

## Terms of Use for BELIMO Cloud Services

These Terms of Use (these “Terms of Use” or this “Agreement”) set forth the terms and conditions that govern a Service User’s (defined below) use of the Services (defined below) under this Agreement. All capitalized terms herein shall have the meanings given to them throughout this Agreement.

BY ACTIVATING THE CLOUD CONNECTION AND/OR REGISTERING A CLOUD ACCOUNT, OR OTHERWISE ACCEPTING THESE TERMS OF USE THROUGH AN ORDERING OR CUSTOMIZED DOCUMENT THAT INCORPORATES THESE TERMS OF USE, THE SERVICE USER (DEFINED BELOW) AGREES TO FOLLOW AND BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. THE INDIVIDUAL ENTERING INTO THIS AGREEMENT ON BEHALF OF THE SERVICE USER THAT IS AN ENTITY, REPRESENTS THAT HE OR SHE HAS THE AUTHORITY TO BIND THE SERVICE USER TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF SUCH INDIVIDUAL DOES NOT HAVE SUCH AUTHORITY, OR IF SERVICE USER DOES NOT AGREE TO THE TERMS OF THIS AGREEMENT, SERVICE USER MUST NOT USE THE SERVICES.

### 1. **Scope of application, general**

- (1) The following Terms of Use shall apply between BELIMO Automation AG Brunnenbachstrasse 1, CH-8340 Hinwil, Switzerland (hereinafter “**BELIMO**”), and the respective person who views data and reports generated by the Services (hereinafter “Service User”). These Terms of Use govern the terms for the use and support for the BELIMO Cloud Services provided by BELIMO for the BELIMO Devices purchased from BELIMO or one of its affiliates, or authorized distributors or dealers (hereinafter also “Services” or “BELIMO Cloud Services”). The use of the Services requires a continuous internet connection of the respective BELIMO Device, the Activation of the Cloud Connection on such BELIMO Device (“Activation”), the registration of a Cloud Account and the allocation of the respective BELIMO Device to the Cloud Account (hereinafter “Claiming”). The Cloud Connection may be Activated only if a prompt Claiming of the corresponding Device is intended and takes place within a short time after Activation.
- (2) Any different, contradictory or supplementary general terms and conditions of the Service User that purport to supplement, amend or modify these Terms of Use for such Service User are valid against BELIMO only if and to the extent that BELIMO has consented expressly and in a signed writing to such different, contradictory or supplement term. This requirement for consent shall apply in

any case, for example, even if BELIMO, being aware of the Service User's general terms and conditions, begins providing the services to Service User or Service User's corresponding Device, without reservation.

- (3) In any case, individual agreements executed between BELIMO and a Service User (including side agreements, supplements and amendments) shall take priority over these Terms of Use to the extent provided therein. With respect to the content of such individual agreements, an executed contract between a Service User and BELIMO shall be decisive.

## **2. Scope of performance**

- (1) The BELIMO Cloud Services require the Claiming of a BELIMO Device via a Cloud-Account.
- (2) The Services include the following data, reports and services:
  - a) access to condition- and measurement data;
  - b) preparing and submitting service reports;
  - c) system optimization and increasing the efficiency of the system;
  - d) remote support for optimal configuration of the BELIMO Device; and
  - e) support upon commissioning the BELIMO Device.
- (3) BELIMO shall provide the Services initially without charge, provided that BELIMO shall be entitled at any time (i) without notice to change or update the Services or, (ii) after a notice period of one (1) month, to continue to make Services available only for a charge, in whole or in part, and/or to terminate or suspend provision of the Services in whole or in part.
- (4) BELIMO shall make available to the Service User a help function and technical guidance for the use of the Services on [www.belimo.com/iot](http://www.belimo.com/iot) (hereinafter "Service Documentation"). Should it not be possible to clarify technical and administrative questions concerning the use of the Services using the Service Documentation, then in exceptional cases, and only during BELIMO's normal business hours in the region where Service User is located, the Service User may also contact BELIMO Cloud Support by email. The contact information for the

respective contact persons responsible for the regions may also be found on [www.cloud.belimo.com](http://www.cloud.belimo.com). BELIMO Cloud Support will attempt to respond and answer these questions within a reasonable processing time.

- (5) The Service User is responsible for reading and complying with the requirements of the Service Documentation while using the Services. The Service User is solely responsible for use of the Services and for adequately test the Services' proper functioning before use.
  
