

ADS-TEC ENERGY TERMS OF USE

Last Updated: May 8, 2023

These Terms of Use (these “**Terms of Use**”) constitute an agreement between the user (“**Users**” or “**you**”) and ads-tec Energy GmbH (“**ADS-TEC**,” “**we**,” “**us**” or “**our**”) and govern your use of the Internet of Energy (“**IoE**”) Service & Maintenance Platform “Big-LinX® Energy” (the “**Service**”).

PLEASE NOTE THAT THESE TERMS OF USE CONTAIN **INDEMNIFICATION, GOVERNING LAW, AND DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY** SECTIONS THAT AFFECT YOUR RIGHTS, INCLUDING YOUR ABILITY TO BRING LEGAL CLAIMS AGAINST US. Please read these Terms of Use and any other terms referenced in this document carefully. By using our Service, you agree that you have read, understand, and are bound by the Terms of Use. We may, in our sole discretion, revise the Terms of Use from time to time with the new terms taking effect on the date of posting. IF YOU DO NOT AGREE TO THESE TERMS OF USE, PLEASE DO NOT USE OUR SERVICE.

Users and ADS-TEC jointly also referred to as the “**Parties**”, individually referred to as a “**Party**”

1. General information and scope of application

- 1.1 ADS-TEC is a supplier of a wide range of battery storage systems for operational applications in the field of energy management, spanning from smart charging solutions for the e-mobility of the future to high-performance systems for industrial plants and infrastructures. For integrating its products into “Internet of Energy” (IoE) architectures in local and global networks, ADS-TEC provides “Big-LinX® Energy”, an IoE Service & Maintenance Platform (hereinafter referred to as “**Service**”). The Service can be accessed via web-based, User-side telecommunications connection. With its integrated infrastructure and platform services and applications, the Service enables remote operation and maintenance of the connected battery storage systems.
- 1.2 This Agreement governs the right to use the Service provided by ADS-TEC as well as access to the Service and content thereof (hereinafter “**the Terms of Use**” or “**these Terms of Use**”).
- 1.3 The use of the Service is exclusively subject to these Terms of Use and individual agreements made with the User in specific cases. Unless otherwise agreed, these Terms of Use shall also apply if no further reference is made to them upon the conclusion of a contract or subsequent amendments or additions thereto.
- 1.4 These Terms of Use, together with any amendments and any additional agreements you may enter into with us in connection with the Service shall constitute the entire agreement between you and us concerning the Service.

2. Conclusion of the contract

- 2.1 The User may obtain permission to use the Service from ADS-TEC only.
- 2.2 A contract with ADS-TEC subject to these Terms of Use may only be concluded by someone, who
 - (a) intends to use the Service solely for their own commercial or professional purposes;

(b) is legally capable and of legal age or is legally represented by a legal or fiscal representative or duly authorized representative,

(c) does not operate, maintain or participate in any undertaking developing, offering or selling services that are essentially similar to the Service here; and

(d) has not already been excluded from use once by permanent blocking of his or her access authorization.

2.3 ADS-TEC reserves the right, in its sole discretion, to review and decide on the final creation of a binding contract between the Parties. In doing so, ADS-TEC may require proof of any or all of the conditions described in Section 2.2.

2.4 A contract is concluded between ADS-TEC and the User (i.e., the User is granted a right to use the Service) (a "**License Agreement**"):

(a) by mutual signing of a written agreement, to which these Terms of Use are attached and/or in which reference is made to the applicability of these Terms of Use; or

(b) by accepting an offer made by ADS-TEC, to which these Terms of Use are attached and/or in which reference is made to the applicability of these Terms of Use; or

(c) after the User has completed the registration process for the Service in full on our web portal located [here](#) (the "**Web Portal**"), thereby submitting an offer to ADS-TEC for the conclusion of a separate License Agreement, based on these Terms of Use. A notification automatically sent in the registration process about the receipt of the registration data does not constitute a declaration of acceptance by ADS-TEC, but serves only to verify and confirm this data by the User. ADS-TEC accepts the offer made by the User by way of activation of access to the Service or by explicit notification to the User.

2.5 The User may only register once for the Service. Its registration, the License Agreement and the User account together with access data are not transferable or assignable. Any attempted transfer or assignment in violation hereof will be null and void.

3. Content and limitations of the Service

3.1 The basic components of the Service are set out in **Annex 1** attached hereto. Any additional components and/or other services must be agreed upon separately. For the agreed Service, the User is given access to electronic user documentation in the form of online help. The User is also entitled to use ADS-TEC's User support to a reasonable extent.

3.2 The Service and its contents can be accessed via our Web Portal and various web services. ADS-TEC does not provide the necessary telecommunications connection and the hardware and system environment required for use of the Service. You are responsible for providing such. In this respect, interface is the respective data transfer point (router output) of the server used by ADS-TEC for the telecommunications network.

3.3 Some of the content available within the Service is provided by third parties (hereinafter

collectively referred to as “**Third-Party Content**”). ADS-TEC does not check on the quality, suitability, completeness, correctness, legality or currentness of Third-Party Content and therefore, does not assume any responsibility or guarantee regarding the Third-Party Content. The User uses all Third-Party Content at its own risk.

