work on Your premises, including without limitation, any Covid-19 protocols that You may adopt or implement from time to time; provided that, You provide Innovyze written notice of such policies and procedures reasonably in advance of Innovyze performing work on Your premises.

2.9 Beta Services. From time to time, Innovyze may, as part of the Services, make certain Beta Services available to You at no charge. You may choose to use or not use such Beta Services in Your sole discretion. In the event You elect to use the Beta Services, You acknowledge and agree that Innovyze makes no representations or warranties of any kind in connection with the Beta Services, and will have no liability of any kind to You with respect to Your use of the Beta Services. Rather, all risk associated with the use of the Beta Services is solely with You. For purposes of this Agreement, “**Beta Services**” means Innovyze services or functionality that may be made available to You to use at Your option at no additional charge which is clearly designated by Innovyze as beta, pilot, limited release, developer preview, non-production, evaluation, or by a similar description.

### **3. TERM AND TERMINATION**

3.1 Term. This Agreement commences on the Effective Date and will continue thereafter for a period of one (1) year from the Go-Live Date set out in the Order Form (“**Initial Term**”), unless terminated earlier pursuant to the terms of this Agreement. Thereafter, this Agreement will automatically renew for successive (1) year periods (each a “**Renewal Term**” and together with the Initial Term, the “**Term**”), unless either Party provides the other Party with written notice of non-renewal not less than ninety (90) days prior to the expiration of the Initial Term or the then-current Renewal Term. The term of each Order Form will be as specified in the applicable Order Form.

#### 3.2 Termination

3.2.1 Either Party may terminate this Agreement and/or any individual Statement of Work or Order Form upon written notice to the other Party in the event of a material breach by the other Party, which breach remains uncured for a period of thirty (30) days after written notice reasonably specifying the nature of the breach is given to the breaching Party.

3.2.2 Either Party may terminate this Agreement and/or any individual Statement of Work or Order Form immediately in the event the other Party: (i) becomes insolvent, is dissolved or liquidated; (ii) files or has filed against it a petition in bankruptcy and such petition is not dismissed within sixty (60) days of the date of filing; (iii) makes a general assignment for the benefit of its creditors; or (iv) ceases conducting business in the ordinary course.

3.2.3 Except as otherwise agreed by the Parties in writing, the termination of this Agreement will automatically terminate any and all Statements of Work and/or Order Forms then in effect between the Parties.

3.3 Effect of Termination. Upon any termination or expiration of this Agreement: (i) Your and Your Authorized Users’ right to access and use the Services will immediately cease; (ii) You will promptly delete and destroy all copies of the Documentation (as defined below) in Your possession or control; (iii) each Party will promptly return, or destroy if requested by the other Party, the other Party’s Confidential Information, provided that, You acknowledge that Innovyze’s legal department will maintain one (1) copy of Your Confidential Information for compliance reasons; and (iv) for a period of thirty (30) days following the effective date of termination or expiration, Innovyze will make available to You for download or other export, in such format and manner as reasonably determined by Innovyze, any of Your Data contained in the Services. Upon the expiration of such thirty (30) day period, Innovyze

will have no further obligations to You with respect to Your Data, and may, in its discretion, delete, or destroy Your Data. No refunds or credits of any prepaid fees will be granted in the event of any termination or expiration of this Agreement or individual Statement of Work or Order Form.

3.4 Survival. The following Sections will survive the termination or expiration of this Agreement for any reason: Sections 2.6, 3.3, 4, 5, 6, 7, 9 and 10.

#### **4. FEES; PAYMENT**

4.1 Fees. You will pay Innovyze the fees for the Services specified in the Order Form (subject to the proportional reductions to which You may be entitled in accordance with Section 1.1 above, as applicable) and any Professional Services fees as may be specified in a Statement of Work. Unless otherwise specified in an Order Form or the applicable Statement of Work, You will pay to Innovyze all invoiced amounts within forty-five (45) days of the invoice date. Payments will be sent to the address included on the invoice. In addition, You will pay Innovyze all reasonable costs incurred by Innovyze's personnel for travel, lodging, and meal expenses related to the Professional Services.

