

## WIELAND WienetCloud-Portal – Terms of Service

Welcome to WIELAND WienetCloud-Portal. Please read these terms and any other terms referenced to herein carefully.

WIELAND WienetCloud-Portal is a web-based service platform that enables transfer and communication of data from WIELAND IIoT-Gateways (sold separately), as integrated in an industrial network, through different interfaces. WIELAND WienetCloud-Portal includes services that, inter alia, enables secure data transfer, device management of WIELAND IIoT-Gateways, data storage, process visualisation and creation of data logs and reports, as may be further detailed and explained in the Specification (“**WIELAND WienetCloud-Portal**”). WIELAND WienetCloud-Portal can be accessed through [<https://www.iot.wienet.cloud/>] the WIELAND WienetCloud-Portal mobile application (IOS/Android) and through the Kolibri API.

By creating an WIELAND WienetCloud-Portal account, through your acceptance of this Agreement by ticking the checkbox or by continuing to use WIELAND WienetCloud-Portal after being notified of a change to these terms, you acknowledge your full understanding of and agree to be legally bound by this Agreement.

### DEFINITIONS

“**Advertisers**” means advertisers, sponsors and other third parties that may post promotions, links and advertisements in WIELAND WienetCloud-Portal;

“**Agreement**” means these terms of service, including any addendums, and any other operating rules and policies as set forth by WIELAND, in its own discretion, and made available to the Customer, directly or by reference, as amended from time to time;

“**Business Day**” means a day (other than a Saturday, Sunday or public holiday) on which commercial banks are open for general banking business in the jurisdiction where WIELAND is incorporated, other than for Internet banking services only;

“**Confidential Information**” means any commercial or technical information furnished by one party to the other party including, but not limited to, trade secrets, information pertaining to Intellectual Property Rights, the Specification, Registration Data, technical data, inventions, formulations, testing methods, other methods and processes and all other proprietary information or materials, whether disclosed in Written or oral form. However, Confidential Information does not include any information that the Receiving Party can show (i) was known to the Receiving Party at the time of disclosure by the Disclosing Party, (ii) was in the public domain at the time of the execution of this Agreement or which has come in the public domain during the term of this Agreement through no fault or breach of the Agreement by the Receiving Party or (iii) has been, in a verifiable manner, independently developed by the Receiving Party without reference to or use of the Confidential Information of the Disclosing Party or the Disclosing Party;

“**Customer**” means the legal entity entering into this Agreement and, where relevant, its Users;

“**Customer Administrator Account**” means the Customer’s principal WIELAND WienetCloud-Portal account through which the Customer is able to assign access and user rights to WIELAND WienetCloud-Portal to its Users, as further detailed in clause 1.2;

“**Customer Data**” means all data and information (excluding Registration Data) relating to the Customer and its operations, facilities, customers, clients, personnel, assets and programs in whatever form that may exist and whether entered into, stored in, generated by or processed through or as a part of the use of WIELAND WienetCloud-Portal or to which WIELAND otherwise may have access as a consequence of this Agreement, and in relation to which the Customer is data controller and WIELAND is data processor in accordance with the GDPR;

“**Disclosing Party**” means the party disclosing Confidential Information;

“**Force Majeure Event**” means an event beyond a party’s reasonable control including, without limitation, strikes, lock-outs or other labour disturbances or disturbances by fire, flood, war, embargoes, blockades, riots, governmental interference, interruptions, loss or malfunctions of utilities, communications, hardware or software services or from defects or delays in the performance of its suppliers or subcontractors if caused by any circumstance referred to in the foregoing;

“**GDPR**” means Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC;

“**WIELAND WienetCloud-Portal**” means as described above in the preamble;

“**Intellectual Property Rights**” means, including without limitation, patents, trademarks, service marks, registered designs, applications for any of the foregoing, copyrights, design rights, know-how, trade and business names and any other similar protected rights in any country, whether registered or not, as well as all drawings, plans, diagrams, specifications, programs, materials, methods, processes, techniques, technologies, data or other information;

“**Kolibri API**” means an event-based, secured protocol which enables connection to WIELAND WienetCloud-Portal from any cloud based or local data system;

“**Price List**” means WIELAND’ at each time applicable price list for WIELAND WienetCloud-Portal, whether furnished in physical form or made available online;