- 3.4 Other services in connection with the initial setup, configuration and parametrization of the Service as well as its subsequent use, which go beyond the content or scope of User support, may be provided solely on the basis of a separately executed contract between ADS-TEC, who may use the help of third parties or affiliated companies, and the User or its customers.

4. Data connections for Service and other Terms of Use

- 4.1 The intended use of the Service and its contents requires a transport-encrypted data connection between the Service, on the one hand, and the User and target networks, on the other. In the User network, the User or a person authorized by it must also authenticate itself as an authorized access person, optionally by entering a second authentication feature.

In this way, data and control commands can be exchanged between network devices of the User and target network, and data and control commands can be stored, managed and used within the Service. For certain functionalities, an additional backup of the data connection is provided by activating a VPN tunnel or a special transmission protocol between the respective data transfer points.

- 4.2 For the above purposes, ADS-TEC shall provide the User with the following requirements:

- (a) identification data in the form of usernames, user passwords, PINS as well as smart cards or software certificates (hereinafter collectively referred to as “**Identification Data**”) or ADS-TEC shall prompt the User to create Identification Data during registration;
- (b) web browser interfaces (APIs), VPN client software, firmware for compatible hardware products from ADS-TEC (hereinafter collectively referred to as “**Access Software**”).

The User is entirely responsible for the security and confidentiality of the Identification Data. Furthermore, the User is entirely responsible for any and all activities that occur using the User's Identification Data. The User is also entirely responsible for the proper operation of the Access Software. Assistance from ADS-TEC in the form of online help and User support is not a User-specific solution and does not relieve the User from the obligation to safely handle the application, installation, operation and maintenance of the Access Software.

- 4.3 The use of third-party Access Software is not permitted. Insofar as the User has purchased hardware products from ADS-TEC (from ADS-TEC itself, specialist dealers, from a system integrator, etc.) and their firmware for access, the provisions of the agreement executed upon purchase of the product apply. Moreover, the Access Software is available for download via the Web Portal or, if necessary, on a portable storage medium. By downloading and installing the Access Software, the User acknowledges the applicability of these Terms of Use.

5. Rights of Use

5.1 Granting of Rights of Use

- 5.1.1 ADS-TEC grants the User a limited and non-exclusive right to use the Service, its content and the Access Software provided by ADS-TEC, limited to the term of this Agreement, in accordance with these Terms of Use. The User may not transfer or assign this right or grant sub-licenses for it.
- 5.1.2 In the event that ADS-TEC makes new versions, updates, upgrades or other new supplies of the Service, its contents and/or Access Software available during the term of this Agreement, the above rights shall also apply to them.

5.2 Use of Access Software

- 5.2.1 The Access Software provided by ADS-TEC may only be used to access the Service. Only the interfaces expressly provided for this purpose may be used to connect the User's own network programs, services or databases.
- 5.2.2 The User shall have the right to revise or compile the Access Software only to the extent that ADS-TEC is prevented by applicable and mandatory statutory provisions from limiting this right of the User; otherwise, it is excluded.

5.3 Use of available contents

- 5.3.1 You should assume that everything on the Service is copyrighted unless otherwise indicated and that it must not be used except as provided in the Terms of Use or with the express written consent of ADS-TEC. All contents are copyrighted and may not be used without ADS-TEC's written permission. All intellectual property rights in the Service and in any content of the Service (including, but not limited to, text, graphics, design, layout, software, photographs, and other images, videos, sound, trademarks and logos) are owned by ADS-TEC or our licensors. Except as expressly set forth herein, nothing in the Terms of Use gives the User any rights in respect of any intellectual property owned by ADS-TEC or our licensors and the User acknowledges that you do not acquire any ownership rights by downloading or using the Service.
- 5.3.2 Unless otherwise expressly permitted in these Terms of Use, the available contents, in particular:
 - (a) may only be accessed, displayed and used by the User for the User's own internal business purposes or for specific customer orders and for no other commercial purposes;
 - (b) may not be processed, altered, translated, presented, published, displayed, reproduced or disseminated by the User in whole or in part;
 - (c) may not be used by the User while removing or modifying copyright notices, logos and other marks or proprietary notices.
- 5.3.3 The User is also entitled to download the available content and to print content only during the term of this Agreement and only as far as it is possible to download or print out within the Service as functionality (for example, by means of an export interface or a download button).

The use of automated technical aids for downloading or printing such as interfaces, other software, bots or scripts is only permitted with the express prior consent of ADS-TEC.

- 5.3.4 If the User has properly downloaded or printed out content in accordance with the preceding paragraphs, the User shall be entitled to use it solely for its own commercial or professional purposes for an indefinite period of time and not exclusively. All other rights to the content remain with the original copyright holder.

6 Handling Application Data

- 6.1 The functionality of specific content of the Service allows the User to transmit information from network devices (in particular, sensor data and other status and/or legacy data of monitored machines, processes and equipment) to the Service, save it there, generate new information through the use of the Service (collectively referred to as the “**Application Data**”) and make the Application Data available to third parties.