- (6) BELIMO shall make the Services available to the Service User without promising any particular availability. BELIMO DOES NOT GUARANTEE THAT (A) THE SERVICES WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED, OR THAT BELIMO WILL CORRECT ALL SERVICES ERRORS, (B) THE SERVICES WILL OPERATE IN COMBINATION WITH SERVICE USER CONTENT OR SERVICE USER APPLICATIONS, OR WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEMS OR DATA NOT PROVIDED BY BELIMO, (C) THE SERVICES WILL MEET SERVICE USER'S REQUIREMENTS, SPECIFICATIONS OR EXPECTATIONS AND (D) THE FUNCTIONALITY OR SECURITY OF SERVICE USER-CONTROLLED INFRASTRUCTURE. SERVICE USER ACKNOWLEDGES THAT BELIMO DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, OR THE LINES OR POWER SUPPLY OR THE HARDWARE AND SOFTWARE, INCLUDING THE INTERNET, AND THAT THE SERVICES MAY BE SUBJECT TO INTERRUPTIONS, LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES, POWER, HARDWARE OR SOFTWARE. BELIMO IS NOT RESPONSIBLE FOR ANY DELAYS, INTERRUPTIONS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. BELIMO IS NOT RESPONSIBLE FOR ANY ISSUES RELATED TO THE PERFORMANCE, OPERATION OR SECURITY OF THE SERVICES THAT ARISE FROM SERVICE USER CONTENT, SERVICE USER APPLICATIONS OR THIRD PARTY CONTENT. BELIMO DOES NOT MAKE ANY REPRESENTATION OR WARRANTY REGARDING THE RELIABILITY, ACCURACY, COMPLETENESS, CORRECTNESS, OR USEFULNESS OF THIRD

PARTY CONTENT, AND DISCLAIMS ALL LIABILITIES ARISING FROM OR RELATED TO THIRD PARTY CONTENT.

- (7) BELIMO expressly reserves the right to limit the monthly number of call-ups of the Services by the respective Service User. Such a limitation may be changed at any time by BELIMO, particularly in order to assure the adequate performance of the Services for all Service Users. Any circumvention of this limitation by technical means is a violation of these Terms of Use.
- (8) Beyond the scope of performance described in this Section 2, BELIMO shall owe the Service User no additional technical or product-related advisory services, implementation services or other services outside BELIMO's normal business hours or individual adaptations and changes or updates to the Services.
- (9) TO THE EXTENT NOT PROHIBITED BY LAW, THESE WARRANTIES ARE EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS INCLUDING FOR SOFTWARE, HARDWARE, SYSTEMS, NETWORKS OR ENVIRONMENTS OR FOR MERCHANTABILITY, SATISFACTORY QUALITY, NON-INFRINGEMENT, QUIET ENJOYMENT, FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE.
- (10) FOR ANY BREACH OF THE SERVICES WARRANTY, SERVICE USER'S EXCLUSIVE REMEDY AND BELIMO'S ENTIRE LIABILITY SHALL BE THE CORRECTION OF THE DEFICIENT SERVICES THAT CAUSED THE BREACH OF WARRANTY, OR, IF BELIMO CANNOT SUBSTANTIALLY CORRECT THE DEFICIENCY IN A COMMERCIALY REASONABLE MANNER, SERVICE USER MAY END THE DEFICIENT SERVICES AND BELIMO WILL REFUND TO SERVICE USER THE FEES FOR THE TERMINATED SERVICES THAT SERVICE USER PRE-PAID TO BELIMO FOR THE PERIOD FOLLOWING THE EFFECTIVE DATE OF TERMINATION OR PAY SERVICE USER \$100 WHICH-EVER IS MORE.

