

# WATCHMAN Reliability Portal™

---

## WEB APPLICATION SERVICES AND HOSTING AGREEMENT 1.2

This Web Application Services and Hosting Agreement (“Agreement”) is entered into and effective as of January 31, 2008 (“Effective Date”) by and between Azima, Inc., a Massachusetts corporation, having its principal place of business at 300 TradeCenter, Suite 4610, Woburn, MA 01801 USA (“Azima DLI”) and the company identified as Customer in Schedule A of this Agreement (“Customer”).

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

### **1 Definitions.**

- 1.1 “Commencement of Service” means the date when AZIMA DLI has provided to Customer access to the Service.
- 1.2 “Customer Data” means all electronic data or information submitted by Customer to the Service.
- 1.3 “Service” means the online, Web-based automated condition monitoring software service, including associated offline components, provided by AZIMA DLI.
- 1.4 “User Guide” means the online documentation for the Service, accessible therein, as updated from time to time.
- 1.5 “Users” means Customer’s employees, consultants, contractors or agents who are authorized to use the Service and have been supplied user identifications and passwords by Customer (or by AZIMA DLI at Customer’s request).

### **2 Service.**

- 2.1 Provision of Service. AZIMA DLI shall make the Service available to Customer pursuant to the terms and conditions set forth in this Agreement and any and all Schedules executed hereunder from time to time. During the term of this Agreement, (i) the Service shall perform materially in accordance with the User Guide, and (ii) the functionality of the Service will not be materially decreased from that available as of the Effective Date.
- 2.2 Additional Users. User subscriptions are for named Users and cannot be shared or used by more than one User. Customer may add or remove Users at any time. Unless otherwise

**Azima DLI**

---

specified in Schedule B, (i) additional User subscriptions may be added in increments of 1 unit; and (ii) pricing for the additional User subscriptions shall be the same as that for the pre-existing subscriptions.

**3 Use of the Service.**

- 3.1 **AZIMA DLI Responsibilities.** AZIMA DLI shall: (i) in addition to its confidentiality obligations under Section 6, but subject to rights granted to AZIMA DLI pursuant to Section 5.4, not use, edit or disclose to any party other than Customer the Customer Data; (ii) maintain the security and integrity of the Service and the Customer Data; (iii) provide up to two (2) hours per month of telephone and unlimited online standard support (excluding diagnostic/analytical services) to up to two (2) named "Champions" designated by Customer; (iv) provide on-line access to one year of historical data or up to one thousand megabytes (1000MB) of storage space for Customer's use (whichever is lesser); and (v) use commercially reasonable efforts to make the Service generally available 99.5% of the calendar month twenty-four (24) hours a day, seven (7) days a week, except for: (a) planned downtime (of which AZIMA DLI shall give at least 48 hours notice and which AZIMA DLI shall schedule to the extent reasonably practicable during the weekend hours from 9:00 p.m. ET Friday to 6:00 a.m. ET Monday); or (b) downtime caused by circumstances beyond AZIMA DLI'S reasonable control, including acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems not involving AZIMA DLI employees, computer or telecommunications failures or delays involving hardware or software not within AZIMA DLI'S possession or reasonable control, and network intrusions or denial of service attacks, but only to the extent unavailability results notwithstanding the exercise by AZIMA DLI of reasonable care and due diligence to avoid or mitigate the same in anticipation of or in response to such causes.
- 3.2 **Customer Responsibilities.** Customer is responsible for all activities that occur under Customer's User accounts. Customer shall: (i) have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Entered Data; (ii) use commercially reasonable efforts to prevent unauthorized access to, or use of, the Service, and notify AZIMA DLI promptly of any such unauthorized use; and (ii) comply with all applicable local, state, federal, and foreign laws in using the Service.
- 3.3 **Use Guidelines.** Customer shall use the Service solely for its internal business purposes as contemplated by this Agreement and shall not: (i) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Service available to any third party, other than as contemplated by this Agreement; (ii) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (iii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortuous material, including material harmful to children or violative of third party privacy rights; (iv) knowingly send or store material containing software viruses, worms, Trojan horses or other

## Azima DLI

---

harmful computer code, files, scripts, agents or programs; (v) interfere with or disrupt the integrity or performance of the Service or the data contained therein; or (vi) attempt to gain unauthorized access to the Service or its related systems or networks.