- 6.2 ADS-TEC may use the transmitted Application Data for a variety of purposes, including, without limitation: analyzing and improving the Service and business operations and advertising and marketing. In addition, ADS-TEC may share the Application Data with third-party service providers and suppliers to enable them to perform tasks for ADS-TEC. Further, ADS-TEC may use the transmitted Application Data to provide and improve the functionality of the Service. For this limited purpose, the User grants ADS-TEC free of charge the non-exclusive, irrevocable and transferable right - unlimited in terms of time, territory and content - to exploit the Application Data online and offline, in particular to make it accessible via internet and mobile phone, to copy, distribute and process for the User’s storage, push, backup, transmission or download processes.

The User ensures and declares to ADS-TEC that it is the sole owner of all rights in the Application Data transmitted by it to the Service or is otherwise entitled to upload the Application Data to the Service and to grant the rights of use and exploitation as described above. This applies, in particular, to third-party copyright, trademark or patent rights as well as commercial and/or competition law for performance rights and personal rights.

- 6.3 The User is responsible for ensuring that Application Data does not contain any confidential information and does not violate any confidentiality obligations.
- 6.4 The User is responsible for checking whether the Application Data has any information that identifies, relates to, describes, or is reasonably capable of being associated, linked or linkable with a particular individual or household, including any information that is subject to applicable data protection laws (“**Personal Information**”) and, if necessary, fulfill its obligations under applicable privacy laws before uploading such Application Data to the Service.
- 6.5 The User is responsible for regularly backing up Application Data in accordance with the significance of the data by creating, in particular, its own backup copies in order to enable their reconstruction in the event of loss of Application Data. In doing so, the User is responsible for ensuring all security of its Application Data and determining its own retention obligations, including as such security and retention obligations may be dictated by applicable law.

- 6.6 Insofar as the User makes Application Data available to ADS-TEC or to ADS-TEC's service partners within the framework of agreed additional services (for example, to carry out monitoring and/or servicing orders), the User hereby grants ADS-TEC free of charge the non-exclusive, irrevocable and transferable right, unlimited in terms of time, territory and content, right to use the Application Data, in accordance with the order.
- 6.7 If posted Application Data is removed from the Service, the right to use granted in Section 6.6 shall lapse; provided, however, any right to use that the User has granted to ADS-TEC's service partners as part of his orders shall remain unaffected. For the avoidance of doubt, ADS-TEC remains entitled to retain copies created for security and/or evidence purposes.
- 6.8 ADS-TEC reserves the right to refuse the posting of and/or to suspend or remove already posted Application Data, provided that the posting of or the already posted Application Data either has itself resulted in a violation of or there is a reasonable suspicion that there will be a violation of these Terms of Use. In making such determination, ADS-TEC will take into account the legitimate interests of the User and choose the mildest means to defend the violation.

7 Usage policy and blocking of accesses

- 7.1 The User is prohibited from any activity on or in connection with the Service that violates applicable law, infringes the rights of third parties, disregards the purpose of the Service or jeopardizes its functionality. In particular, the User is prohibited from the following actions:
- setting up, distributing, offering and advertising in violation of privacy law and/or other law and/or fraudulent content, services and/or products;
 - giving instructions on prohibited manipulation of technical facilities;
 - the dissemination and/or public reproduction of content available within the Service, except as expressly permitted by the respective author or expressly made available as functionality within the Service;
 - violating any applicable federal, state, local, or international law or regulation (including, without limitation, any laws regarding the export of data or software to and from the US or other countries);
 - storing the Service (including pages of the Service) on a server or other storage device connected to a network or creating a database by systematically downloading and storing any data from the Service (other than for page caching);
 - removing or changing any content of the Service or attempting to circumvent the security or interfere with the proper working of the Service or any servers on which it is hosted;
 - creating links to the Service from any other websites without our prior written consent;
 - using any robot, data mining, screen scraping, spider, website search/retrieval application, or other manual or automatic device or process to retrieve, index, "data mine", or in any way reproduce or circumvent the navigational structure or presentation of the Services or

their contents;

- posting, distributing, or reproducing in any way any copyrighted material, trademarks, or other proprietary information without obtaining the prior written consent of the owner of such proprietary rights;
- interfering with or disrupting the Service or the servers or networks connected to the Service; and
- modifying, copying, reproducing, duplicating, adapting, sublicensing, translating, selling, reverse engineering, deciphering, decompiling, or otherwise disassembling any portion of the Service or any software used on or for the Service or causing others to do so. In particular, the Service must not be used as a development or test process aimed at developing a similar software or other similar technology or determining whether such software or technology works similarly to components of the Service.

7.2 The User acknowledges and agrees that its use of the Services may be monitored by ADS-TEC, but ADS-TEC is not required to do so. This may also include the logging and evaluation of IP connection data in the event of a suspected violation of these Terms of Use and/or in the event of a suspected unlawful act or crime.

