

## 1 Purpose and Scope

These terms of service (“Terms of Service”), together with other documents attached to a quotation, acknowledgement of order, order receipt or contract acknowledgement (“Order”), govern and explain the terms under which the Vaisala entity identified in the Order (“Vaisala”, “we”, “us”, “Vaisala Group Company”) agrees to grant rights to access and use Vaisala Beacon data service (“Service”) to Vaisala’s customer (“Customer”, “you”), unless the transaction is subject to a separate agreement. Vaisala may update these Terms of Service from time to time.

By submitting a service request, responding to our quotation, placing an order for the Service, or otherwise requesting, procuring or accepting any access to the Service from us, you acknowledge: (a) your complete comprehension and acceptance of these Terms of Service, description of the Service, as well as Order (“Agreement”); and (b) that any terms accompanying your document(s) related to the given sales transaction have no effect and shall not apply. Each party represents, warrants and covenants that: (a) it has the full right, power, and authority to render the performance and obligations as set forth herein; and (b) the representative whose signature is affixed to this Agreement (when applicable) has full capacity and authority to bind that party to the terms hereof.

For description of the Service (“Service Description”), please see: <http://www.vaisala.com/DOC246951>

## 2 Definitions

**Admin:** means a user who is authorized by Vaisala to access or use Service under the rights granted to Customer pursuant to this Agreement.

**Agreement:** refers to Order, these Terms of Service, Service Description, and other documents attached thereto, entered into by and between us and you.

**API:** refers to Application Programming Interface.

**Customer Devices:** mean Vaisala products that are compatible with the Service, listed in the Service Description.

**Generalized Data:** means data based on further processing of Measurement Data or Product Data, or combination thereof with other material, which data (i) doesn’t include information on Customer’s identity, and (ii) doesn’t include data items of Measurement Data as such but only in aggregated form or combined with other data items (excluding metadata contained in the Measurement Data which may be included as such).

**Intellectual Property Rights:** mean any and all registered and unregistered rights related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property, and all similar or equivalent rights or forms of protection, in any part of the world.

**Measurement Data:** means (i) data measured by sensors or other equipment provided or operated by Vaisala, and (ii) data measured by other equipment of the Customer and made available to Vaisala in relation to Services, as well as related metadata (such as location and timing of the measurement, information on the product etc.).

**Product Data:** means data pertaining to the performance, condition and maintenance of products.

**Subscription Term:** refers to the subscription term stated in the Order.

**Third Party Materials:** refer to any material, service and information, including software, related or incorporated to Service that are not proprietary to Vaisala.

**User:** means Admin or a user who is authorized by Admin to access or use Service under the rights granted to Customer pursuant to this Agreement.

## 3 Service

### 3.1 Provision of Service

We shall provide you access to Service as set forth in this Agreement and Orders executed hereunder.

### 3.2 Users

After registering and gaining access to Service as an Admin, you may create additional User accounts to the Service. The number of Users shall be reasonable considering the purpose of the Service. Login details of a User may be used only by one individual.

You shall assume responsibility for compliance with this Agreement by your Users.

### 3.3 Security

We employ high security measures in providing the Service, such as advanced embedded software security infrastructure. More detailed security measures can be found in the Service Description.

As a data controller, we implement technical and organizational measures to secure personal data processed in the Service in accordance with the Section 9.

### 3.4 Service Updates and Upgrades; Maintenance

In order for Vaisala to ensure high level of security in providing the Service and maintaining its availability, you acknowledge and agree that Vaisala may update, and provide maintenance to, the Service. Vaisala may provide upgrades to the Service in the form of new features. Such updates, upgrades and maintenance activities are described in the Service Description.

### 3.5 Minimum Requirements

You acknowledge and agree that for Users to access and Customer Devices to connect to the Service, minimum requirements set out in the Service Description have to be complied with.

## 4 Use of Service

### 4.1 Grant of Right

We grant you and your Users a limited, non-exclusive and world-wide right to access and use the Service for your internal business purposes in accordance with the terms of this Agreement.

### 4.2 Customer Responsibilities

Customer shall use the Service only in accordance with the Agreement.