“**Privacy Policy**” means the latest available version of WIELAND’ Privacy Policy made in regard of WIELAND’ processing of Registration Data in accordance with the GDPR and made available on WIELAND’ website;

“**Receiving Party**” means the party receiving Confidential Information;

“**Registration Data**” means certain current, complete and accurate information about the Customer as requested by WIELAND from time to time and specifically in conjunction with the application for an WIELAND WienetCloud-Portal account, and in relation to which WIELAND is data controller in accordance with the GDPR;

“**ICC**” means the International Chamber of Commerce;

“**Specification**” means any relevant functional, technical or commercial specification of WIELAND WienetCloud-Portal and its functionalities, furnished in physical form or from within WIELAND WienetCloud-Portal or otherwise made available online (such as on WIELAND’ website or by e-mail);

“**User(s)**” means the employees, representatives, consultants, contractors, agents and customers of the Customer for whom the Customer has acquired access and user rights to WIELAND WienetCloud-Portal in accordance with this Agreement; and

“**Written**” shall be defined to include paper copies, e-mails and other generally accepted electronic communications means, and the term “**Writing**” shall have a meaning correlative to the foregoing.

## **1. APPLICATION, SUBSCRIPTION, USER RIGHTS**

- 1.1 WIELAND WienetCloud-Portal is solely intended for commercial use, to the exclusion of any private use. This Agreement shall therefore only apply vis-à-vis legal entities.
- 1.2 The Customer’s initial application for an WIELAND WienetCloud-Portal account is made subject to a manual verification process by WIELAND and, if such application is approved, a Customer Administrator Account for the Customer is assigned. The Customer will through the Customer Administrator Account be able to (i) grant each User a right to create an account in WIELAND WienetCloud-Portal and (ii) decide upon the level of authorisation each User shall have with respect to actions, including the right to purchase services within WIELAND WienetCloud-Portal for which the Customer will be invoiced, that can be undertaken by the User in WIELAND WienetCloud-Portal. For the avoidance of doubt, the Customer acknowledges and agrees that based on the extent of rights granted to a User, such User will be able to order paid services within WIELAND WienetCloud-Portal without the Customer’s prior authorisation in each case and the Customer will be invoiced the amounts payable for any and all such services ordered by Users within WIELAND WienetCloud-Portal.
- 1.3 The Customer agrees to provide and maintain Registration Data as requested by WIELAND. WIELAND reserves the right to suspend or terminate the Customer’s access to WIELAND WienetCloud-Portal should the Registration Data provided by the Customer be, in any way, inaccurate, incomplete or not up-to-date, with or without prior notification to the Customer.

## **2. PROVISION OF WIELAND WIENETCLOUD-PORTAL**

- 2.1 WIELAND will, during the term of this Agreement and subject to the Customer’s timely payment of applicable fees and use of WIELAND WienetCloud-Portal in accordance with this Agreement and the Specification, (i) provide WIELAND WienetCloud-Portal to the Customer and (ii) use commercially reasonable efforts to make WIELAND WienetCloud-Portal available at least ninety-nine point five per cent (99.5%) on an annual basis (based on an assumed requirement of continuous availability), except for in the event of (a) downtime for scheduled maintenance (of which prior Written notice is given to the Customer), (b) downtime for emergency maintenance (of which prior Written notice is given to the Customer if practically feasible), (c) a Force Majeure Event and/or (d) subject to clause 3.2, disruptions in the Customer’s IT-systems and/or infrastructure.
- 2.2 WIELAND grants to the Customer a non-exclusive, non-transferable, revocable right for its Users to access and use WIELAND WienetCloud-Portal in accordance with this Agreement and the Specification during the term of this Agreement.
- 2.3 WIELAND reserves the right to, at any time and in its own discretion, modify, update and/or upgrade, temporarily or permanently, WIELAND WienetCloud-Portal (or any part thereof), provided that such modification, update and/or upgrade does not diminish the overall

functionality of WIELAND WienetCloud-Portal. Further, the Customer acknowledges and agrees that certain modifications, updates and/or upgrades related to WIELAND WienetCloud-Portal may require the application of new software to WIELAND gateways in order to enable continuous connection to WIELAND WienetCloud-Portal.