7.3 ADS-TEC may, at its option and in its sole discretion, suspend, restrict or terminate the User's access to the Service if: (i) we are so required by a facially valid subpoena, court order or binding order of any government authority; (ii) we reasonably suspect the User of using the Service in connection with any prohibited uses; (iii) The User's use of the Service is subject to any pending litigation, investigation or government proceeding and/or we, in our sole discretion, perceive a heightened risk of legal or regulatory non-compliance associated with the User's activity; (iv) the User takes any action that ADS-TEC deems in its sole discretion as circumventing ADS-TEC's controls, (v) the User breaches these Terms of Use, or (vi) .we have any other legitimate interest in doing so. In deciding whether to suspend or restrict and in determining the time limit of such, ADS-TEC shall take into account the legitimate interests of the User. If the User repeatedly breaches these conditions, ADS-TEC reserves the right to permanently terminate the User's access and permanently exclude such User from future use of the Service.

7.4 In the event of temporary or permanent suspension of the User's right to access, ADS-TEC shall notify the User of this by e-mail. In the event of a temporary suspension, the access authorization will be reactivated after the expiration of the suspension period or the reason for suspension has finally ceased to exist, and the User will be notified of this by ADS-TEC by e-mail. For the duration of the suspension period, ADS-TEC is exempt from its obligation to perform, but retains the right to a non-usage-related remuneration. A permanently suspended access authorization cannot be restored.

8 Obligations and Liability of the User (Indemnification)

8.1 The User must fulfill all obligations and requirements that are necessary for the execution of the License Agreement. In addition, all information provided when registering a User account

must be complete and correct.

- 8.2 In particular, the User must always keep the Access Software it uses up to date and to download and install the software and firmware updates provided by ADS-TEC.
- 8.3 The User shall take the necessary precautions to prevent the use of the Service and the Access Software by unauthorized persons. In particular, the User shall keep confidential the Identification Data provided to it or prompted by it, protect such data by means of appropriate technical and organizational measures against access by unauthorized third parties and not pass it on to third parties other than the persons authorized by it. The User shall notify ADS-TEC immediately if there is a suspicion that the Identification Data could have become known to unauthorized persons or there is risk of it becoming known.
- 8.4 To the extent that the persons authorized by the User belong to an affiliated or a third-party company (e.g. a customer), the User shall first impose all obligations and restrictions under these Terms of Use by contract and ensure that the obligations and limitations can also be enforced by ADS-TEC without limiting the User's own liability. In general, the User must contractually obligate all persons authorized by it to comply with the provisions of these Terms of Use. The User is liable to ADS-TEC for the actions of the companies engaged by it and authorized persons as for its own.
- 8.5 To the fullest extent permitted by applicable law, the User agrees to indemnify, defend and hold harmless ADS-TEC, and our respective past, present and future employees, officers, directors, contractors, consultants, equity holders, suppliers, vendors, service providers, parent companies, subsidiaries, affiliates, agents, representatives, predecessors, successors and assigns (individually and collectively, the "**ADS-TEC Parties**"), from and against all actual or alleged claims, damages, awards, judgments, losses, liabilities of every kind and nature whatsoever, whether known or unknown, that are caused by, arise out of or are related to (a) the User's use or misuse of the Service, (b) the User's violation of these Terms of Use, (c) the User's violation of any right(s) of any third party, (d) the actions of the persons authorized by the User, and/or (e) the User's Application Data. The User agree to promptly notify ADS-TEC of any claim(s) and shall cooperate fully with the ADS-TEC Parties in defending such claims. The User further agrees that the ADS-TEC Parties shall have control of the defense or settlement of any third party claims.
- 8.6 Before posting data and information on the Service, the User will perform an anti-virus check, using only state-of-the-art virus protection and anti-spyware programs, which will carry out an ongoing security check by the User to establish a data connection to the Service. In addition to the above indemnification obligations, the User shall also indemnify ADS-TEC from and against any and all claims made against ADS-TEC by third parties due to the breach of such obligations by the User.

9 Prices, invoicing, trial access and payment terms

9.1 Usage fee

During the term of the License Agreement, the User shall pay the agreed usage fee as

consideration for accessing the Service. The amount of the usage fee depends on the components of the Service agreed with the User and the customization of the services provided by ADS-TEC. The usage fee consists of a fixed, non-usage-related basis component (“**Basic Fee**”) and of the agreed variable components (“**Variable Fees**”).

Prices are quoted with net amounts in USD and are exclusive of any taxes and similar assessments. Without limiting the foregoing, the User is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by the User hereunder, other than any taxes imposed on ADS-TEC’s income. . Section 16 shall apply to any price changes.

9.2 **Basic fee**

The Basic Fee shall be due for payment and chargeable on the License Agreement’s Effective Date (see Section 12.1) and, if applicable, on commencement of each Renewal Period (see Section 12.2), to be paid in advance for the entire 12-month period, without the User making any deduction.

9.3 **Variable fees**

Variable Fees may, in particular, exist in usage-related prices as well as in prices for one-off or time-bound additional services from ADS-TEC, which go beyond the basic components (see Section 3.1).