4.2 Late Payments. If You fail to make any payment when due hereunder, Innovyze will be entitled to withhold fulfillment of any of Your other orders. If You fail to pay any fee when due, then Innovyze may charge You interest in an amount of one percent (1%) per month, or such lower rate as may be mandated by applicable Law, on the unpaid balance from the due date and/or suspend access to the Services. If any charge that You owe is thirty (30) days or more overdue, Innovyze may, without limiting its other rights and remedies, suspend the Services until such amounts are paid in full.

4.3 Taxes. Fees do not include sales, use, value-added or other taxes or duties. You agree to pay all applicable taxes and duties on fees for which Innovyze is required to pay or account, exclusive of any tax on Innovyze's income. You will directly pay any such taxes or duties assessed against You, unless You provide Innovyze in a timely manner with a valid certificate of exemption or other evidence that items are not taxable. If You are required by applicable Law to make any deduction or withholding (whether on account of tax or otherwise) from any payment, You will notify Innovyze in writing of such deduction or withholding requirement prior to making the payment to Innovyze. You will, in accordance with the Law, withhold such deduction or withholding taxes from the amount due to Innovyze, remit the deduction or withholding taxes to the appropriate tax authority, and furnish Innovyze with proof of payment of such deduction or withholding taxes within thirty (30) days following payment thereof. Where Innovyze is entitled under any applicable tax treaty to a reduction in the rate of, or the elimination of, applicable withholding tax, the Parties agree to cooperate in accordance with applicable Law to claim such a reduction.

#### **5. PROPRIETARY RIGHTS**

5.1 Your Proprietary Rights. Your Data is and will at times remain Your sole and exclusive property. Except as expressly set forth in this Agreement, Innovyze obtains no rights under this Agreement from You to Your Data.

5.2 Innovyze Proprietary Rights. Notwithstanding any terms to the contrary, as between You and Innovyze, Innovyze owns and will retain all right, title, and interest in and to all Innovyze Proprietary Rights and, except for the rights expressly granted to You under this Agreement, You will have no right, title or interest in or to the Innovyze Proprietary Rights, and all such rights are expressly reserved by Innovyze. You will not assert, impose or maintain any encumbrances or other rights in or to the Innovyze Proprietary Rights. You hereby disclaim any right, title, and interest in and to the Innovyze Proprietary Rights. To the extent You obtain any rights in any Innovyze Proprietary Rights or any modifications, enhancements, and derivative works to any Innovyze Proprietary Rights, You hereby assign to Innovyze all right, title, and interest in and to such modifications, enhancements, and derivative works. Upon request by Innovyze, You will sign and deliver, and will cause Your Affiliates, and Your and Your Affiliates' employees, subcontractors, agents, and representatives to sign and deliver, any documents that may be necessary or desirable under any Laws to preserve, or enable Innovyze to enforce, its rights hereunder with respect to the Innovyze Proprietary Rights.

5.3 **"Innovyze Proprietary Rights"** means (i) the Services; (ii) the Usage Data; (iii) the work product and associated Intellectual Property Rights created or conceived by Innovyze or any of its subcontractors for use by You (via the Services or otherwise) under this Agreement; (iv) the then-current user documentation, technical manuals, and tutorials for the Services generally made available by Innovyze to its customers via an online helpdesk system

(the “**Documentation**”); (v) all modifications, enhancements, and derivative works of or to any of the foregoing; and (vi) all Intellectual Property Rights associated with and/or embodied in any of the foregoing, and any and all other Intellectual Property Rights that are (a) owned or acquired or developed by (or by a third party on behalf of) Innovyze whether prior to or in the course of performing the Services, Support and Maintenance Services or the Professional Services; or (b) licensed by Innovyze from a third party.

5.4 “**Intellectual Property Rights**” means all works of authorship, copyrights, inventions, patent rights and other rights of inventorship, rights in trademarks, service marks and other indicia of source, rights in trade secrets and proprietary information, rights in data and compilations of data, and all other intellectual property and proprietary rights of any type under applicable state or federal Law of the United States or any other nation or international treaty or Law, as well as all rights in registrations and applications for registration of these rights and all licenses to these rights.

5.5 Feedback. You may provide Innovyze with feedback, comments, or suggestions from time to time (collectively, “**Feedback**”). You acknowledge and agree that: (i) any Feedback will not be deemed Your Confidential Information; (ii) Innovyze will have no obligation to review, consider, or implement any Feedback; and (iii) You hereby irrevocably grant to Innovyze and its successors and assigns, a perpetual, irrevocable and unlimited license to use, reproduce, modify, distribute, display, perform, and create derivative works of any Feedback and any derivatives thereof for any purpose and without restriction, free of charge and without attribution of any kind, including by making, using, selling, offering for sale, importing, and promoting commercial products and services which incorporate or embody Feedback, whether in whole or in part.