### **3. USE OF WIELAND WIENETCLOUD-PORTAL**

- 3.1 The Customer is responsible for all activity that occurs under the Customer's accounts by or on behalf of the Customer and for all activities taken while using WIELAND WienetCloud-Portal. For the avoidance of doubt, the Customer undertakes to (i) be solely responsible for all Users' activity, which at all times must be in accordance with this Agreement, (ii) be solely responsible for any and all unauthorised use of WIELAND WienetCloud-Portal under any Customer accounts, (iii) be solely responsible for Customer Data (other than with respect to WIELAND' obligations in regard of Customer Data according to this Agreement), (iv) obtain and maintain during the term of this Agreement all necessary consents, agreements and approvals for all actual or intended use of Customer Data, information, data or other content which the Customer will use in connection with WIELAND WienetCloud-Portal, (v) not use WIELAND WienetCloud-Portal in any manner contrary to this Agreement including any and all instructions provided by WIELAND connected thereto, the Specification, applicable law or regulations in any jurisdiction where WIELAND WienetCloud-Portal is used, (vi) not disrupt, disable, decompile, reverse engineer or otherwise interfere with WIELAND WienetCloud-Portal, (vii) not provide access to WIELAND WienetCloud-Portal to other users than the Users and (viii) use all reasonable efforts to prevent unauthorised access to, or use of, WIELAND WienetCloud-Portal and notify WIELAND promptly of any known or anticipated unauthorised access or use.
- 3.2 In order to use WIELAND WienetCloud-Portal, the Customer must, apart from meeting basic functional requirements for access to and use of web-based content, have or obtain access to the World Wide Web, either directly or through devices that can access web-based content such as WIELAND WienetCloud-Portal. For the avoidance of doubt, the Customer is responsible for its own bandwidth and adequate internet connection.
- 3.3 WIELAND shall have the right to audit the Customer's compliance with this Agreement at any time during the term of this Agreement. If during such audit WIELAND, in a verifiable manner, determines that the Customer has used WIELAND WienetCloud-Portal contrary to this Agreement, such as by allowing access to WIELAND WienetCloud-Portal other than as permitted herein or has otherwise violated any part of this Agreement, and as a result additional fees are owed to WIELAND, WIELAND shall invoice the Customer for such discrepancies in accordance with this Agreement. The Customer shall bear the costs associated with the audit should the audit conclude the Customer's breach of this Agreement. WIELAND' audit right shall not limit WIELAND' other rights and remedies under this Agreement.
- 3.4 The Customer agrees that WIELAND may, with, if reasonably practical, prior notice to the Customer, suspend the Customer's access to WIELAND WienetCloud-Portal if WIELAND reasonably concludes that the Customer's use of WIELAND WienetCloud-Portal is causing immediate risk for and/or ongoing harm to WIELAND or others. WIELAND shall use commercially reasonable efforts to resolve the issues causing the suspension of access to WIELAND WienetCloud-Portal. Consequently, the Customer agrees that WIELAND will

not be liable to the Customer or any third parties for any suspension of access to WIELAND WienetCloud-Portal under such circumstances as described in the foregoing.