- 3.4 **Third-Party Providers.** Third-party providers, some of which may be listed on pages within AZIMA DLI'S website, offer Products and services related to the Service, including implementations, customization, and other consulting services related to customers' use of the Service and applications (both offline and online) that work in conjunction with the Service, such as by exchanging data with the Service or by offering additional functionality within the user interface of the Service through use of the Service's application programming interface. AZIMA DLI does not warrant any such third-party providers or any of their products or services, whether or not such products or services are designated by AZIMA DLI as "certified," "validated" or otherwise. Any exchange of data or other interaction between Customer and a third-party provider, and any purchase by Customer of any product or service offered by such third-party provider, is solely between Customer and such third-party provider.
- 3.5 **Privacy Statement.** AZIMA DLI'S privacy statement, available at <http://www.AzimaDLI.com/privacy> is incorporated herein by this reference. Any changes to AZIMA DLI's privacy statement are effective from and after the date they are posted at such address, and such changes are also incorporated herein by this reference.
- 3.6 **Press Releases.** AZIMA DLI may not issue press releases relating to this Agreement except with Customer's prior written consent.

## 4 Fees & Payment.

- 4.1 **Invoicing & Payment.** Customer agrees to pay AZIMA DLI 100% of the Total Upfront Fees as detailed in Schedule B upon execution of this Agreement. Customer will be invoiced annually in advance for the use of the Service based upon the number of Users. Additional users may be added at any time (by contacting AZIMA DLI's Portal Operations group defined in Schedule A) and will be charged at a pro-rata amount for the balance of the contract year. Invoicing will begin upon Commencement of Service, unless otherwise stated in Schedule B and fees are due upon receipt of invoice. All payments made under this Agreement shall be in United States dollars.
- 4.2 **Overdue Payments.** Any payment not received from Customer by the due date may accrue (except with respect to charges then under reasonable and good faith dispute), at AZIMA DLI's discretion, late charges at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid.

**Azima DLI**

---

- 4.3 Suspension of Service. If Customer's account is 30 days or more overdue (except with respect to charges then under reasonable and good faith dispute), in addition to any of its other rights or remedies, AZIMA DLI reserves the right to suspend the Service provided to Customer, without liability to Customer, until such amounts are paid in full.
- 4.4 Taxes. Unless otherwise stated, AZIMA DLI's fees do not include any local, state, federal or foreign taxes, levies or duties of any nature ("Taxes"). Customer is responsible for paying all Taxes, excluding only taxes based on AZIMA DLI's income. If AZIMA DLI has the legal obligation to pay or collect Taxes for which Customer is responsible under this section, the appropriate amount shall be invoiced to and paid by Customer unless Customer provides AZIMA DLI with a valid tax exemption certificate authorized by the appropriate taxing authority.
- 4.5 Billing and Contact Information. Customer shall maintain complete and accurate billing and contact information on the Service at all times.