ADS-TEC calculates the Variable Fees at regular intervals (at least annually) (the “**Billing Period**”). Billing can be done electronically in which the invoice is sent exclusively via e-mail. The User may cancel time-bound additional services with the effective date of cancellation as of the end of a Billing Period or the User may choose a reduced range of services, thus reducing the Variable Fees accordingly. For this purpose, the User must notify ADS-TEC of its request in writing (e.g. by e-mail or fax) within a period of four (4) weeks before the date of the desired change. Accordingly, the User should proceed if it wishes further time-bound additional services or an increased scope of Service.

9.4 **Free Trial**

ADS-TEC offers a trial for the Service free of charge to Users who have not previously- entered into a License Agreement with ADS-TEC for the Service (the “**Free Trial**”). In determining whether a User has previously entered into a License Agreement with ADS-TEC for the Service, ADS-TEC is entitled to use information provided by such User in the context of a previous License Agreement, such as the device ID, payment details or e-mail address.

The Free Trial should give the User the opportunity to test the Service as well as its functionalities and content free of charge; provided, however, that ADS-TEC is entitled, in its sole discretion, to exclude specific functionalities and content from the Service for the duration of the Free Trial or to only make such features available in part.

If the User is provided with a Free Trial, ADS-TEC will make the Service available to such User

for a limited period of time. Upon expiration of the Free Trial, ADS-TEC will begin billing the User the usage fee as consideration for accessing the Service, unless the User terminates prior to the expiration of the Free Trial. For the avoidance of doubt, the Free Trial can be terminated by ADS-TEC or the User at any time with immediate effect.

In any Free Trial, ADS-TEC provides the Service "AS IS" and with all faults and defects without warranty of any kind. to the maximum extent permitted under applicable law, ADS-TEC expressly disclaims all warranties, whether express, implied, statutory, or otherwise, with respect to the Free Trial, including all implied warranties of merchantability, fitness for a particular purpose, title, and non-infringement, and warranties that may arise out of course of dealing, course of performance, usage, or trade practice. without limitation to the foregoing, ADS-TEC provides no warranty or undertaking, and makes no representation of any kind that the Free Trial will meet the User's requirements, achieve any intended results, be compatible, or work with any other software, applications, systems, or services, operate without interruption, meet any performance or reliability standards, or be error-free, or that any errors or defects can or will be corrected.

ADS-TEC shall not be liable for any damages incurred by the User as a result of any Free Trial and, for the avoidance of doubt, ADS-TEC shall not indemnify the User against any actual or alleged claims, damages, awards, judgments, losses, liabilities of every kind and nature whatsoever, whether known or unknown, that are caused by, arise out of or are related to the Free Trial.

9.5 Payment terms

ADS-TEC shall submit all invoices to the User. The User must pay all invoices within fourteen (14) calendar days of the User's receipt of the invoice. If the User fails to make any payment when due, in addition to all other remedies that may be available to ADS-TEC, ADS-TEC may charge interest on the past due amount at the lesser of the highest rate permitted under applicable law or 1.5% per month until paid in full, and ADS-TEC may also suspend the User's access to the Service.

10 Warranty of ADS-TEC

10.1 Disclaimer of Warranties

THE SERVICE AND ALL CONTENT THEREIN ARE PROVIDED ON AN "AS IS," "WITH ALL FAULTS," AND "AS AVAILABLE" BASIS AND THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY, AND EFFORT IS WITH THE USER. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE MAKE NO REPRESENTATIONS, WARRANTIES, OR CONDITIONS, EXPRESS OR IMPLIED. WE EXPRESSLY DISCLAIM ALL WARRANTIES AND CONDITIONS, EXPRESS, STATUTORY, AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OR CONDITIONS (A) OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, WORKMANLIKE EFFORT, TITLE, QUIET ENJOYMENT, AND NON-INFRINGEMENT; (B) OF ADEQUACY, ACCURACY, TIMELINESS, AND COMPLETENESS OF THE SERVICES, INFORMATION, CONTENT, OR RESULTS; (C) ARISING THROUGH COURSE OF DEALING OR USAGE OF TRADE, AND (D) OF SECURITY, UNINTERRUPTED, OR ERROR-FREE ACCESS OR USE OF THE SERVICE.

10.2 **Quality and availability of the Service**

10.2.1 ADS-TEC provides the Service with the conditions as described in these Terms of Use Unless otherwise stated in these Terms of Use, ADS-TEC does not guarantee the availability of the Service and ADS-TEC does not assure any specific condition or functionality beyond the existence of the essential functions agreed upon.

10.2.2 In particular, information in brochures and in the Service descriptions or User instructions provided by ADS-TEC merely serve as an approximate description of the Service and its contents and do not constitute guaranteed quality characteristics, unless the agreed scope of use requires precise consistency.