5.6 Third-Party Materials. The Services may display or make available, third party content (including data, information, and/or materials) (collectively, “**Third Party Materials**”). You acknowledge and agree that Innovyze is not responsible for the Third Party Materials. Innovyze does not assume and will not have any liability or responsibility to You, any Authorized User, or any other person or entity for any Third Party Materials.

## 6. CONFIDENTIALITY

6.1 Confidential Information. Each Party (including its Affiliates) may provide or otherwise make available Confidential Information to the other Party. The Party (including its Affiliates) disclosing Confidential Information is referred to herein as the “**Disclosing Party**,” and the Party (including its Affiliates) receiving Confidential Information is referred to as the “**Receiving Party**.” “**Confidential Information**” means information not generally known to the public that is (i) made available or disclosed by a Disclosing Party to a Receiving Party in writing and (ii) designated by the Disclosing Party in writing as Confidential. Innovyze Confidential Information also includes the non-public aspects of (i) any Services and any related product plans, technology and other technical information and (ii) business negotiations. Nonetheless, Confidential Information does not include any of Your Data that You send to, or allow to be accessed by, a third party through the Services.

6.2 Confidentiality and Non-Use Obligations. Without limiting the terms of this Agreement, the Receiving Party will: (i) keep all Confidential Information of the Disclosing Party confidential and not use such Confidential Information except as necessary to perform the Receiving Party’s obligations and/or exercise its rights under this Agreement; (ii) use the same degree of care the Receiving Party uses to protect its own Confidential Information to prevent the unauthorized use or disclosure of the Disclosing Party’s Confidential Information, but in no event less than a commercially reasonable degree of care; and (iii) not disclose, reveal or otherwise make available the Disclosing Party’s Confidential Information to anyone except to: (a) its Affiliates; (b) its employees, agents, and representatives; and (c) its attorneys, auditors, regulatory authorities, accountants and other professional advisors, in each case (i.e., (a) through (c) above), who have a bona fide need to know such information, and on the condition that the Receiving Party informs such persons and/or entities of the obligations under this Agreement and such persons and/or entities are subject to obligations of confidentiality and non-use at least as protective of the Disclosing Party’s Confidential Information as those set forth in this Agreement. The Receiving Party will promptly notify the Disclosing Party of any use or disclosure of the Disclosing Party’s Confidential Information not permitted by this Agreement of which the Receiving Party becomes aware and fully cooperate with the Disclosing Party to protect the Disclosing Party’s Confidential Information.

6.3 Exceptions. Confidential Information will not include, and the Receiving Party will have no obligation to

preserve the confidentiality of, any information, which, except as a result of unauthorized or unlawful use, access or disclosure: (i) was previously known to the Receiving Party free of any confidentiality or nondisclosure obligation; (ii) is or becomes publicly available; or (iii) was disclosed to the Receiving Party free of any confidentiality or nondisclosure obligation from a source other than the Disclosing Party.

6.4 Compelled Disclosure. Notwithstanding anything to the contrary, in the event that the Receiving Party is legally compelled to disclose any Confidential Information of the Disclosing Party pursuant to a subpoena, order, process or other requirement of a judicial or other governmental authority of competent jurisdiction (each a “**Legal Order**”), the Receiving Party may disclose such Confidential Information provided that the Receiving Party (unless prohibited): (i) notifies the Disclosing Party (including a copy of the Legal Order) as soon as reasonably practicable prior to making such legally compelled disclosure; (ii) provides any reasonably requested assistance to the Disclosing Party in obtaining a protective order; and (iii) only discloses that portion of such Confidential Information that, in the opinion of the Receiving Party’s legal counsel, the Receiving Party is legally compelled or otherwise required to disclose. If the Receiving Party is compelled by law to disclose the Disclosing Party’s Confidential Information pursuant to any such Legal Order, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