**5 Proprietary Rights.**

- 5.1 Reservation of Rights. Customer acknowledges that in providing the Service, AZIMA DLI utilizes (i) the Azima DLI name, the Azima DLI logo, the Azima DLI domain name, the product and service names associated with the Service, and other trademarks and service marks; (ii) certain audio and visual information, documents, software and other works of authorship; and (iii) other technology, software, hardware, products, processes, algorithms, user interfaces, know-how and other trade secrets, techniques, designs, inventions and other tangible or intangible technical material or information (collectively, "AZIMA DLI Technology") and that the Azima DLI Technology is covered by intellectual property rights owned or licensed by AZIMA DLI (COLLECTIVELY, "AZIMA DLI IP Rights"). Other than as expressly set forth in this Agreement, no license or other rights in or to the AZIMA DLI Technology or AZIMA DLI IP Rights are granted to Customer, and all such licenses and rights are hereby expressly reserved.
- 5.2 License Grant. AZIMA DLI grants Customer and its Users a non-exclusive, non-transferable (except in connection with a permitted assignment of this Agreement), non-sub licensable right to access and use the Service in accordance with the terms of this Agreement.
- 5.3 Restrictions. Customer shall not (i) modify, copy or create derivative works based on the Service or AZIMA DLI Technology; (ii) create Internet "links" to or from the Service, or "frame" or "mirror" any content forming part of the Service, other than on Customers' own intranets or otherwise for its own internal business purposes; or (iii) disassemble, reverse engineer, or decompile the Service or AZIMA DLI Technology, or access it in order to (A) build a competitive product or service. (B) build a product or service using similar ideas, features, functions or graphics of the Service, or (C) copy any ideas, features, functions or graphics of the Service.

**Azima DLI**

---

- 5.4 **Customer Data.** As between AZIMA DLI and Customer, all Customer Data is owned exclusively by Customer. Customer Data shall be considered Confidential Information subject to the terms of this Agreement. AZIMA DLI may access Customer's User accounts, including Customer Data, solely to perform machine condition analysis services, respond to service or technical problems or at Customer's request. Customer grants AZIMA DLI a perpetual license to internally use any data collected by AZIMA DLI through its monitoring operations for purposes of creating and improving systems for the diagnosis of machine performance.
- 5.5 **Suggestions.** AZIMA DLI shall have a royalty-free, worldwide, irrevocable, perpetual license to use or incorporate into the Service any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer or its Users relating to the operation of the Service.

## **6 Confidentiality.**

- 6.1 **Definition of Confidential Information.** As used herein, "Confidential Information" means all confidential and proprietary information of a party ("Disclosing Party") disclosed to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including the terms and conditions of this Agreement (including Pricing and other terms reflected in all Schedules hereunder), the Customer Data, the Service, the AZIMA DLI Technology, business and marketing plans, technology and technical information, product designs, and business processes. Confidential Information (except for Customer Data) shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (iii) was independently developed by the Receiving Party without breach of any obligation owed to the Disclosing Party and without reference to the Disclosing Party's Confidential Information; or is received from a third party without breach of any obligation owed to the Disclosing Party.
- 6.2 **Confidentiality.** Except as otherwise permitted by this Agreement, the Receiving Party shall not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, except with the Disclosing Party's prior written permission.
- 6.3 **Protection.** Except as otherwise permitted by this Agreement, each party agrees to protect the confidentiality of the Confidential Information of the other party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind, but in no event shall either party exercise less than reasonable care in protecting such Confidential Information.

## **Azima DLI**

---

- 6.4 **Compelled Disclosure.** If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.
- 6.5 **Remedies.** If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of this Section 6, the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that any other available remedies are inadequate.

## **7 Warranties & Disclaimers.**

- 7.1 **Warranties.** Each party represents and warrants that it has the legal power to enter into this Agreement. AZIMA DLI represents and warrants that (i) it will provide the Service in a manner consistent with general industry standards reasonably applicable to the provision thereof; (ii) it owns or otherwise has sufficient rights to the Service and the AZIMA DLI Technology to grant the rights and licenses granted herein; and (iii) the Service and AZIMA DLI Technology do not infringe any intellectual rights of any third party.
- 7.2 **Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, AZIMA DLI MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. AZIMA DLI HEREBY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