#### **4. FEES AND PAYMENT**

- 4.1 The Customer shall pay the relevant fees set out in the Price List in accordance with this Agreement. The fees may consist of (i) a monthly subscription fee for access to WIELAND WienetCloud-Portal, (ii) one-time payments (such as for project/device registration) and (iii) recurring fees, volume-based fees and one-time payments for services ordered by the Customer in WIELAND WienetCloud-Portal (the Customer will be presented with information regarding the triggering of a cost in conjunction therewith).
- 4.2 Unless otherwise specified in the relevant invoice, fees will become due and payable thirty (30) days from the order date. The Customer is responsible for providing WIELAND with complete, accurate and up to date billing and contact information. The Customer may be invoiced by a third party appointed by WIELAND to market and sell subscriptions to WIELAND WienetCloud-Portal as an official WIELAND agent on behalf of WIELAND. Notwithstanding the payment of fees to a third party agent appointed by WIELAND, WIELAND shall always remain the contracting party in relation to the Customer.
- 4.3 The Customer's payment obligations are non-cancellable and fees paid are non-refundable. Any fees owed by the Customer at the time of termination of this Agreement, howsoever occasioned, will be due and payable immediately upon first demand from WIELAND.
- 4.4 WIELAND may in its own discretion change the fees in the Price List for WIELAND WienetCloud-Portal, including recurring subscription fees, from time to time and will communicate any price changes to the Customer in advance and, if applicable, how to accept such changes. Subject to applicable law, the Customer accepts the price change by continuing to use WIELAND WienetCloud-Portal after the price change takes effect.
- 4.5 If any invoiced fees are not received from the Customer on the due date, then, without limiting WIELAND' other rights and remedies, WIELAND shall be entitled to late payment interest on the overdue amount at the interest rate provided under applicable law, from the date such payment was due until payment is received.
- 4.6 In the event of late payment of fees for WIELAND WienetCloud-Portal, WIELAND may, at its own discretion and without limiting its other rights and remedies, discontinue the Customer's access to WIELAND WienetCloud-Portal until such amounts are settled.
- 4.7 The fees are exclusive of all taxes, duties, levies or similar governmental assessments of any kind. The Customer is solely responsible for paying all taxes and such other assessments associated with the Customer's purchases under this Agreement.
- 4.8 WIELAND may in the future offer the Customer a combined offering regarding a subscription model involving hardware (such as WIELAND gateways) and WIELAND WienetCloud-Portal, pursuant to a separate addendum to be agreed between the parties and to form part of this Agreement.

#### **5. CUSTOMER DATA AND DATA PROTECTION**

- 5.1 The Customer is data controller and WIELAND is data processor in accordance with the GDPR in relation to the processing of personal data within Customer Data. WIELAND'

processing of Customer Data will at all times be carried out in accordance with the personal data processor agreement, attached hereto as 0. However, the personal data processor agreement in Wieland WienetCloud-Portal–Personal DATA PROCESSOR AGREEMENT shall only apply if and when Customer Data includes personal data. Furthermore, WIELAND retains all ownership rights in and to the Registration Data and shall at all times be regarded as data controller in relation to Registration Data in accordance with the GDPR.

- 5.2 The Customer Data is and will remain the property of the Customer at all times. Except as required by applicable law, WIELAND will (i) not use the Customer Data for any other purpose than directly in relation to the performance of its obligations under this Agreement, (ii) not sell, exploit, assign rights in or otherwise dispose of any Customer Data and (iii) not make any Customer Data available to any third parties except for WIELAND’ subcontractors and then only to the extent necessary to enable the subcontractor to perform its part of WIELAND’ obligations under this Agreement.
- 5.3 WIELAND will establish and maintain reasonable administrative, physical and technical safeguards against the destruction, loss or alteration of any Customer Data in the control of WIELAND.
- 5.4 WIELAND WienetCloud-Portal is physically hosted within the European Union.
- 5.5 Upon Written request by the Customer made within thirty (30) days after the date of termination of this Agreement, WIELAND shall, at the option and reasonable expense of the Customer, either return a copy of the Customer Data in a suitable format or destroy or delete the Customer Data.

## **6. PARTICIPATION IN PROMOTIONS**

The Customer acknowledges that the inclusion of links, promotions and/or advertisements of Advertisers in WIELAND WienetCloud-Portal does not constitute WIELAND’ endorsement of the Advertisers or their websites or offerings. WIELAND has no control over the content of the Advertisers’ websites or the collection and usage of personal information at or by those websites and therefore cannot assume any liability whatsoever in relation to the Customer for any interaction with or transactions on such websites. The Customer may enter into correspondence with or participate in promotions of the Advertisers. Any correspondence or promotions, including the delivery of and payment for goods and services, and any other conditions, warranties or representations associated with such correspondence, promotions or transactions are solely between the Customer and the Advertiser. WIELAND assumes no liability, obligation or responsibility for any part of such correspondence, promotion or transaction.

## **7. INTELLECTUAL PROPERTY RIGHTS**

- 7.1 Each party’s Intellectual Property Rights shall remain the property of the respective party and the other party shall have no right to nor interest therein. Nothing in this Agreement

constitutes a transfer, assignment or grant of any ownership rights in any Intellectual Property Rights.

- 7.2 All Intellectual Property Rights existing in WIELAND WienetCloud-Portal or the Specification shall remain the Property of WIELAND. All Intellectual Property Rights existing in the Customer Data shall remain the property of the Customer.