## **7. INDEMNIFICATION**

7.1 Indemnification by Innovyze. Innovyze will defend You from and against any third party claim that the Services, as provided by Innovyze, infringe upon any third party U.S. copyright, trademark, or patent (“**IP Claim**”). Innovyze will pay any settlement amounts and/or any resulting damages, costs, and expenses finally awarded to a third party as a result of any such IP Claim. The foregoing defense and indemnification obligations do not apply if: (i) the allegation does not state with specificity that the Services are the basis of the IP Claim; (ii) the IP Claim arises from any unauthorized use of, unauthorized access granted to or unauthorized distribution of the Services; (iii) the IP Claim arises from the use of any of Your Data with or in the Services, or from Your breach of this Agreement, the Documentation, or the applicable Order Form(s); or (iv) the IP Claim arises from the use or combination of the Services or any part thereof with software, hardware, data or processes not provided by Innovyze. If the Services become, or, in Innovyze’s opinion, are likely to become, the subject of an IP Claim, Innovyze may, at its option and expense, either: (a) obtain the right for You to continue using the Services in accordance with this Agreement; (b) replace or modify the Services so that they become non-infringing while retaining substantially similar functionality; or (c) if neither of the foregoing remedies can be reasonably effected by Innovyze, terminate this Agreement and refund You any prepaid fees covering the remainder of the Term. THIS SECTION 7.1 STATES INNOVYZE’S SOLE AND ENTIRE OBLIGATION AND LIABILITY, AND YOUR SOLE AND EXCLUSIVE RIGHT AND REMEDY, FOR INFRINGEMENT OR VIOLATION OF INTELLECTUAL PROPERTY RIGHTS.

7.2 Indemnification by You. You will defend, indemnify, and hold harmless Innovyze, its Affiliates and their respective directors, officers, shareholders, trustees, partners, members, beneficial owners, agents, employees, attorneys, successors, and assigns from and against any and all damages, liens, fines, penalties, liabilities, losses, costs and expenses (including, without limitation, reasonable attorneys’ fees) arising out of: (i) Your breach of this Agreement; (ii) Your and/or Your Authorized Users’ use of the Services; (iii) any instructions or directions You provide to Innovyze; and (iv) Your Data.

7.3 Indemnification Procedure. The Parties’ indemnity obligations set forth in this Section 7 will be subject to and conditioned upon the Party seeking indemnity hereunder promptly notifying the indemnifying Party of any damages or losses for which indemnity is owed (“**Indemnified Claim**”), provided that, the failure to promptly notify the indemnifying Party of the Indemnified Claim will not relieve the indemnifying Party of its duties under this Section 7 unless the indemnifying Party is materially prejudiced by the delay. The indemnifying Party will assume exclusive control of the defense and settlement (including all decisions relating to litigation, defense, and appeal) of any such Indemnified Claim; provided that, without the indemnified Party’s prior written consent, not to be unreasonably withheld, the indemnifying Party may not settle such Indemnified Claim in a manner involving any remedy except for the payment of money fully indemnified hereunder. The indemnified Party will reasonably cooperate with the indemnifying Party, at the indemnifying Party’s expense, in its defense of the Indemnified Claim. The indemnified Party may participate in, but not control, the defense of such Indemnified Claim using attorneys of

its choice and at its sole cost and expense.

## **8. REPRESENTATIONS AND WARRANTIES; DISCLAIMER**

8.1 Mutual Representations and Warranties. Each Party represents and warrants that: (i) this Agreement has been validly entered into by such Party and constitutes the legal, valid, and binding obligation of such Party enforceable against it in accordance with its terms, subject to the principles of equity, bankruptcy, insolvency, reorganization, and other Laws affecting creditors' rights generally; (ii) it has all requisite authority to enter into this Agreement and to carry out the transactions contemplated by this Agreement; and (iii) its acceptance of the terms of this Agreement and its performance and compliance with the terms of this Agreement will not conflict with, result in a breach of, constitute a default under or require the consent of any third party under any license, sublicense, lease, contract, agreement or instrument to which such Party is bound or to which such Party is subject.