Customer shall use reasonable efforts to prevent unauthorized access to, or use of, the Service and notify Vaisala promptly of such unauthorized use. The foregoing efforts include maintaining security in respect of passwords to the Service.

### **4.3 Use Restrictions**

In accessing and using the Service, Customer and Users shall not:

- i. infringe or breach someone else's rights, including the Intellectual Property Rights of Third Party Materials;
- ii. remove any proprietary notices of the Service;
- iii. license, sublicense, lease, rent, sell, resell or otherwise commercially exploit the Service;
- iv. use the Service in a manner that violates any laws or leads to any unlawful, misleading or fraudulent activities; or
- v. Exceed a limit of reasonable API requests.

Vaisala may suspend or limit the use of the Service, or any part of it, without liability if: (a) it identifies an attack on Customer's account, or any attempt to access or manipulate Customer's account by a third party without Customer's consent; (b) Vaisala reasonably believes suspension or limitation of the Service is necessary to protect Vaisala's network or its other customers use of the Service; (c) Vaisala is required by law or by a regulatory or government body to suspend to do so; or (d) Customer or any of its Users are in breach of this Agreement.

## **5 Data Rights**

### **5.1 Measurement Data**

Vaisala shall have the right to process Measurement Data for the purposes of provision of Services to the Customer (including support and maintenance related Services). Vaisala (including Vaisala Oyj, its affiliates and subcontractors) reserves the right to collect, process and analyze Measurement Data:

- i. for providing, supporting, modifying and improving Service;
- ii. for development, diagnostic and corrective purposes in connection with Service and other Vaisala services and products; and
- iii. for creating, modifying and improving Generalized Data.

Vaisala may disclose Measurement Data to third parties for the aforementioned purposes in connection with its business. Other than as expressly set forth in this Agreement, no license or other right in or to Measurement Data is granted to Vaisala.

The foregoing rights survive expiry or termination of this Agreement. However, after the expiry or termination of this Agreement, Vaisala may use Measurement Data only as part of Generalized Data.

#### **5.1.1 Access to Measurement Data**

During the Subscription Term, you may access your Measurement Data at any time subject to Service being available. You may export and retrieve your Measurement Data in a standard format as described in the Service Description.

You acknowledge that collection of Measurement Data may be interrupted by maintenance of Customer Devices or local conditions that are beyond Vaisala's control. Vaisala shall not be responsible for loss of data transmitted on networks or services not owned or operated by Vaisala, including the internet or Third Party Materials.

#### **5.1.2 Access through API**

Notwithstanding the restrictions of use in Section 4.3 (iii), you may provide access to Measurement Data to third parties through API. You acknowledge and agree that Vaisala shall under no circumstance assume any liability arising from or related to such grant of access to Measurement Data.

Vaisala reserves the right to limit the number of API requests made during a given time period. In accordance with Section 4.3, Vaisala may limit access to Service in case of the limit of reasonable API requests is exceeded.

#### **5.1.3 Measurement Data Back-up**

Unless otherwise agreed by Vaisala and Customer, Customer shall be responsible for any necessary back-up of Measurement Data.

### **5.2 Product Data**

Vaisala shall have the right to process Product Data for the purposes of provision of Services to the Customer and Vaisala's quality control, research and development purposes.

### **5.3 Generalized Data**

Vaisala shall have the right to create sets of Generalized Data based on the Measurement Data and/or Product Data. Such sets of Generalized Data shall be regarded as a separate and independent data sets and Customer's rights over Measurement Data and Product Data shall not encompass such Generalized Data.

Vaisala shall have the right to use Measurement Data and/or Product Data for the purposes of quality control, research and development (including without limitation right to develop Vaisala's machine learning systems) and provision of value-added Services to third parties, provided always that the information or data disclosed to is Generalized Data and that Measurement Data or Product Data as such is not disclosed third parties. Vaisala's right to utilize Measurement Data and Product Data pursuant to this Section shall expire upon termination of the Agreement, but this shall have no effect on Vaisala's rights to the Generalized Data.