## **8. CONFIDENTIALITY**

- 8.1 The Receiving Party receiving Confidential Information from the Disclosing Party undertakes to hold the Confidential Information strictly confidential and to not disclose such Confidential Information to any third party, except as provided for in this Agreement.

- 8.2 The Receiving Party may only use the Confidential Information within the scope of the purpose of this Agreement and shall limit access to the Confidential Information of the Disclosing Party on a need-to-know basis.

- 8.3 This Agreement shall not prevent the disclosure of Confidential Information to the extent such disclosure is mandatory under provisions of mandatory legislation or stock market regulations. The Receiving Party shall, to the extent permitted by mandatory legislation or stock market regulations, notify the Disclosing Party of any required disclosure and make its best reasonable efforts to reduce any damage to the Disclosing Party resulting from such mandatory disclosure.

- 8.4 Subject to what may otherwise be provided for in this Agreement, following the termination of this Agreement, the Receiving Party shall return or delete any and all Confidential Information and not retain any copy, duplicate, extract or reproduction in whole or in part. However, the Receiving Party shall be entitled to retain copies of the Confidential Information to the extent required by compulsory legislation, stock market regulations or other applicable rules (such as professional standards) and copies of the Confidential Information resulting from automatic back-up procedures or archival copies not accessible day-to-day and which are generated in the ordinary course.

## **9. TRADE COMPLIANCE**

- 9.1 The Customer represents and warrants that (i) the Customer and its Users shall comply with all applicable laws and regulations, including anti-bribery laws, trade and economic sanctions and export control laws, (ii) none of the Customer, its affiliates and other representatives is or is owned or controlled by any person targeted under the sanctions or export controls of the UN, US, UK, EU or any other relevant government, (iii) the Customer and its Users will not engage in any business involving a sanctioned person and (iv) the Customer will immediately inform WIELAND of any suspected or alleged breach of the foregoing. Following any reasonably suspected breach, WIELAND has the discretionary right to suspend the Customer's access to and use of WIELAND WienetCloud-Portal or terminate this Agreement.

- 9.2 Notwithstanding any provision of this Agreement to the contrary, WIELAND shall not be obliged to take any action under this Agreement if it believes in good faith that such action

may constitute a violation, or contribute to a violation, of any anti-bribery laws, trade and/or economic sanctions or export control laws.

## **10. WARRANTIES AND DISCLAIMERS**

10.1 Subject to the terms set out herein, WIELAND warrants to the Customer during the term of this Agreement that WIELAND WienetCloud-Portal will comply substantially with the functionality described in the Specification and that such functionality shall substantially be maintained in subsequent modifications, updates and/or upgrades of WIELAND WienetCloud-Portal in accordance with clause 2.3. The Customer's sole and exclusive remedy for WIELAND' breach of this warranty shall be that WIELAND shall use commercially reasonable efforts to correct such errors or modify WIELAND WienetCloud-Portal to achieve the intended functionality within a reasonable period of time. Notwithstanding the foregoing, WIELAND shall have no obligation with respect to any warranty claim (i) unless notified of such claim within fifteen (15) Business Days of the first material functionality problem or (ii) where any alleged non-conformity is due to the Customer's error as reasonably determined by WIELAND, following amicable discussions with the Customer. For the avoidance of any doubt, no warranties are provided with respect to that WIELAND WienetCloud-Portal will be free of non-material errors, bugs or interruptions, or that all such errors may be corrected.

10.2 Except as otherwise is stated in clause 10.1, WIELAND WienetCloud-Portal is provided on an as-is basis and WIELAND does not represent that the Customer's use of WIELAND WienetCloud-Portal will be secure, timely, uninterrupted or error-free, or that WIELAND WienetCloud-Portal will meet the Customer's requirements or that all errors in WIELAND WienetCloud-Portal will be corrected or that WIELAND WienetCloud-Portal will be free of viruses or other harmful components or that WIELAND WienetCloud-Portal will operate in combination with other hardware, software, systems or data not provided by WIELAND or the operation of WIELAND WienetCloud-Portal will at all times be secure or that WIELAND will at all times be able to prevent third parties from accessing or destroying Customer Data or the Customer's Confidential Information. The warranty stated in clause 10.1 is the sole and exclusive warranty offered by WIELAND. There are no other warranties or conditions, express or implied, including without limitation, those of merchantability or fitness for a particular purpose. The Customer assumes all responsibility for determining whether WIELAND WienetCloud-Portal or the information generated thereby is accurate or sufficient for the Customer's purpose.