10.2.3 The User understands that ADS-TEC cannot guarantee the continuous, uninterrupted, or error-free operability of the Service. There may be times when all of (or certain features, parts, or content of) the Service become unavailable (whether on a scheduled or unscheduled basis) or are modified, suspended, or withdrawn. Such modifications, suspensions, and withdrawals are in our sole discretion and may be without notice to you. The User agrees that we will not be liable to it or to any third-party for any unavailability, modification, suspension, or withdrawal of any of the Service, or any features, parts, or content of the Service. Notwithstanding the foregoing, the User shall only be entitled to the rights of defects in the event of insufficient quality or functionality of the Service in the event of material deviations or major functional impairments.

10.2.4 Furthermore, the User is not entitled to any rights with respect to past material defects that ADS-TEC was not aware of. In particular, the User is not entitled to any rights if the User has identified a material defect and has not immediately notified ADS-TEC of the same.

10.2.5 Insofar as the User is entitled to rights with respect to material defects due to insufficient quality or functionality of the Service, its contents or the Access Software, ADS-TEC is entitled - in its own discretion - to have the material defects rectified by means of repair, replacement delivery or service, provision of bug-fixes or a workaround, in the case of software, also by provision of a new version (collectively referred to as "**Subsequent Performance**"), unless the Subsequent Performance involves disproportionate or uneconomic costs or is technically impracticable as a whole or in terms of specific measures. For the avoidance of doubt, Subsequent Performance is the exclusive remedy hereunder for any and all damages, injury, and losses arising from any and all claims and causes of action arising out of, based on, resulting, or in any way related to material defects due to insufficient quality or functionality of the Service, its contents or the Access Software.

10.3 **Change in Quality**

10.3.1 ADS-TEC may, in our sole discretion, modify the Service at any time

10.3.2 ADS-TEC shall notify the User of any changes in advance. Such changes shall be deemed accepted if the User does not terminate the License Agreement in writing or by e-mail within four (4) weeks of receipt of the notification of change.

10.3.3 In the case of updates and modifications, the User's rights with respect to material defects shall be limited to the performance characteristics of the update or modification compared to

the previous version.

10.4 **Infringement Remedies**

10.4.1 ADS-TEC shall, at its own cost, defend, indemnify, and hold harmless the User from and against all damages, liabilities, losses, fines, judgments, costs, expenses (including court costs and reasonable attorneys' fees), claims, suits, hearings, proceedings, and actions arising out of or relating to any claim or allegation that the Service or any of its contents infringes, misappropriates, or otherwise violates any intellectual property or other proprietary right of a third party. The User is obliged to inform ADS-TEC immediately upon becoming aware of claims by third parties and to assist in such a defense.

10.4.2 If the User's use of the Service is enjoined due to a claim of intellectual property infringement, ADS-TEC shall, at its own cost and in addition to the obligations set forth in Section 10.4.1, either (a) modify the component of the Service alleged to be infringing such that it does not infringe a third party's intellectual property rights but provides substantially the same (or better) functionality and value as the prior version; provided, however, that ADS-TEC reimburse the User for the reasonable costs incurred by the User in implementing or installing such modification; or (b) obtain the necessary rights for the User to continue using the Service. If after using all commercially reasonable efforts ADS-TEC is unable to achieve either (a) or (b), ADS-TEC may terminate the User's rights to the Service; provided, however, that: (i) ADS-TEC first notifies the User in writing at least ninety (90) days in advance and (ii) ADS-TEC reimburses the User for any costs incurred by the User as a result of such termination.

10.5 **Use of Open Source Software**

10.5.1 The User is aware and agrees that when using the Service and Access Software, Open Source Software ("**OSS**") may be used, which is provided in association with ADS-TEC's Service. Any OSS provided within the association may be subject to separate terms and conditions, which must be applied in whole or in part to the OSS ("**Open Source License Terms**"). In this case, OSS will be subject to the respective separate Open Source License Terms in addition to these Terms of Use.

10.5.2 Open Source License Terms generally stipulate that the use of OSS is disclosed and the rights of use on OSS are sub-licensed accordingly. To meet these requirements, ADS-TEC displays an overview of the Open Source License Terms in a proper form, usually in a designated "Readme" text file within the respective directory or via a link indicated on the respective performance data sheet ("**OSS overview**"). The OSS overview includes a table listing of all software components, if any, subject to the Open Source License Terms, the right to use the OSS and, if applicable, the wording of the respective Open Source License Terms. The User is obligated to comply with the provisions of the Open Source License Terms when using the Service and the Access Software. However, ADS-TEC is not liable to the User for any damages arising from use of OSS.