8.2 Your Representations and Warranties. You represent and warrant to Innovyze that: (i) You own or otherwise have all necessary rights, title, and interest in and to Your Data to provide Your Data to Innovyze; and (ii) in Your collection, compiling, creation and/or maintenance of Your Data, You have complied with and during the Term will continue to comply with any and all Laws, including without limitation, all Laws regarding the privacy and/or security of personal data. Furthermore, You represent and warrant to Innovyze that: (a) the following are or will be installed or achieved at the Installation Site(s), with proven functionality prior to Innovyze's provision of the Baseline Services (1) Scada Historian; and (2) real-time integration; and (b) that during the Baseline Period, You will ensure (1) over 90% uptime of real-time batch data transfer, as measured by minutes, is operational (all critical tags are received); (2) for not less than 90% of the recommended schedule adherence, as measured by percentage of time, the Services recommendations are and will be followed; (3) over 90% uptime of all critical online instruments; (4) over 90% critical lab sample measurements are accurate and timely; (5) all critical instruments are (x) accurate with no flatlining over 90% of operational dates, (y) in-service (i.e., online over 90% of plant operational time), and (z) regularly calibrated and timely; (6) availability of over 6,000 historical data observations during dry weather conditions (no precipitation); (7) availability of over 6,000 historical data observations during wet weather conditions (precipitation events); (8) minimum data resolution delivered every fifteen (15) minutes; (9) that You provide a single, dedicated project manager from the Effective Date through the Baseline Period; and (10) that the criteria set forth above 8.2(b)(1) – (10) are maintained during the Term.

8.3 Innovyze Representations and Warranties. Innovyze represents and warrants that: (i) the Services will perform substantially in accordance with the Documentation; (ii) the Implementation Services, Support and Maintenance Services, and Professional Services will be provided in a professional and workmanlike manner; and (iii) Innovyze will not knowingly introduce any back door, time bomb, Trojan horse, worm, drop dead device, virus, preventative routines or other computer software routines within the Services that are intentionally designed to permit unauthorized access to or use of either the Services, Your Data or either Party's computer systems (collectively, "Viruses"). In the event of any breach of a warranty above, Innovyze will, as its sole and exclusive liability and as Your sole and exclusive remedy, use commercially reasonable efforts to remedy any deficiencies that cause the applicable warranty non-conformance after receipt of written notice thereof from You. Innovyze will not be liable to the extent that any breach of the foregoing warranties are caused by (a) third-party components, including without limitation any of Your Systems or Third Party Materials; (b) unauthorized use and/or modification of the Services; or (c) Viruses introduced by You or Authorized Users.

## **9. LIMITATION OF LIABILITY**

### **9.1 Disclaimer.**

9.1.1 EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE SERVICES, THE IMPLEMENTATION SERVICES, THE SUPPORT AND MAINTENANCE SERVICES, AND THE PROFESSIONAL SERVICES ARE PROVIDED "AS IS," "AS AVAILABLE" AND WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ANY REPRESENTATIONS AND WARRANTIES IMPLIED BY ANY COURSE OF PERFORMANCE OR USAGE OF TRADE, ALL OF WHICH ARE HEREBY EXPRESSLY DISCLAIMED. INNOVYZE AND ITS SUPPLIERS, PARTNERS, SERVICE PROVIDERS AND LICENSORS DO NOT REPRESENT OR WARRANT THAT: (i) THE SERVICES WILL MEET YOUR REQUIREMENTS; (ii) THE SERVICES OR THEIR USE WILL BE ERROR-FREE OR UNINTERRUPTED OR THAT THE RESULTS



OBTAINED FROM THE USE OF THE SERVICES WILL BE ACCURATE OR RELIABLE; (iii) ALL DEFICIENCIES IN THE SERVICES CAN BE FOUND OR CORRECTED; OR (iv) YOUR SYSTEMS WILL INTERFACE WITH OR CONNECT TO THE SERVICES. FURTHER, INNOVYZE WILL NOT BE RESPONSIBLE FOR: (a) ANY LOSS OF DATA THAT IS NOT DUE TO A BREACH OF THIS AGREEMENT BY INNOVYZE; (b) YOUR INABILITY TO ACCESS OR INTERACT WITH ANY OTHER SERVICE PROVIDER THROUGH THE INTERNET, OTHER NETWORKS OR USERS THAT COMPRISE THE INTERNET OR THE INFORMATIONAL OR COMPUTING RESOURCES AVAILABLE THROUGH THE INTERNET; OR (c) GOODS OR SERVICES PROVIDED BY THIRD PARTY PROVIDERS.