### **3. Obligations of the Service User, abusive use / blocking access**

- (1) The Service User represents and warrants that it/he/she: (i) is entitled to use the Services for the respective BELIMO Devices it/he/she has access to, (ii) entitled to use the BELIMO Devices to obtain the Services; and (iii) will comply with all statutory requirements, particularly with respect to data collection and processing.
- (2) In registering the Cloud-Account for management of the Services, the Service User must provide: (i) Service User's name (if a person the name must include first and last name and if an entity, the name must be the full legal entity name), (ii) the country of Service User's residence/domicile, (iii) a password selected by Service User and (iv) a valid email address. Additional data, such as the registered office of a company may be given voluntarily (hereinafter overall "**Registration Data**"). In selecting the user name, the Service User is obliged not to violate any third-party rights (for example rights to names or trademarks).
- (3) After registering a Cloud-Account, the Service User will receive an Activation email at the email address given with a link to the registration page [www.cloud.belimo.com](http://www.cloud.belimo.com). The Cloud-Account registration is concluded only once the Service User uses the Activation link.
- (4) The Service User's Registration Data must be updated by Service User at any time there are changes or updates during the period the Service User is receiving the Services. The Service User may at any time change or update its Registration directly in its Cloud-Account.
- (5) Every Service User has its own Cloud-Account. Access to a Service User's user account and the associated opportunity to manage the BELIMO Devices is permitted exclusively to the Service User. The Service User shall keep all Cloud-Account login and password access data (the "Access Data") secret and not make them accessible or available to third parties. It is the Service User's responsibility to assure that access to the Services via the Access Data take place exclusively by the Service User. Should the Access Data become known to third parties, the Service User must immediately change the Access Data and also

immediately inform BELIMO via email to the respective regional contact person listed on [www.cloud.belimo.com](http://www.cloud.belimo.com). The Service User shall be liable for any use or misuse and/or other activity executed under its/hers/his Access Data.

- (6) The Service User is responsible for assuring that a continuous and sufficiently strong internet connection of the BELIMO Devices is available to enable the Services to be provided. The Service User represents and warrants that during the period Services are provided, the system environment deployed by it for the use of the Services (network, firewall, hardware, software) fulfills and will fulfill the state-of-the-art security standards. The Service User is responsible for the protection of its BELIMO Devices against any unauthorized interferences or individuals (in particular against unauthorized access over the Internet). To the extent that the Service User becomes aware of errors, security gaps or other security issues in the Services, Service User must immediately notify BELIMO Cloud Support of such errors, gaps or issues. The contact information for the respective BELIMO regional contact person may be found on [www.cloud.belimo.com](http://www.cloud.belimo.com).
- (7) In the event of abusive use of the Services by or through Service User's Cloud-Account, BELIMO reserves the right to temporarily or permanently block the Service User's access to the Services. Use of the Services shall be deemed to be abusive particularly if the Service User violates these Terms of Use or if the Service User:
- uses the Services and/or data retrieved in contexts that are unlawful or criminal or that may in some other manner prove disadvantageous to BELIMO's reputation and standing;
  - causes an unusually high burden on the Services' servers, which may adversely affect the stable and high-performance operation of these servers, without prior coordination with BELIMO;
  - uses crawling technologies, scripts or comparable methods for automated requesting and processing of the data retrieved via the Services.

#### **4. Rights of use to Services and data**

- (1) The software programs and databases used for the provision of the Services are protected by copyright or other proprietary rights and in each case are the property of BELIMO or BELIMO's licensors. Under strict compliance with these Terms of Use, the Service User shall be entitled to allow the retrieval of data from the database operated by BELIMO for the use of the Services. This right of use is limited to the term pursuant to these Terms of Use.
- (2) The Service User is prohibited from processing, altering, translating, showing or presenting, publishing, exhibiting, duplicating or disseminating the software programs and databases used for the provisions of the Services in whole or in part. It is likewise prohibited to remove or alter copyright notices, logos and other identifying marks or protective notices. The Services and/or the software programs and databases used for the provision of the Services or the rights of use thereto granted in this agreement may not be resold, retransferred or sub-licensed to third parties for use.
- (3) The linking, integration or other connection of the Services or individual elements of the Services with other databases or meta-databases is not permitted.

#### **5. Data protection**

- (1) The collection, processing and/or use of personal and other data for the Service User by BELIMO shall be done on behalf of the Service User for provision of BELIMO Cloud Services. The particulars are stipulated in the Data Protection Statement and in the Agreement on Contract Data Processing Appendix.
- (2) The Service User is responsible for the lawfulness of the collection, processing and use of the [data] in connection with Activated or Claimed BELIMO Devices it/she/he has access to, as well as for the preservation of the rights of those concerned. It shall therefore assure in particular that personal data of third parties (e.g. of owners of BELIMO Devices who are not Service Users or their lessees or other contractual partners) are processed only if there is statutory permission for this or the respective third parties have expressly consented to the processing of their personal data. This shall also apply particularly in the case of

a change of owner or lessee. The Service User shall then guarantee and assure that it grants third parties access to data related to the respective BELIMO Devices it/she/he has access to, only if all the legal conditions have been fulfilled. The Service User shall indemnify BELIMO upon first demand from all claims that third parties may assert against BELIMO based on the collection, processing or use of data in connection with a BELIMO Device Activated, Claimed or accessed by the Service User.