11 **Limitation of liability**

IN NO EVENT WILL WE BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, INDIRECT, OR PUNITIVE DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS OR CONFIDENTIAL OR OTHER INFORMATION, FOR BUSINESS INTERRUPTION, FOR PERSONAL INJURY, FOR LOSS OF PRIVACY, FOR FAILURE TO MEET ANY DUTY INCLUDING OF GOOD FAITH OR OF REASONABLE CARE, FOR NEGLIGENCE, ARISING FROM YOUR USE OF THIRD-PARTY CONTENT, AND FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER) ARISING OUT OF, BASED ON, RESULTING, OR IN ANY WAY RELATED TO THESE TERMS OF USE OR THE USER'S USE OF THE SERVICE (INCLUDING ANY INFORMATION OR CONTENT CONTAINED THEREIN), EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

OUR MAXIMUM AGGREGATE LIABILITY TO THE USER, AND THE EXCLUSIVE REMEDY HEREUNDER FOR ANY AND ALL DAMAGES, INJURY, AND LOSSES ARISING FROM ANY AND ALL CLAIMS AND CAUSES OF ACTION ARISING OUT OF, BASED ON, RESULTING, OR IN ANY WAY RELATED TO THESE TERMS OF USE OR YOUR USE OF THE SERVICE (INCLUDING ANY INFORMATION OR CONTENT CONTAINED THEREIN), SHALL BE TO RECOVER THE ACTUAL DAMAGES YOU INCUR BASED UPON REASONABLE RELIANCE ON THE SERVICE UP TO 12 MONTHS USAGE FEE. THE EXISTENCE OF MULTIPLE CLAIMS OR SUITS UNDER OR RELATED TO THESE TERMS OF USE OR THE SERVICE WILL NOT ENLARGE OR EXTEND THE LIMITATION OF MONEY DAMAGES.

THE EXCLUSION OF DAMAGES UNDER THE FIRST PARAGRAPH OF THIS SECTION IS INDEPENDENT OF YOUR EXCLUSIVE REMEDY IN THE SECOND PARAGRAPH AND IT SURVIVES IN THE EVENT SUCH EXCLUSIVE REMEDY FAILS OF ITS ESSENTIAL PURPOSE OR IS OTHERWISE DEEMED UNENFORCEABLE. TO THE EXTENT SUCH EXCLUSION AND LIMITATIONS ARE NOT PROHIBITED BY APPLICABLE LAW, BOTH OF THESE LIMITATIONS OF LIABILITY APPLY WITHOUT REGARD TO WHETHER THE DAMAGES ARISE FROM (A) BREACH OF CONTRACT, (B) BREACH OF WARRANTY, (C) FAULT OR TORT (INCLUDING NEGLIGENCE AND MISREPRESENTATION), (D) STRICT LIABILITY OR (E) ANY OTHER CAUSE OF ACTION UNDER LAW OR EQUITY.

12 Term and Termination

- 12.1 The term of the License Agreement commences when the User activates its access to the Service (the "**Effective Date**"). Its term depends on the agreed **Minimum Contract Term**, starting with the Effective Date.
- 12.2 Upon expiration of the Minimum Contract Term, the License Agreement shall be automatically extended by twelve (12) further months in each case (each a "**Renewal Period**"), unless one Party terminates the License Agreement by giving three (3) months' written notice to the other Party prior to the expiration of the Minimum Contract Term or of the respective Renewal Period (each a "**Termination Date**").
- 12.3 The right of either Party to extraordinary termination for good cause shall remain unaffected, as shall the termination rights otherwise granted to them in these Terms of Use.
- 12.4 Unless expressly provided for otherwise, all rights of use granted under these Terms of Use and the User's access to the Service shall cease on the Termination Date. With the expiration of 30 calendar days after the Termination Date and after expiration of any statutory retention periods, ADS-TEC is entitled to irretrievably delete all data originating from the contract

execution. ADS-TEC shall notify the User of the impending deletion at least 14 calendar days in advance.

13 Data usage and data protection

- 13.1 ADS-TEC is entitled to process and exploit all information provided and generated by the User in connection with use of the Service, with the exception of personal data and Application Data (for the latter, Section 6 shall apply) and further with the exception of data in which the User apparently has a confidentiality interest or which has been expressly designated as confidential to ADS-TEC, for any purposes beyond the contractual purpose, such as, without limitation, for statistical, analytical and internal purposes. This right is unlimited in time and irrevocable as well as unlimited in terms of territory and content.
- 13.2 How ADS-TEC processes, uses, and collects Personal Information, including Personal Information that the User provides to ADS-TEC via the Service, is described in the privacy notices provided with the Service.

14 Compliance with export control provisions

- 14.1 The Service may be subject to US export control laws, including the US Export Control Reform Act and its associated regulations. The User will not directly or indirectly, export, re-export, or release the Service to, or make the Service accessible from, any country, jurisdiction or person to which export, re-export, or release is prohibited by applicable law. The User will comply with all applicable laws and complete all required undertakings (including obtaining any necessary export license or other governmental approval) prior to exporting, re-exporting, releasing, or otherwise making the Service available outside the US.
- 14.2 Section 8.5 shall apply mutatis mutandis with regard to the User's indemnity obligation against claims due to the non-observance of the above export control provisions.
- 14.3 The fulfillment of the contract by ADS-TEC is subject to the condition that there are no obstacles or disproportionate risks and expenses due to national, multinational or international regulations of foreign trade law, in particular prohibitions, licensing obligations, etc.