9.1.2 THE SERVICES ARE INTENDED FOR USE IN THE DESIGN, MODELING, ANALYSIS, AND MANAGEMENT OF WATER SYSTEMS. WHILE APPROPRIATE CARE HAS BEEN TAKEN IN THE DEVELOPMENT OF THE SERVICES, THE SERVICES ARE A TOOL ONLY, AND ARE NOT A SUBSTITUTE FOR THE ADVICE AND/OR JUDGMENT OF A PROFESSIONALLY TRAINED ENGINEER OR SIMILAR WATER SYSTEMS PROFESSIONAL. INNOVYZE DOES NOT PERFORM ANY INDEPENDENT ANALYSES OR INVESTIGATIONS OF THE PARTICULAR WATER SYSTEMS WITH WHICH THE SERVICES ARE BEING USED, NOR DOES INNOVYZE PROVIDE ENGINEERING SERVICES. FURTHERMORE, MODEL CONFIGURATIONS, PROJECTIONS, AND ANY ANALYSES GENERATED BY THE SERVICES ARE INTENDED FOR INFORMATIONAL USE ONLY. FORECASTS AND ACTUAL RESULTS MAY VARY DUE TO, AMONG OTHER THINGS, THE USE OF INACCURATE OR INCOMPLETE DATA AS AN INPUT INTO THE SERVICES, OPERATION, AND SYSTEM CONDITIONS THAT ARE BEYOND THE SCOPE OR CAPABILITY OF THE SERVICES, OR ANY EVENTS OR CIRCUMSTANCES THAT ARE NOT REASONABLY FORESEEABLE UNDER THE CIRCUMSTANCES. INNOVYZE IS NOT RESPONSIBLE FOR THE REALIZATION OF FORECASTED CONCLUSIONS OR PROJECTIONS, OR THE IDENTIFICATION OF (OR THE FAILURE TO IDENTIFY) MATTERS THAT MIGHT AFFECT ACTUAL SYSTEM OPERATION OR CONDITIONS AS A RESULT OF THE USE OF THE SERVICES. YOU ACKNOWLEDGE AND AGREE THAT EACH AUTHORIZED USER MUST EXERCISE HIS OR HER OWN INDEPENDENT SKILL, EXPERIENCE, KNOWLEDGE, AND PROFESSIONAL JUDGMENT IN MAKING DECISIONS BASED ON HIS OR HER USE OF THE SERVICES AND/OR THE OUTPUT THEREOF; ACCORDINGLY, ALL RISK ASSOCIATED WITH THE USE OF THE SERVICES IS SOLELY WITH YOU AND/OR YOUR AUTHORIZED USERS.

9.1.3 THE FOREGOING DOES NOT AFFECT ANY WARRANTIES WHICH CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW AND ONLY APPLIES TO THE MAXIMUM EXTENT PERMITTED BY LAW.

9.2 Limitation of Liability. NOTWITHSTANDING ANY OTHER PROVISION HEREOF, IN NO EVENT WILL INNOVYZE'S TOTAL AGGREGATE LIABILITY UNDER THIS AGREEMENT, NO MATTER THE CAUSE OF ACTION OR THEORY OF LIABILITY UNDER WHICH INNOVYZE IS ALLEGED TO BE LIABLE, EXCEED THE TOTAL FEES PAID BY YOU UNDER THIS AGREEMENT IN THE ONE (1) YEAR PERIOD IMMEDIATELY PRECEDING THE DATE OF THE EVENT GIVING RISE TO THE LIABILITY.

9.3 Exclusion of Damages. IN NO EVENT WILL INNOVYZE OR ITS PARTNERS, SUPPLIERS, VENDORS OR LICENSORS BE LIABLE UNDER CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE, WARRANTY OR ANY OTHER LEGAL OR EQUITABLE THEORY WITH RESPECT TO THE SERVICES, INCLUDING FOR ANY LOST PROFITS, DATA LOSS, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, LOSS OF GOODWILL, OR FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, COMPENSATORY OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER, EVEN IF INNOVYZE HAD BEEN ADVISED AS TO, OR SHOULD HAVE KNOWN OF, THE POSSIBILITY OF SUCH DAMAGES.

## **10. GENERAL TERMS**

10.1 Assignment. You will not assign or transfer this Agreement or Your rights and obligations under this Agreement to any third party without the prior written consent of Innovyze. For purposes of this Section 10.1, if You undergo any change of control, whether by merger, sale of equity interests, or otherwise, this occurrence will constitute an assignment requiring the prior written consent of Innovyze. Any attempt by You to assign this Agreement or Your rights and obligations hereunder in violation of this Section 10.1 will be null and void. Innovyze is free to assign or transfer any or all of its rights or obligations under this Agreement at its discretion.