- (3) BELIMO reserves the right to suspend the Services with respect to certain BELIMO Devices in whole or in part, either temporarily or permanently, if in BELIMO's reasonable judgment there are doubts that the Service User will comply with its obligations pursuant to Sec. 5.2.

## **6. Limited Liability and limited warranty**

- (1) BELIMO shall be liable only for intentional misconduct and gross negligence. BELIMO shall be liable for defects of quality and title in the Services and/or the data retrieved only if BELIMO maliciously concealed a defect of quality and/or title from the Service User. Any further liability or warranty for the freedom from defects, of quality and title of the Services and/or the data retrieved is excluded.
- (2) NEITHER BELIMO NOR ITS AFFILIATES WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF REVENUE OR PROFITS, DATA, OR DATA USE, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, NEITHER BELIMO NOR ANY OF ITS AFFILIATES OR LICENSORS WILL BE RESPONSIBLE FOR ANY COMPENSATION, REIMBURSEMENT, OR DAMAGES ARISING IN CONNECTION WITH: (A) SERVICE USER'S INABILITY TO USE THE SERVICES, INCLUDING AS A RESULT OF ANY (I) TERMINATION OR SUSPENSION OF THIS AGREEMENT OR SERVICE USER'S USE OF OR ACCESS TO THE SERVICES, (II) BELIMO'S DISCONTINUATION OF ANY OR ALL OF THE SERVICES, OR, (III) WITHOUT LIMITING ANY OBLIGATIONS UNDER THE SLA, ANY UNANTICIPATED OR UNSCHEDULED DOWNTIME OF ALL OR A PORTION OF THE



SERVICES FOR ANY REASON, INCLUDING AS A RESULT OF POWER OUTAGES, SYSTEM FAILURES OR OTHER INTERRUPTIONS; (B) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; OR (C) SERVICE USER-CONTROLLED INFRASTRUCTURE. BELIMO'S MAXIMUM LIABILITY FOR ALL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT AND SERVICE USER'S ORDER, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, SHALL IN NO EVENT EXCEED, IN THE AGGREGATE, LESSER OF \$100 OR THE TOTAL AMOUNTS ACTUALLY PAID TO BELIMO FOR THE SERVICES THAT ARE THE SUBJECT OF THE CLAIM IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM LESS ANY REFUNDS OR CREDITS RECEIVED BY SERVICE USER FROM BELIMO UNDER SUCH ORDER.

**7. Term, Termination**

This Agreement shall have an indeterminate term. The Agreement may be terminated by the parties at any time without grounds. BELIMO may direct the termination to the e-mail address provided by Service User in the Registration Data. The termination by the Service User is effectuated through the transfer or deletion of BELIMO Devices Claimed in the Service User's Cloud-Account and the subsequent deletion of the Cloud-Account. The Service User may find the technical instructions for that in its Cloud-Account as well as under [www.belimo.com/iot](http://www.belimo.com/iot). Nothing in this Section shall affect BELIMO's rights under Section 2.3.

**8. Final provisions**

- (1) This Agreement and all legal relationships between BELIMO and the Services or any Service Users or third parties (e.g. of owners of BELIMO Devices who are not Service Users or their lessees or other contractual partners) or in connection or relating to, or arising out of, the creation, production, manufacture, distribution, promotion, marketing, advertising (including oral and written statements), use of or sale of any and all of our products and services, through all merchandising channels, including but not limited to, the cloud, the Internet, BELIMO's website or mobile devices shall be governed by the internal substan-

tive laws of Switzerland without regard to its conflict of laws principles. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) is excluded.