## **11. INDEMNIFICATION**

The Customer will defend, indemnify and hold WIELAND harmless from and against any claim, demand, suit or proceeding brought against WIELAND by a third party (i) relating to or arising from the Customer's use of WIELAND WienetCloud-Portal in violation of this Agreement, (ii) relating to or arising from WIELAND' permitted use of the Customer Data or (iii) the Customer's breach of any third party terms and conditions (which relevant parts of such terms and conditions, for the purposes of this clause 11, are incorporated herein by reference) in connection with or relating to WIELAND WienetCloud-Portal, provided that WIELAND (a) promptly gives the Customer Written notice of the claim, (b) gives the



Customer the sole control of the defence and settlement of the claim and (c) provides the Customer with all reasonable assistance, at the Customer's expense.

## **12. LIMITATION OF LIABILITY**

- 12.1 Each party's aggregate liability arising out of or relating to this Agreement, howsoever arising, shall not exceed the total amount of fees paid by the Customer to WIELAND for the Customer's access to and use of WIELAND WienetCloud-Portal during the twelve (12) month period preceding the date on which the event giving rise to the claim occurred. If the event giving rise to the claim occurred before the twelve (12) month period has elapsed, the limitation shall instead be calculated as the average monthly fees paid up until such point in time by the Customer for the Customer's access to and use of WIELAND WienetCloud-Portal multiplied by twelve (12). The foregoing limitation of liability shall not apply in relation to claims under clauses 7 (Intellectual Property Rights), 8 (Confidentiality) and 11 (Indemnification) of this Agreement or if a party's liability results from gross negligence or wilful misconduct.
- 12.2 Neither party shall have any liability for any loss of business, revenue, profits, production, goodwill, use, data (including Customer Data), anticipated savings or other economic advantage (irrespective of if such damage is direct or indirect) as well as any consequential or indirect damages. The foregoing limitation of liability shall not apply in relation to claims under clauses 7 (Intellectual Property Rights), 8 (Confidentiality) and 11 (Indemnification) of this Agreement or if a party's liability results from gross negligence or wilful misconduct.

## **13. TERM AND TERMINATION**

- 13.1 This Agreement will continue to apply until terminated with a three month notice by either WIELAND or the Customer. WIELAND may terminate the Agreement without notice or suspend a User's access to WIELAND WienetCloud-Portal immediately in the event of any actual or suspected unauthorised use of WIELAND WienetCloud-Portal or otherwise due to a breach or a reasonably anticipated breach of this Agreement, as determined by WIELAND. The Customer may terminate this Agreement by terminating the relevant Customer account, in accordance with the instructions in the Specification. However, the termination of the Customer Administrator Account will result in the automatic suspension or termination of all Users' accounts, unless a new Customer Administrator Account for the Customer is designated within a reasonable time. The Customer acknowledges and agrees that WIELAND shall have no obligation to refund any amounts already paid by the Customer in the event of termination of this Agreement, howsoever occasioned.
- 13.2 Following the termination of this Agreement, howsoever occasioned, all rights granted to the Customer in relation to WIELAND WienetCloud-Portal will immediately cease and the Customer shall stop using WIELAND WienetCloud-Portal.

## **14. MISCELLANEOUS**

- 14.1 Notices under this Agreement shall be given in Written form and be provided to the other party pursuant to the contact information stated in WIELAND WienetCloud-Portal and pertaining to the Customer and WIELAND, respectively.
- 14.2 The Customer may not, wholly or partly, assign, pledge or otherwise dispose of its rights and/or obligations (including by way of mergers and demergers completed in accordance

with applicable law) under this Agreement without WIELAND' prior Written consent. WIELAND may without prior notice to the Customer, wholly or partly, assign its rights and/or obligations to an affiliate.