10.2 Entire Agreement. This Agreement, including any Order Forms and Statements of Work (and all documents attached thereto), constitutes the entire agreement between the Parties and supersedes all prior or contemporaneous agreements or representations concerning the subject matter hereof.

10.3 Export Controls.

10.3.1 You acknowledge that the license to use the Services hereunder may be subject to export control Laws which may include, without limitation, the United States Export Administration Regulations, the Trading With the Enemy Act, the International Emergency Economic Powers Act, the Arms Export Control Act and regulations promulgated by the United States Department of the Treasury's Office of Foreign Assets Control ("**OFAC**"), as amended from time to time (collectively, the "**Export Control Laws**"). You agree that all actions taken by You in furtherance of this Agreement will be in compliance with applicable Export Control Laws. You agree to comply with all applicable Export Control Laws. In addition, You agree that You will not export, re-export, transfer, or license any Services to any third parties that are named as a "Specially Designated National" or "Blocked Person" as designated by the OFAC.

10.3.2 If You know, or if acting reasonably, should know, that the Services could be exported, transferred, or licensed in a manner violating applicable Export Control Laws, You will immediately notify Innovyze. Furthermore, if Innovyze suspects or determines, in its sole and absolute discretion, that any sale of the Services to You may violate applicable Export Control Laws, You acknowledge and agree that Innovyze may refuse to accept such order for the Services and such refusal will not be a breach of this Agreement.

10.3.3 You agree to defend, indemnify, and hold harmless Innovyze and its Affiliates and their respective directors, officers, agents, employees, contractors, and assigns from and against any and all losses, liabilities, demands, claims, damages, suits, judgments, fines, and penalties, including but not limited to attorney's fees, which arise from or in connection with Your violation of applicable Export Control Laws.

10.4 Governmental Rights. The Services consist of "commercial items," as defined at FAR 2.101. In accordance with FAR 12.211-12.212 and DFARS 227.7102-4 and 227.7202-4, as applicable, the rights of the U.S. Government to use, modify, reproduce, release, perform, display, or disclose commercial computer software, commercial computer software documentation, and technical data furnished in connection with the Services will be as provided in this Agreement, except that, for U.S. Department of Defense end users, technical data customarily provided to the public is furnished in accordance with DFARS 252.227-7015. If a government agency needs additional rights, it must negotiate a mutually acceptable written addendum to this Agreement specifically granting those rights.

10.5 Changes to the Agreement. To the maximum extent permitted by applicable Law, Innovyze reserves the right from time to time to (and You acknowledge that Innovyze may) modify this Agreement. Innovyze will endeavor to notify You of any material modification to the Agreement that may have a materially adverse effect on You ("**Modification Notice**"), and You will then have an opportunity to review such modification. If any such modification has a material adverse effect on You and You do not agree to the modification, You may reject the modification by notifying Innovyze of the rejection within thirty (30) days of the Modification Notice. If You reject a modification under these circumstances, (i) Your access to and use of any Services affected by the modification will continue to be governed by the terms in effect immediately before the modification (except to the extent the modification was made for security, privacy or legal compliance reasons) until (a) the end of the then-current period for the Services, if applicable, or (b) one hundred eighty (180) days after the Modification Notice, whichever is earlier; and (ii) Your rights to such Services will then terminate. In the event of such a termination by You, Innovyze will refund to You the prorated portion of any prepaid fees applicable to the remaining term of the Order Form for the affected Services after the effective date of termination. Such date will be the end of the term of such Services. If you renew or extend your access to the Services, it will be under the then-current Agreement. Notices by You or Innovyze will be provided as set forth below, except that You may also provide Your notice of rejection (within the 30-day period described above) to the email address, or in any other manner, specified in the Modification Notice.

10.6 No waiver. This Agreement and applicable Statements of Work or Order Forms may not be supplemented or modified by course of dealing or performance. The waiver or failure of either Party to exercise any right provided for herein will not be deemed a waiver of any further rights hereunder.