## **6 Intellectual Property Rights**

Vaisala owns all right, title and interest in and to:

- i. Service, including all support services, improvements, enhancements or modifications thereto;
- ii. any software, applications, inventions or other technology developed in connection with Service; and
- iii. all Intellectual Property Rights related to any of the foregoing ("Vaisala Intellectual Property Rights").

Customer shall own all right, title and interest in and to any software, applications, inventions or other technology developed in connection with its API development, and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the said developed results.

Other than as expressly set forth in this Agreement, no license or other right in or to Vaisala Intellectual Property Rights are granted to Customer.

With respect to Third Party Materials, the applicable third party owns all right, title and interest in and to Third Party Materials.

## 7 Confidentiality

Neither party shall disclose, transfer, transmit or otherwise make available to a third party documentation related to this Agreement or any confidential information submitted in connection with the provision of the Service, including but not limited to information relating to pricing, without the written consent of the other party, unless such disclosure is required by law, regulation or any governmental or other competent regulatory authority.

Each party retains all rights in and to its confidential information.

## 8 Personal Data

Parties shall comply with the applicable data protection legislation in connection with processing of personal data.

In order to initiate the Services under the Agreement, certain personal data, such as User's name and email addresses will be collected from the Admin(s). The Customer warrants that the personal data provided by it may be processed by Vaisala for the purposes of the Agreement. The Customer must obtain a consent of Users, or have other legal grounds for processing and sharing such personal data, and warrants to disclose personal data only to the extent it is necessary for the operation of the Service.

Vaisala collects and processes personal data of Users to the extent necessary in providing access to the Service. Any processing of personal data shall take place in accordance with Vaisala Privacy Policy, which is available at <https://www.vaisala.com/en/vaisala-policies>.

## 9 Fees and Payment

### 9.1 Fees and Taxes

The quoted fees are exclusive of all taxes, duties and charges of any kind, which shall be added to the fees in accordance with applicable law or paid directly by Customer to appropriate authorities, as the case may be.

### 9.2 Invoicing and Payment

Customer will pay the fees stated in the Order. Fees shall be paid annually in advance unless otherwise stated in the applicable Order.

If the fees or any other sums payable under this Agreement are 30 days or more overdue, Vaisala reserves the right to terminate the Subscription Term and prevent Customer from accessing and/or using the Service immediately until such amounts are paid in full. Vaisala will not exercise its rights under this Section if Customer has disputed the fees and/or other sums reasonably and in good faith and is cooperating diligently to resolve the dispute.

Vaisala reserves the right to increase the fees of the Service up to five percent (5%) by informing Customer in writing of the revised fees three (3) months prior to the commencement of a renewed Subscription Term. In addition, in the event roaming or other charges charged by the mobile operators increase, Vaisala reserves the

right to increase its prices correspondingly with thirty (30) days written notice.

Upon Vaisala's acceptance of Customer's credit application, payment terms shall be net 30 days, unless otherwise agreed by the parties. Any payment outstanding after the due date shall accrue interest at the rate of twelve percent (12%) per annum on the unpaid amount from the date such payment becomes due.

## 10 Term and Termination

### 10.1 Term

Subscription Term is twelve (12) months, starting on the date the Admin is granted access to the Service, unless otherwise agreed.

Subscription Term shall be automatically renewed, unless either party informs the other party of its intention not to renew by giving of a written notice to that effect at least two (2) months before the expiry of the then-current Subscription Term. The renewed Subscription Term shall be of the same duration as the preceding Subscription Term, unless otherwise agreed.

If the Order is amended in accordance with Section 13.7, for a reason of adding new features during the Subscription Term, a new Subscription Term shall commence from the execution of such amendment, and the then-current Subscription Term shall terminate. You shall be reimbursed for any prepaid fees for the remainder of the terminated Subscription Term after the date of termination.

If the Order is amended in accordance with Section 13.7, for a reason of decreasing the features of the Service, the changes shall be effective from the following new Subscription Term, and the fees of the new Subscription Term shall be invoiced accordingly.