- (2) You agree that any dispute shall be resolved exclusively by final and binding arbitration administered by [Swiss Arbitration Association ("SAA").] Before commencing any arbitration, the claimant must give BELIMO notice of a claim, in writing. We may then attempt to resolve such claim. If the dispute is not resolved within 30 days, the claimant may demand an arbitration pursuant to the terms below.
- (3) The Service User agrees that: (i) the arbitration shall be conducted before a single arbitrator pursuant to the applicable Rules and Procedures established by the SAA and subject to the [Federal Arbitration Act, 9 U.S.C. § 1 et seq.]; (ii) the arbitration shall be held telephonically with written submissions, or based on written submissions only (at your option), with the arbitrator's fee to be paid by us (unless the arbitrator finds that your claims are frivolous, in which case you will pay the arbitrator's fee), if the amount in controversy is \$10,000 or below, or, for amounts in controversy in excess of \$10,000 in person at a location determined by the SAA pursuant to the Rules and Procedures of the SAA, with the arbitrator's fee to be allocated equally between the parties; (iii) the arbitrator shall have the authority to award actual direct damages only with no authority to issue any fines and penalties nor award punitive damages or equitable relief; (iv) THERE SHALL BE NO RIGHT TO LITIGATE YOUR CLAIM IN COURT AND NO RIGHT TO A JURY TRIAL, and (v) claimant's claim shall be arbitrated on an individual basis, and that claimant shall not have the right to participate in a representative capacity, or as a member of any class of claimants pertaining to any Claim subject to arbitration, and that the arbitrator shall have no authority to consolidate or join the Claims of other persons or parties who may be similarly situated and may only resolve Claims, and render awards between claimant and BELIMO alone. With the exception subpart (v) above, if any part of this arbitration provision is deemed invalid, unenforceable or illegal, or otherwise conflicts with the Rules and Procedures of the SAA, then same shall be stricken and the

balance of this arbitration provision shall remain in effect and construed accordingly. If subpart (v) is invalidated, there shall be no right to arbitration of claims on any class or collective basis, but instead any attempt to assert claims on a class or collective basis of any kind must be pursued in a court of competent jurisdiction. For more information on the SAA and its Rules and Procedures, visit the SAA website at [[www.arbitration-ch.org](http://www.arbitration-ch.org)]

- (4) Zurich, Switzerland is agreed upon as the exclusive place of jurisdiction; however, BELIMO remains entitled to file a claim or initiate other judicial proceedings at the general place of jurisdiction of the Service User.
- (5) Amendments and supplements to these Terms of Use shall require written form. This shall also apply to amendments to this written form requirement itself. The requirement for written form may be observed by means of email or other electronic communication.
- (6) Neither party shall be responsible for failure or delay of performance if caused by: an act of war, terrorism, hostility, or sabotage; act of God; pandemic; electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions (including the denial or cancelation of any export, import or other license); strike or labor dispute; or other event outside the reasonable control of the obligated party. Each party will use reasonable efforts to mitigate the effect of a force majeure event. If such event continues for more than 30 days, either party may cancel unperformed Services and affected orders upon written notice. This Section does not excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures or Service User's obligation to pay for the Services.
- (7) If, for reasons related to the Law on General Terms and Conditions of Trade, individual provisions of these Terms of Use are or become invalid/void or unfeasible in whole or in part, the statutory stipulations shall apply. If individual provisions of these Terms of Use are or become invalid/void or unfeasible in whole or in part for reasons other than the provisions of the Law on General Terms and Conditions of Trade, the validity of the remaining provisions shall not be affected

thereby. In lieu of the invalid provision, a provision shall be deemed to have been agreed upon that reflects to the extent possible the economic purpose of the invalid provision. The same shall apply in the event of a gap in this Agreement.

VERSION 2.0, effective as of 1 April 2019

## **Data Protection Statement**

### **1. Information on the collection of personal data and supplier identification**

- (1) Below, BELIMO provides information on the collection of personal data when using the BELIMO Cloud Services. Personal data are all data that can be related to persons, e.g. name, address, email addresses, patterns of use (hereinafter **“Personal Data”**).
- (2) The service provider for BELIMO Cloud Services is BELIMO Automation AG Brunnenbachstrasse 1, CH-8340 Hinwil, Switzerland (hereinafter **“BELIMO”**).
- (3) As part of the use of BELIMO Cloud Services it is possible that both Personal Data of the Service User or its employees as well as possibly the Personal Data of third parties (e.g. the Buyer of the Device, who is not identical to the Service User, or of lessees or other contractual partners) may be processed.
- (4) In order to operate the BELIMO Cloud Services, to some extent BELIMO uses external service providers with registered office in Switzerland or within the European Union or the European Economic Area to process Personal Data. These were carefully selected by BELIMO and commissioned in writing. They are mandated to follow BELIMO's instructions and are regularly audited by BELIMO. The service providers shall not pass the Personal Data on to third parties.
- (5) Personal Data are to some extent processed by employees of companies affiliated with BELIMO that have their registered office outside Switzerland or the European Union. BELIMO has concluded contracts with these affiliated companies to assure proper data protection.