10.7 Audits. During the Term and for a period of one (1) year thereafter, Innovyze may retain administrative access to Your account(s) through the Services for purposes of auditing Your compliance with the terms of this Agreement, including without limitation, Your usage of the Services. Innovyze and/or its designees will further have the right, upon reasonable prior notice to You, to audit and inspect Your systems, devices, and/or records for purposes of determining Your compliance with this Agreement, which audit right may include the right to access and inspect Your facilities and copy any documents or records in connection with such audit. You agree to cooperate

with Innovyze in connection with any such audit. In the event any such audit discloses use of the Services in violation of the terms of this Agreement or any other material breach of this Agreement, You agree to reimburse Innovyze for the costs and expenses incurred by Innovyze in connection with such audit.

10.8 Compliance with Laws. You agree at all times to comply with applicable Laws and regulations in Your performance of this Agreement, including, without limitation, the provisions of the United States' Foreign Corrupt Practices Act ("**FCPA**") and the United Kingdom's Bribery Act 2010 ("**Bribery Act**"). You will indemnify, defend, and hold harmless Innovyze and its respective officers, agents, and employees from and against any and all losses, costs, claims, and other liabilities arising out of, relating to or resulting from Your failure to comply with the provisions of applicable Laws, including without limitation, the FCPA and the Bribery Act.

10.9 Governing Law and Jurisdiction. This Agreement is governed and construed by and in accordance with the laws of the State of Oregon (excluding the conflict of law rules of any jurisdiction and the United Nations Convention on Contracts for the International Sale of Goods). Any suit, action or proceeding in connection with or relating to this Agreement (including, without limitation, any non-contractual dispute or claim) will be brought exclusively before the federal and state courts located in Multnomah County, Oregon, and the Parties hereby expressly and irrevocably submit to the exclusive jurisdiction of such courts for the purpose of any such suit, action, or proceeding.

10.10 Remedies. Without affecting any other rights or remedies that Innovyze or its Affiliates may have, You acknowledge that Innovyze and/or its Affiliates may be irreparably harmed by any breach of the terms of this Agreement including but not limited to breach of obligations with respect to Innovyze's Confidential Information or violation of any of the Innovyze Proprietary Rights and that damages alone may not necessarily be an adequate remedy. Accordingly, You hereby acknowledge that, except as provided in this Agreement and without proof of actual damages, injunctive relief, specific performance or other equitable relief in favor of Innovyze or any of its Affiliates is an appropriate and necessary remedy for breach of the terms of this Agreement.

10.11 Notices. Any notice by You to Innovyze will be sent by postal mail or delivery service to:

Innovyze LLC  
c/o Autodesk, Inc.

Attention: Chief Legal Officer/General Counsel  
The Landmark @ One Market, Suite 400  
San Francisco, CA 94105, USA

Except as otherwise expressly stated in this Agreement, any notices by Innovyze to You will be provided (i) by email to the registered email address associated with Your account, (ii) by posting to Your account, (iii) by posting within a Service (for example, through an in-Service notification function or sign-in notification), (iv) by postal mail or delivery service to the address associated with Your account, or (v) in any other manner deemed reasonable by Innovyze that involves specific notification to You. Notices from Innovyze to You will (a) in the case of notices by email, be effective one day after being sent and (b) in the case of other notices, five days after being posted or sent. You hereby agree to service of process being effected on You by registered mail sent to the address set forth in the Order Form if so permitted by applicable Law.

10.12 Force Majeure. Except for Your payment obligations under this Agreement, neither Party will be liable for, or will be considered to be in breach of or in default under this Agreement on account of, any delay or failure to perform any obligation under this Agreement due to force majeure events or other causes or conditions that are beyond such Party's reasonable control and that such Party is unable to overcome through the exercise of commercially reasonable diligence. If any such force majeure event occurs, the affected Party will give prompt notice in the manner described above to the other Party and will use commercially reasonable efforts to minimize the impact of the event.

10.13 Relationship between the Parties. Innovyze is an independent contractor. Nothing in this Agreement will be construed to create any agency, joint venture, partnership, fiduciary relationship, joint venture or similar

relationship between the Parties.

10.14 Severability. If any provision of this Agreement is invalid or unenforceable, that provision will be construed, limited, modified or, if necessary, severed to the extent necessary to eliminate its invalidity or unenforceability, and the other provisions of this Agreement will remain in full force and effect.

10.15 Successors. All terms of this Agreement will be binding upon, inure to the benefit of, and be enforceable by and against the respective successors and permitted assigns of Innovyze and You.