15 Force Majeure

- 15.1 In no event will either Party be liable or responsible to the other Party, or be deemed to have defaulted under or breached the License Agreement, for any failure or delay in fulfilling or performing any term of the License Agreement, when and to the extent such failure or delay is caused by any circumstances beyond such Party's reasonable control (a "**Force Majeure Event**"), including (i) acts of God; (ii) flood, fire, earthquake, epidemic or pandemic or explosion; (iii) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (iv) government order, law, or actions; (v) embargoes or blockades in effect on or after the date of the License Agreement; (vi) national or regional emergency; (vii) strikes, labor stoppages or slowdowns, or other industrial disturbances; and (viii) shortage of adequate power or transportation facilities. Either Party may terminate the License Agreement if a Force Majeure Event affecting the other Party continues substantially uninterrupted for a period of thirty (30) days or more.

- 15.2 In the event of any failure or delay caused by a Force Majeure Event, the affected Party will give prompt written notice to the other Party stating the period of time the occurrence is expected to continue and use commercially reasonable efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

16 Changes to these Terms of Use, price changes

- 16.1 ADS-TEC reserves the right to change the Terms of Use of the Service at any time with effect even within the existing contract. The User shall be notified via email of such changes at least thirty (30) calendar days prior to the planned entry into force of the changes.
- 16.2 If the User does not object within thirty (30) days of receipt of the notification of change and continues to make use of the benefits provided with the Service even after expiration of the objection period, the changes shall be deemed to have been validly agreed upon from the expiration of the objection period. In the event of an objection, the License Agreement shall be continued under the previously applicable Terms of Use. ADS-TEC reserves the right to terminate the License Agreement in the event of an objection. The User will be informed of its right of objection and the consequences in the notification of change.
- 16.3 ADS-TEC shall notify the User via e-mail of any price changes in a timely manner so that the User may terminate the License Agreement in compliance with the notice requirements set out in Section 12.2. In such notification, the User shall also be informed of the consequences of the price change and his or her right of termination. If the User does not terminate after notification of the change in price and continues to use the Service after the change in price has come into effect, the change in price shall then become binding for the User.

17 Final provisions

- 17.1 **Governing Law; Submission to Jurisdiction.** These Terms of use are governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provisions. The User irrevocably submits to venue and exclusive personal jurisdiction in the federal and state courts located in New York City, New York for any dispute arising out of the contract, and the User waives all objections to jurisdiction and venue of such courts. The User hereby irrevocably waives its right to a trial by jury.
- 17.2 **Assignment.** These Terms of Use, and any rights and licenses granted hereunder, may not be transferred or assigned by the User, but ADS-TEC may assign them without restriction. Any attempted transfer or assignment in violation hereof will be null and void.
- 17.3 **Waiver.** No waiver of any term of the Terms of Use shall be deemed a further or continuing waiver of such term or any other term, and our failure to assert any right or provision under the Terms of Use shall not constitute a waiver of such right or provision.
- 17.4 **Severability.** If any provision of the Terms of Use is deemed invalid by a court of competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of the Terms of Use, which shall remain in full force and effect.
- 17.5 **Entire Agreement.** These Terms of Use and the annexes, together with any amendments and

any additional agreements the User may enter into with ADS-TEC in connection with the Service shall constitute the entire agreement between the User and ADS-TEC concerning the Service.

17.6 **Notices and Questions.** All notices to ADS-TEC must be sent to info@ads-tec. If you have any questions regarding these Terms of Use, please contact ADS-TEC at info@ads-tec.

Annex

- Annex 1 - Big-LinX[®] Energy Description of Services (basic components)

The following services and functions are basic components* of the Big-LinX Energy solution:

Web interface

Web interface (accessible using any currently available browser) through which the User can log in with the Identification Data provided to him or her and has access to the following information and functions:

- **Home**

Overview of the functions mentioned below and presentation of ADS-TEC's news about the Big-LinX[®] Energy solution.

- **User management**

Overview and rights/management of users, groups and organizations.

- There are separate one-off charges for the one-time setup per user and for the purchase of smart card devices/readers and/or software certificates, if agreed.

- **Energy Systems management**

Overview and management of all registered Energy Systems based on the current system status and legacy values (**dashboard**).

- There is a separate monthly charge for each device activated in the Energy Systems management.
- There will be a separate one-off fee for the customer-specific device configuration (only IRF and only when using smart cards), if agreed.

- **Service desk**

The service desk also allows a VPN connection from Big-LinX[®] to the Energy Systems in order to access their local interface. The basic component is the setup of up to 10 simultaneous VPN connections from and to Big-LinX[®].

- There is a separate monthly fee for each additional concurrent VPN connection, if agreed.

- **Support**

Download section for the local VPN Client and the applicable Terms of Use, contact details of the technical support for the Big-LinX[®] Energy solution.



VPN client

Local VPN client to authenticate the User and set up the secured VPN connection to the Big-LinX Energy solution. Note: The user shall be responsible for porting the VPN client to operating systems other than commonly available ones, insofar as an SDK (software development kit) can be provided for this purpose.¹

¹ settled with the agreed annual basic fee, unless stated otherwise. Other components and services for a fee in accordance with a separate agreement