### **2. Data security**

BELIMO maintains current technical measures to guarantee data security, particularly for the protection of Personal Data from risks in data transmission as well as from knowledge by third parties. These are always adjusted to the current state of the art and periodically audited. The computing center for BELIMO Cloud Services is ISO/IEC 27001 certified (see <https://cloud.google.com/security/>). Communications take place via an encrypted connection, e.g. HTTPS.

### 3. **Collection of data in the configuration of the BELIMO Device**

(1) The respective BELIMO Device shall be installed by the Service User or a by a third party contracted to do so, e.g. a professional, in a heating ventilation or air conditioning system (hereinafter “**HVAC**”). As part of the installation, the BELIMO Device must be configured. Within the scope of the configuration, the following information is required:

- IP address of the BELIMO Device
- product features and characteristics
- product configuration (type of operation, target values, interface configuration)

as well as the following information that may be recorded on a voluntary basis upon configuration:

- email address
- project name
- Device name
- place of installation of the Device
- building type (select)
- HVAC application (select)
- building address

(hereinafter “**Configuration Data**”)

(2) The Configuration Data will be stored locally on the BELIMO Device. If no connection to the BELIMO Cloud is set up, BELIMO will have no access to the Configuration Data. Processing of the Configuration Data by BELIMO may take place if BELIMO contracts for on-site maintenance of the BELIMO Device.

### 4. **Set-up of the BELIMO Cloud Services**

As part of the use of the BELIMO Devices, BELIMO offers various Services (see Terms of Use, Sec. 2.2). In order to be able to use the BELIMO Cloud Services, as part of the configuration of the BELIMO Device, the Service User must select

the use of the BELIMO Cloud Services by clicking on the appropriate button.

The following options are available for selection:

- Cloud Connection: [yes] or [no]
- Cloud Access: [read only] or [read / write]
- Software Update via Cloud: [yes] [notification only / manual installation] or [automatic]

## 5. **Collection of data upon Activation of the Cloud Connection and use of the BELIMO Cloud Services**

(1) If the Cloud Connection is Activated, the following data will be collected and exchanged between the BELIMO Device and the BELIMO Cloud (hereinafter “**Configuration and Condition Data**”):

- Configuration Data (Sec. 3.1 of this Data Protection Statement)
- SW Info (name, version, patch level)
- system condition values (system utilization and history)
- HVAC condition values (actual values of sensors, target values of actuators, information, warning and error reports)

(2) As long as Activated Devices are not yet Claimed by any Service User, only the following data shall be stored by BELIMO (hereinafter “**Statistical Data**”):

- product features and characteristics
- product configuration (type of operation, target values, interface configuration)
- SW info (name, version, patch level)
- system condition values (system utilization and history)
- HVAC condition values (actual values of sensors, target values of actuators, information, warning and error reports)

The remaining Configuration and Condition Data shall be discarded from the Cloud.

These Statistical Data shall be processed for the purposes of future optimization and further development of the BELIMO Devices as part of anonymous analyses and statistical evaluations. These analyses and statistical evaluations shall not

be combined with Personal Data. The Service User may oppose this use of the Statistical Data by deactivating the Cloud connection (see Sec. 4).

- (3) As soon as a the Cloud-Account is registered, the Registration Data (pursuant to Sec. 3.2 of the Terms of Use) and after Claiming of the respective BELIMO Devices, the Configuration and Condition Data shall be collected and stored (jointly hereinafter "**Cloud Data**"). The Cloud Data shall be processed for the provision of the Services pursuant to Sec. 2.2 of the Terms of Use.

## **6. Rights to information and revocation, reservation of consent and obligation to delete**

- (1) The Service User shall have the right at any time to demand information from BELIMO concerning the Personal Data for the Claimed Device that are stored at BELIMO, as well as their provenance, the recipients or categories of recipients to which these Personal Data are transmitted and the purpose of the storage.
- (2) To the extent that BELIMO wishes to collect Personal Data for purposes other than those cited in this Data Protection Statement, BELIMO shall do this only if there is statutory permission for this or the consent of the Service User is obtained. If the Service User has given consent for the use of Personal Data, this may be revoked at any time simply by transferring the devices managed in its Cloud-Account to another Service User or deleting the respective devices from its Cloud-Account and subsequently delete the Cloud-Account. The technical instructions for that may be found under [www.belimo.com/iot](http://www.belimo.com/iot).
- (3) As soon as they are no longer needed for the purposes for which they were collected, all Personal Data shall be deleted, unless BELIMO is obliged to retain them based on statutory provisions. Should BELIMO be obliged to retention, the Personal Data shall be deleted upon the expiration of the retention periods prescribed by law. Deletion of the Personal Data shall be done in particular if the Service User transfers the Claimed BELIMO Device to another Service User or if it deletes the respective BELIMO Device from its Cloud-Account and subsequently also deletes its/her/his Cloud-Account. The technical instructions for that may be found under [www.belimo.com/iot](http://www.belimo.com/iot).