- 14.3 English language terms used in this Agreement shall be interpreted solely with reference to legal usage, traditions and the laws of Germany and not with reference to the legal usage, traditions or laws of any other country.
- 14.4 Neither party shall be deprived of any right under this Agreement because of its failure to exercise any right under this Agreement or failure to notify the infringing party of a breach in connection with the Agreement. Notwithstanding the foregoing, rules on complaints and limitation periods, such as in clause 10.1, shall apply.
- 14.5 Terms which by their nature extend beyond the term of this Agreement shall survive the termination of this Agreement.

## **15. GOVERNING LAW AND DISPUTE RESOLUTION**

- 15.1 This Agreement shall be governed by the substantive laws of Germany without regard to its conflict of laws rules.
- 15.2 Any dispute, controversy or claim arising out of or in connection with this Agreement, or the breach, termination or invalidity thereof, may be settled by arbitration in accordance with the ICC Arbitration Rules. The Arbitration Rules by the ICC shall apply, unless the ICC in its discretion determines, taking into account the complexity of the case, the amount in dispute and other circumstances, that Rules for Expedited Arbitrations shall apply. However, in all cases, the Arbitral Tribunal must be composed of three (3) arbitrators.
- 15.3 The seat of arbitration shall be in Frankfurt a. M., Germany. The language to be used in the arbitral proceedings shall be English. The confidentiality undertaking in this Agreement shall, *mutatis mutandis*, apply to the arbitral proceedings, the arbitral award and the fact that arbitration has been initiated.
- 15.4 Irrespective of the aforementioned paragraphs, the parties shall have the right to take legal action before the ordinary courts, even after the arbitration proceedings have been concluded. The place of jurisdiction is Nuremberg.

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If you have any questions regarding WIELAND WienetCloud-Portal or the Agreement, please contact us by visiting the [Contact section](#) on our website.

Contracting Entity: WIELAND Electric GmbH, Brennerstraße 10-14, 96052 Bamberg, Germany

**ANNEX 1**  
**OVERVIEW OF THE AGREEMENT AND THE PROCESSING OPERATIONS**

A. Name and date of the Agreement	WIELAND WienetCloud-Portal Terms of Service.
B. Subject matter of the Agreement	Provision of WIELAND WienetCloud-Portal as described in the WIELAND WienetCloud-Portal Terms of Service.
C. Duration of the processing	The Processor will process Personal Data during the term of the Agreement.
D. Nature and purposes of the processing	The Processor will process Personal Data within Customer Data for the purpose of providing services to the Controller ( <i>i.e.</i> the Customer) under the Agreement. The personal data may be subject to basic processing activities such as storage, transmission, viewing, deletion, etc.
E. Type of Personal Data that are processed	The types of Personal Data that will be processed are the types of Personal Data that the Controller decides to include in WIELAND WienetCloud-Portal. Such Personal Data may include <i>e.g.</i> log data, employee identification numbers, time stamps, and any other Personal Data that the Controller includes in WIELAND WienetCloud-Portal. The inclusion of personal data in WIELAND WienetCloud-Portal by the Controller shall be construed as an instruction to the processor to process such Personal Data.
F. Types of Special Categories of Personal Data	Not processed under this Data Processing Agreement
G. Categories of Data Subjects	Categories of Data Subjects may consist of Controller employees, consultants that may be engaged by the Controller and other individuals whose Personal Data the Controller includes in WIELAND WienetCloud-Portal.
H. Location(s) of the processing of Personal Data, including countries outside the EU/EEA	All Personal Data is processed within the EU/EEA or other country that guarantee(s) an adequate level of protection of Personal Data.
I. Third parties	<ul style="list-style-type: none"> <li>• Wusys, and</li> <li>• SMS4.de</li> </ul>

**ANNEX 2**  
**TECHNICAL AND ORGANISATIONAL SECURITY MEASURES**

The Processor shall install and provide the following security measures in order to protect the personal data:

<b>Organisational measures</b>
- IT and IT Security policy
- Raising staff's awareness through information and training
- Notification procedure in case of physical/technical incidents
- Emergency plan in case of, among others, physical/technical incidents
<b>Technical measures</b>
- Back-up system
- Measures in case of fire-, burglary-, or water damage, or physical/technical incidents
- Control of access (physically and logical)
- Authentication system
- Password policy
- Patching
- Anti-virus
- Fire wall
- Network security
- Surveillance, examination and maintenance of the systems
- Subcontractor agreements