### 10.2 Termination

A party may terminate this Agreement with immediate effect if:

- i. it notifies the other party of such other party's material breach of its obligations under this Agreement and such breach is not remedied within thirty (30) days from the date of notice; or
- ii. if the other party files for bankruptcy, makes arrangements with creditors due to financial difficulties, goes into voluntary or compulsory liquidation other than for the purpose of reconstruction, or has a receiver appointed.

### 10.3 Effects of Expiry and Termination

Upon the effective date of expiration or termination of this Agreement:

- i. Customer's right to use Service will end; and
- ii. Customer's access and right to export and retrieve the Measurement Data will end.

No expiration or termination of this Agreement will affect Customer's obligations to pay fees that have become due before such expiration or termination. Termination of this Agreement does not affect other agreements between the parties.



## **11 Warranty and Disclaimer**

### **11.1 Warranty**

Vaisala warrants to use commercially reasonable efforts consistent with prevailing industry standards to maintain the Service in a manner which minimizes errors and interruptions in the Service. Service may be temporarily unavailable for scheduled maintenance as set out in the Service Description, or for unscheduled emergency maintenance, either by Vaisala or providers of Third Party Materials, or because of other causes beyond Vaisala's reasonable control.

The warranty will not apply if the Service is not used in accordance with this Agreement, especially if any non-conformity is due to failure to comply with minimum requirements set out in the Service Description, or due to services and products not provided by Vaisala.

### **11.2 Disclaimer**

Except as expressly provided herein and to the maximum extent permitted by applicable law, the Service is provided "as is" and "as available", and Vaisala makes no warranties of any kind, whether express, implied, statutory or otherwise, and specifically disclaims all implied warranties, including but not limited to, the warranty of merchantability, the warranty of fitness for a particular purpose, accuracy, completeness or usefulness of the Service. Vaisala does not warrant that the Service will be error free or uninterrupted. The limited warranties provided in Section 11.1 are the sole and exclusive warranties provided to Customer in connection with the provision of the Service.

Although Vaisala strives for excellence in weather measurements, the parties acknowledge that any Measurement Data contained in or provided by the Service is advisory only and that any use or application of such Measurement Data shall be the sole responsibility of Customer and/or Users, who shall assume all liabilities and obligations with respect to such use or application. Customer acknowledges that Vaisala does not assume any risk in connection with the business of the Customer.

## **12 Indemnification and Limitation of Liability**

### **12.1 Indemnity by Vaisala**

Vaisala shall hold harmless, defend and indemnify Customer, and each of its directors, officers, members, managers, employees, and agents (collectively, the "Customer Indemnified Parties") from and against any and all damages, losses, liabilities, costs and expenses suffered or incurred by any of Customer Indemnified Parties in any action, suit, litigation, arbitration or dispute brought by a third party arising or resulting from any claim that the Service provided to Customer infringe any copyright, patent, or trademark, constitute a misappropriation of any trade secret, or violate any other intellectual property or proprietary right of any third party (a "Claim"). The Customer Indemnified Parties shall without delay notify Vaisala in writing about any such action, suit, litigation, arbitration or dispute, and they shall not settle or make any admissions in respect of the same. Vaisala shall be given the option, at its expense, to control the action, suit, litigation, arbitration or dispute, and shall be given all necessary information, authorization and assistance to defend the same.

The foregoing indemnity shall not apply to a) a Claim, damage, loss, liability, cost or expense to the extent attributable to the negligent activities or intentional misconduct of any of Customer Indemnified Parties; b) where any such infringement, misappropriation, or violation would not have occurred but for Customer's modification of the Service or Customer's combination of the Service with any hardware, software or service not provided by Vaisala; or c) Claims by entities belonging to the same group of companies with Customer or otherwise associated with any of the Customer Indemnified Parties.

The foregoing states Vaisala's entire liability and Customer's sole and exclusive remedies with respect to any infringement or misappropriation of any Intellectual Property Rights of any third party.

### **12.2 Indemnity by Customer**

Customer shall hold harmless, defend and indemnify Vaisala from and against any and all damages, losses, liabilities, costs and expenses in connection with claims, demands, actions, or proceedings made or brought against Vaisala by a third party related to Measurement Data.