- (4) All requests for information, inquiries or opposition to the processing of Personal Data are to be addressed via email to the regional contact person listed under [www.cloud.belimo.com](http://www.cloud.belimo.com).

**7. Revision of this Data Protection Statement**

BELIMO reserves the right to revise this Data Protection Statement as needed to adapt to technical developments or in connection with the offer of new services or products. The current version may always be examined at [www.cloud.belimo.com](http://www.cloud.belimo.com).

VERSION 2.0, effective as of 1 April 2019

## **Agreement on Contract Data Processing Appendix**

This Agreement for Contract Data Processing (hereinafter also “**Agreement**”) details the obligations of BELIMO under the data protection laws that result from the provision of the BELIMO Cloud Services for the Service User. The contract concluded based on the Terms of Use between the Service User and BELIMO shall hereinafter be called “**Service Contract**”. The Agreement shall apply to all activities that are related to the contracted Services and in which BELIMO, its employees or third parties contracted by BELIMO collect, process or use the Service User’s personal data.

### **1. Definitions**

- (1) **Personal Data:** Personal Data are individual information concerning personal or substantive relationships of a particular person or one whose identity can be determined.
- (2) **Contract Data Processing:** Contract Data Processing is the storage, changing, transmission, blocking or deletion of Personal Data by BELIMO on behalf of the Service User.
- (3) **Instructions:** Instructions are the order by the Service User directed at a particular handling of Personal Data by BELIMO for the purpose of data protection (e.g. anonymization, blocking, deletion, surrender).

### **2. Subject of the order and responsibility**

- (1) The subject of the order is the provision of the Services for the Service User. Specifically, the subject of the order, the term of the order and the type of data collection, processing or use results from the Service Contract concluded between the parties.
- (2) The term of this Agreement shall be determined by the term of the Service Contract. When the Service Contract ends, this Agreement also ends automatically, without the need for any separate termination.
- (3) BELIMO shall process the following types of data, which may contain Personal Data:
  - employee data
  - personal data of the Service User’s customers
  - address data

- Cloud-Data pursuant to Sec. 5.3 of the Data Protection Statement
- (4) Those affected by the data processing essentially consist of
- the Service User's employees
  - the Service User's customers
  - contractual partners of the Service User or its customers (e.g. lessees)
- (5) BELIMO shall process Personal Data under contract for the Service User. This includes services that are specified in the Service Contract. Within the scope of this Agreement, the Service User shall be solely responsible for compliance with the statutory provisions of the data protection laws, particularly for the lawfulness of the transmission of data to BELIMO, as well as for the lawfulness of the data processing ("Controller").

### **3. Obligations of BELIMO**

- (1) BELIMO may collect, process or use Personal Data only within the scope of the order and the Service User's instructions. The instructions shall initially be set forth in the Service Contract and may thereafter be changed, supplemented or replaced in written form or in text form by means of individual instructions (specific instruction). Instructions that extend beyond the contractually-agreed performance shall be treated as a request for a change in performance.
- (2) Within the scope of its responsibility BELIMO shall structure its internal organization such that it complies with the special requirements of data protection. It shall take technical and organizational measures for the appropriate securing of the Service User's data from abuse and loss that comply with the requirements of the applicable data protection laws.

All technical and organizational measures may be adapted to advances in technical and organizational development during the term of the Service Contract.

- (3) BELIMO warrants that the employees engaged in the processing of the data and other persons working for BELIMO are prohibited by an undertaking to collect,

process or use data without authorization (Confidentiality). Confidentiality shall continue to apply even after the end of the order.