## **8 Mutual Indemnification.**

- 8.1 **Indemnification by AZIMA DLI.** Subject to this Agreement, AZIMA DLI shall defend, indemnify and hold Customer harmless against any loss or damage (including reasonable attorneys' fees) incurred in connection with claims, demands, suits or proceedings ("Claims") made or brought against Customer by a third party alleging that the use of the Service as contemplated hereunder infringes the intellectual property rights of, or has otherwise harmed, a third party; provided, that Customer (a) Promptly gives written notice of the Claim to AZIMA DLI; (b) gives AZIMA DLI sole control of the defense and settlement of the Claim (provided that AZIMA DLI may not settle or defend any Claim unless it unconditionally releases Customer of all liability); and (c) provides to AZIMA DLI, at AZIMA DLI's cost, all reasonable assistance.
- 8.2 **Indemnification by Customer.** Subject to this Agreement, Customer shall defend, indemnify and hold AZIMA DLI harmless against any loss or damage (including reasonable attorneys' fees) incurred in connection with Claims made or brought against AZIMA DLI by a third party

**Azima DLI**

---

alleging that the Customer Data infringes the intellectual property rights of, or that Customer's actions related to this Agreement have otherwise harmed, a third party; provided, that AZIMA DLI (a) promptly gives written notice of the Claim to Customer; (b) gives Customer sole control of the defense and settlement of the Claim (provided that Customer may not settle or defend any Claim unless it unconditionally releases AZIMA DLI of all liability); and (c) provides to Customer, at Customer's cost, all reasonable assistance.

**9 Limitation of Liability.**

- 9.1 Limitation of Liability. IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE LESSER OF \$500,000 OR THE AMOUNTS ACTUALLY PAID BY AND DUE FROM CUSTOMER HEREUNDER.
- 9.2 Exclusion of Consequential and Related Damages. IN NO EVENT WILL AZIMA DLI BE LIABLE TO CUSTOMER FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION ANY LOST PROFITS, LOST SAVINGS, OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE THE WEB SERVICES EVEN IF AZIMA DLI OR AN AUTHORIZED AZIMA DLI REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 9.3 Limitation of Action. Except for actions for non-payment or breach of either party's intellectual property rights, no action (regardless of form) arising out of this Agreement may be commenced by either party more than two (2) years after the cause of action has accrued.

**10 Term & Termination.**

- 10.1 Term of Agreement. This Agreement commences on the Effective Date and shall remain in effect for one (1) year. Azima DLI reserves the right to change prices following the initial one (1) year contract.
- 10.2 Termination. A party may terminate this Agreement without cause upon 30 days written notice.
- 10.3 Outstanding Fees. Termination shall not relieve Customer of the obligation to pay any fees accrued or payable to AZIMA DLI prior to the effective date of termination. Customer shall not be entitled to any return of fees paid hereunder upon any termination of this Agreement, unless this Agreement is terminated by Azima DLI without cause, or is terminated by Customer because of a material breach of this Agreement by Azima DLI.
- 10.4 Return of Customer Data. Upon request by Customer, AZIMA DLI will make available to Customer a file of Customer Data in exchange for the fees described in Schedule B. After thirty (30) days following termination of this Agreement by either party for any reason,

**Azima DLI**

---

Azima DLI shall have no obligation to maintain or provide any Customer Data and shall thereafter, unless legally prohibited, delete all Customer Data in its systems or otherwise in its possession or under its control.

- 10.5 **Surviving Provisions.** The following provisions shall survive the termination or expiration of this Agreement for any reason and shall remain in effect after any such termination or expiration: Sections 1, 4, (excluding 4.1 and 4.2), 5 (excluding Section 5.2), 6, 7, 8, 9, 10 and 11.