### **12.3 Limitation of Liability**

**NOTWITHSTANDING SECTIONS 7 (CONFIDENTIALITY) AND 12.1 (INDEMNITY BY VAISALA), THE MAXIMUM AGGREGATE LIABILITY OF A PARTY TO THE OTHER PARTY FOR ANY AND ALL DAMAGES, LOSSES, LIABILITIES, COSTS AND EXPENSES ("DAMAGES") ARISING FROM OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT, OR OTHERWISE, SHALL BE LIMITED TO AND UNDER NO CIRCUMSTANCES EXCEED THE FEES FOR THE LAST 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO LIABILITY.**

### **12.4 No Indirect Damages**

**NEITHER PARTY SHALL UNDER NO CIRCUMSTANCES BE LIABLE TO THE OTHER PARTY FOR ANY DAMAGES WHICH ARE INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY, INCLUDING, WITHOUT LIMITATION, ANY LOSS OF PROFITS OR REVENUE (EXCLUSIVE OF THE FULL PAYMENT FOR THE SERVICE PROVIDED PURSUANT TO THE TERMS OF THIS AGREEMENT) INCURRED BY EITHER PARTY WHETHER IN AN ACTION BASED ON CONTRACT OR TORT, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER FORESEEABLE OR UNSEEABLE. DAMAGES RESULTING FROM ANY LOSS OF MEASUREMENT DATA SHALL BE DEEMED INDIRECT DAMAGES, AND SHALL BE SUBJECT TO THIS SECTION.**

## **13 General**

### **13.1 Relationship of the Parties**

None of the Sections of this Agreement will be deemed to constitute a partnership, joint venture or any other such relationship between the parties, and no party will have any authority to bind the other in such manner as a result of any Section of this Agreement.

**13.2 Force Majeure**

Neither party shall be liable for failure to duly fulfil its obligations due to a Force Majeure event. Force Majeure events are events beyond control of both parties and may include events affecting either party or any of its suppliers or subcontractors, or any other cause or circumstance beyond either party's reasonable control.

**13.3 Export Control and Compliance**

Customer agrees to comply with all applicable export laws, restrictions and regulations, including those of the jurisdiction in which the Service was obtained or will be used.

**13.4 Severability**

If any Section of this Agreement is held to be invalid or unenforceable, the invalidity or unenforceability will not affect the other Sections of this Agreement.

**13.5 Assignment**

Notwithstanding the right to create additional User accounts to access and use the Service, neither party may assign or transfer any of its rights or obligations hereunder without the prior express written consent of the other party. Such authorization shall not be unreasonably withheld.

**13.6 Non-waiver**

Failure to enforce any right under this Agreement will not be deemed a waiver of future enforcement of that or any other right.

**13.7 Entire Agreement**

This Agreement, including all Orders, these Terms of Service and Service Description hereunder, is the complete Agreement between the parties, and supersedes all prior agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by both parties. Notwithstanding the above, Vaisala has the right to amend and update the Service Description and these Terms of Service from time to time.

**13.8 Precedence of Documents**

If there is ambiguity or inconsistency between any of the documents comprising this Agreement, the documents shall take precedence to the extent of ambiguity or inconsistency as follows:

- i. Order;
- ii. Terms of Service; and
- iii. Service Description.

This Agreement shall take precedence over Vaisala General Terms & Conditions.

**13.9 Governing Law and Dispute Resolution**

This Agreement shall be governed by and constructed in accordance with the laws of the country (and/or the state, as applicable) of the place of incorporation of the applicable Vaisala Group Company. It is expressly agreed that the application of United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.

In all events, the parties shall first try to resolve any dispute relating to or arising from this Agreement through good faith negotiations.

Any dispute, controversy or claim arising out of or in connection with this Agreement, or the breach, termination or validity thereof, shall be finally settled by arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The arbitration shall be held in the place of applicable Vaisala Group Company, and the language of the arbitration shall be English. Any court having jurisdiction over the matter may enter judgment on the award of the arbitrator.