- (4) BELIMO shall immediately notify the Service User in the event of serious disruptions to the course of operations, of suspicion of a breach of data protection or other irregularities in the processing of the Service User's data. BELIMO shall also immediately inform the Service User if the data protection regulatory authorities carry out controls or measures by regulatory authorities or if a competent authority carries out investigations against BELIMO or against third parties in BELIMO's business premises.
- (5) BELIMO shall block the access to the data subject of the Service Contract if the Service User so directs. The correction or deletion of data may be effectuated directly by the Service User (see also Sec. 3.4 of the Terms of Use and Sec. 6.3 of the Data Protection Statement). The technical instructions for that may be found under [www.belimo.com/iot](http://www.belimo.com/iot).

#### **4. Obligations of the Service User**

- (1) With respect to the data to be processed, the Service User and BELIMO are each responsible for compliance with the data protection laws applicable to it.
- (2) The Service User must inform BELIMO immediately and in full if, in the verification of the results of the order it determines errors or irregularities with respect to provisions of data protection laws.
- (3) The Service User is obligated to the statutory duties of information.
- (4) Should the Service User be obligated by law to give an individual person information on the collection, processing or use of that person's data, BELIMO shall support the Service User to the extent required in making this information available. This is conditioned on the fact that the Service User has requested this from BELIMO in writing or in text form, and the Service User reimburses BELIMO for the costs incurred by this support. BELIMO shall not respond to any demands for information and shall instead refer the person concerned to the Service User.

- (5) Should a person concerned contact BELIMO with demands for correction, deletion or blocking, BELIMO shall refer such person to the Service User.

**5. Duties of audit**

- (1) Before acceptance of the data processing, and thereafter on a regular basis, the Service User shall audit the technical and organizational measures taken by BELIMO and document the result.

To this end the Service User may

- obtain self-reporting by BELIMO,
- request an attestation by an expert or a recognized certification body or
- after giving timely notice, and during normal business hours, and without disruption to the course of operations, audit personally or have an expert third party audit, to the extent that the latter is not a competitor of BELIMO.

- (2) BELIMO undertakes that upon written request, and within a reasonable period of time, it shall give all information that is required for the performance of an audit.

**6. Subcontractors**

- (1) The use by BELIMO of subcontractors for the Services is permissible. The Service User agrees that in order to fulfill its contractually agreed performance BELIMO may call upon companies affiliated with the BELIMO or may subcontract the performance of the Services to third parties.

- (2) At the time of the conclusion of this Agreement the companies listed below work as subcontractors for partial performance for BELIMO and in this connection they also directly process and/or use the Service User's data. For these subcontractors the consent to such work shall be deemed to have been granted:

<b>Name and address of subcontractor</b>	<b>Description of the partial performance</b>
Ergon Informatik AG, Merkurstrasse 43, 8032 Zurich	development and 4 <sup>th</sup> level support
Google Cloud Platform	hosting

Google Ireland Limited, Gordon House, Barrow Street, Dublin 4, Ireland (cloud.google.com)	
--	--

(3) Should BELIMO place orders with a subcontractor, BELIMO shall be obliged to transfer its obligations under this contract to the subcontractor. Sentence 1 shall apply in particular to requirements as to confidentiality, data protection and data security between the parties to this Agreement. Any audit of the subcontractor by the Service User shall take place only in coordination with BELIMO. Upon written request the Service User shall be entitled to obtain information from BELIMO concerning the subcontractor’s obligations with regard to data protection, and if necessary. BELIMO reserves the right to invoice based on time and labor spent.

(4) There is no requirement to obtain consent for a contractual relationship with a subcontractor if BELIMO contracts with third party within the scope of performance that is ancillary to the main performance, such as for external personnel, postage and shipment services or maintenance. BELIMO shall make agreements with this third party to the extent necessary to assure appropriate data protection.

**7. Miscellaneous**

(1) Should the Service User’s data that are with BELIMO be jeopardized by means of attachment or seizure, by a bankruptcy or settlement proceeding or by other events or measures by third parties, BELIMO shall inform the Service User of this immediately. BELIMO shall immediately inform all those responsible in this connection that the sovereignty and title to the data are exclusively those of the Service User as “Controller”.

(2) In the event of any contradictions, the stipulations of this Data Protection Statements shall take precedence over the stipulations of the contract. Should individual parts of this Appendix be invalid, this shall not affect the validity of the rest of the Appendix.

- (3) Amendments and supplements to this Agreement and all its components require a written agreement and the explicit reference to the fact that such agreement is an amendment or supplement to this Agreement. This shall also apply to the waiver of the formal requirement.
- (4) Aside from that, the stipulations of the Terms of Use shall apply.

VERSION 2.0, effective as of 1 April 2019