**11 General Provisions.**

- 11.1 **Relationship of the Parties.** This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties.
- 11.2 **No Benefit to Others.** The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the parties and their respective successors and permitted assigns, and they are not to be construed as conferring any rights on any other persons.
- 11.3 **Notices.** All notices under this Agreement shall be in writing and shall be delivered to the addresses notified by the parties to each other in Schedule A by a means evidenced by a delivery receipt, by facsimile or by email. Notice shall be deemed to have been given upon: (i) personal delivery; (ii) the second business day after mailing; (iii) 48 hours after sending by confirmed facsimile; or (iv) 48 hours after sending by email.
- 11.4 **Waiver and Cumulative Remedies.** No failure or delay by either party in exercising any right under this agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.
- 11.5 **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.
- 11.6 **Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the consent of the other party. Notwithstanding the foregoing either party may assign this Agreement together with all rights and obligations hereunder, without consent of the other party, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party. Any attempt by a party to assign its rights or obligations under this Agreement in breach of this section shall be void and of no effect and shall entitle the nonassigning party to terminate this Agreement for cause. Subject to the foregoing, this



**Azima DLI**

---

Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

- 11.7 **Governing Law.** This Agreement shall be governed exclusively by, and construed exclusively in accordance with, the laws of the United States and the State of Massachusetts, without regard to its conflicts of laws provisions.
- 11.8 **Venue.** The state and federal courts located in Middlesex County, Massachusetts shall have exclusive jurisdiction to adjudicate any dispute arising out of or relating to this Agreement. Each party hereby consents to the jurisdiction of such courts and waives any forums, whether on the basis of the doctrine of forum non conveniens or otherwise. Each party also hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.
- 11.9 **Export Control Laws.** Each party shall comply with all United States and foreign export control laws or regulations applicable to its performance under this Agreement.
- 11.10 **Entire Agreement.** This Agreement, including all exhibits and addenda hereto, along with all Schedules executed hereunder, constitute the entire agreement between the parties as to its subject matter, and supersede all previous and contemporaneous agreements, proposals or representations, written or oral, concerning the subject matter of this Agreement. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom the modification, amendment, or waiver is to be asserted. In the event of any conflict between the provisions in this Agreement and any exhibit or addendum hereto, or Schedule executed hereunder, the terms of such exhibit, addendum or Schedule shall prevail to the extent of any inconsistency. Notwithstanding any language to the contrary therein, no terms or conditions stated in a Customer purchase order or in any other Customer order documentation shall be incorporated into or form any part of this Agreement, and all such terms or conditions are specifically objected to and shall be null and void.
- 11.11 **Counterparts.** This Agreement may be executed in counterparts, which taken together shall form one legal instrument.

**Azima DLI**

---

# CONFIDENTIAL

---

IN WITNESS WHEREOF, the parties' authorized signatories have duly executed this Agreement as the Effective Date:

**AZIMA DLI CORPORATION**

By \_\_\_\_\_

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

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

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

**CUSTOMER**

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

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

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

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

**SCHEDULES:**

Schedule A: Agreement Supplemental Information

Schedule B: Final Pricing Proposal

**Azima DLI**

---

**Schedule A: Agreement Supplemental Information**

**Customer:**

- Company:
- Site Name:
- Site Address:
- Subscription(s) Description:
- Primary Contact:
  - Name:
  - Business Address:
  - Telephone:
  - Facsimile:
  - E-mail Address:
- Champion (1):
  - Name:
  - Business Address:
  - Telephone:
  - E-mail Address:
- Champion (2):
  - Name:
  - Business Address:
  - Telephone:
  - E-mail Address:

**Azima DLI:**

- Operations Manager:
  - Name: Dave Geswein
  - Business Address:
  - Telephone: 781-938-0707 x 726
  - Facsimile: 781-935-0179
  - E-mail Address: [dgeswein@azimadli.com](mailto:dgeswein@azimadli.com)
- Technical Support Team:
  - Telephone: US: 800-654-2844 option 4, International: (+1)206-842-7656 option 4
  - Facsimile: 206-842-7667
  - E-mail Address: [support@azimadli.com](mailto:support@azimadli.com)
  - Hours of availability: 8:00 AM to 7:30 PM eastern U.S. time zone.

## **Schedule B : Final Pricing Proposal**

(Attached)

SAMPLE