Regulation (EU) 2023/2854 "Data Act"

1.   Parts and related product/service

Parties to the contract

This contract on access to and use of data is made between

SMILICS TECHNOLOGIES Baldrich 222, 08322 Terrassa, Barcelona, Spain ("Data Subject")
info@smilics.com

and

you, as a user of a Wibeee device ("User") and/or the Wibeee Nest platform

Related Product/Service

This contract is made with respect to:

(a)   the following connected products (hereinafter referred to as "Product"): Wibeee One, Wibeee Box, Wibeee Connect, Wibeee Plug, Wibeee Plug Lite, Wibeee Max Pro

(b)   the following related services (the "Related Services"): Wibeee Nest

The User represents that he/she is the owner of the Product or has the contractual right to use the Product under a rental, financial lease or similar agreement and/or to receive the Related Services under a service contract.

The User undertakes to provide, upon duly reasoned request, to the Data Subject, all relevant documentation supporting these statements, where necessary.

2. Data covered by the Contract

The data covered by this contract (the "Data") consists of any Product Data or Related Service Data readily available within the meaning of the Data Act.

The Data consists of the Data listed in **Appendix 1**, with a description of the type or nature, estimated volume, frequency of collection, storage location, and duration of retention of the Data.

If, during this contract, new data is made available to the User, **Appendix 1** will be amended accordingly.

3. Use and sharing of data by the Data Subject

3.1.   Agreed use of non-personal data by the data subject

3.1.1 The Data Subject undertakes to use the Data that are Non-Personal Data only for the purposes agreed with the User as follows:

(a)   perform any agreement with the User or activities related to such agreement (e.g. issue invoices, generate and provide reports or analyses, financial projections, impact assessments, calculation of staff benefits);

(b)   to provide support, warranty or similar services or to evaluate claims by the User, the Data Subject or third parties (e.g. in relation to the malfunction of the Product) related to the Related Product or Service;

(c)   monitor and maintain the operation, safety, and security of the Related Product or Service and ensure quality control;

(d)   improve the operation of any related products or services offered by the Data Subject;

(e)   develop new products or services, including artificial intelligence (AI) solutions, by the Data Subject, by third parties acting on behalf of the Data Subject (i.e., where the Data Subject decides which tasks will be entrusted to such parties and will benefit from them), in collaboration with other parties, or through special purpose companies (such as joint ventures);

(f)   To aggregate this data with other data or to create derived data, for any lawful purpose, including for the purpose of selling or making available to third parties such aggregated or derived data, provided that such data does not make it possible to identify specific data transmitted to the data subject from the connected product or to allow a third party to derive that data from the dataset.

3.1.2   The Data Subject agrees not to use the Data to obtain information about the User's economic situation, assets, and production methods, or about the User's use of the Related Product or Service in any other way that may undermine the User's business position in the markets in which the User is active.

3.2.   Sharing of Non-Personal Data with Third Parties and Use of Processing Services

3.2.1 The Data Subject may share the Data with third parties and that are non-personal data, if:

(a)   the Data is used by the third party exclusively for the following purposes:

i)   assist the Data Subject in achieving the purposes permitted in clause 3.1.1;

ii)   to achieve, in collaboration with the Data Subject or through special purpose companies, the purposes permitted in clause 3.1.1;

and

(b)   the Data Subject contractually binds the third party:

i)   not to use the Data for any purpose or in any manner that goes beyond the permitted use in accordance with clause 3.2.1 (a) above; (ii) to comply with clause 3.1.2; (iii) to apply the protective measures required in clause 3.4.1.

3.2.2   The Data Subject may always use processing services, e.g. cloud computing services (including infrastructure as a service, platform as a service and software as a service), hosting services or similar services to achieve the purposes agreed in clause 3.1. Third parties may also use such services to achieve the purposes agreed in clause 3.2.1(a).

3.3 Sharing of personal data by the data subject

The Data Subject, as the Data Controller, may process or share personal data with third parties only when there is a valid legal basis in accordance with Article 6 of the GDPR and for the specific, explicit and legitimate purposes described in this contract.

Where the processing involves electronic communications, cookies or direct marketing activities, the provisions of Directive 2002/58/EC (ePrivacy) will be followed. The Data Controller shall ensure that the processing complies with the principles of lawfulness, fairness, transparency, purpose limitation, data minimisation, accuracy, limitation of the retention period and confidentiality (Art. 5 GDPR).

The Account Holder undertakes to:

- To facilitate the exercise of the rights of access, rectification, deletion, limitation, portability and opposition of the interested party, in accordance with the provisions of articles 15-22 of the GDPR.

-To enter into contract contracts with any third party acting as a data processor, in accordance with Article 28 of the GDPR.

-Carry out an Impact Assessment (DPIA) when the processing may entail a high risk to the rights and freedoms of the data subjects (art. 35 GDPR).

-Ensure that any international data transfer is carried out under approved mechanisms (standard contractual clauses, binding corporate rules, etc.).

3.4 Protection measures adopted by the Data Subject

3.4.1 The Data Subject undertakes to implement such Data protection measures as are reasonable in the circumstances, taking into account the state of science and technology, the potential harm suffered by the User as a result of the loss of Data or the disclosure of Data to unauthorized third parties, and the costs associated with the protection measures.

3.4.2 The Data Subject may also apply other appropriate technical protection measures to prevent unauthorized access to the Data and to ensure compliance with this contract.

3.4.3 The User undertakes not to alter or eliminate such technical protection measures unless previously agreed in writing by the Data Subject.

4. Use of data by the User

4.1. Use and Permitted Use of Data

The User may use the Data made available by the Data Subject at his/her request for any lawful purpose and/or share the Data freely subject to the limitations indicated below.

4.2.   Unauthorized Use and Use of Data

4.2.1   The User agrees not to participate in the following:

(a)   use the Data to develop a connected product that competes with the Product, or share the Data with a third party for that purpose;

(b)   use such data to obtain information on the economic situation, assets and production methods of the manufacturer or, where applicable, the data subject;

(c)   use coercive means to gain access to the Data or, to do so, abuse loopholes in the Data Subject's technical infrastructure that is designed to protect the Data;

(d)   sharing the data with a third party considered to be a gatekeeper under Article 3 of Regulation (EU) 2022/1925;

(e)   use the Data they receive for any purpose that violates EU law or applicable national law.

5. Exchange of data at the request of the User with a Data Recipient

5.1.   The Data, together with the relevant metadata necessary to interpret and use it, must be made available to a Data Recipient by the Data Subject, free of charge to the User, upon request submitted by the User or a party acting on its behalf. The application can be submitted by email to info@smilics.com

5.2.   The Data Subject shall make available to a third party the Data that is personal data at the request of the User, where the User is not the data subject, only where there is a valid legal basis for making the personal data available under Article 6 of Regulation (EU) 2016/679 (GDPR) and only, where applicable,   the conditions set out in Article 9 of that Regulation and Article 5(3) of Directive 2002/58/EC (Directive on privacy and electronic communications) are fulfilled.

In this regard, where the User is not the data subject, he/she shall indicate to the Data Subject, in each request submitted pursuant to the previous clause, the legal basis for the processing pursuant to Article 6 of Regulation (EU) 2016/679 (and, where applicable, the applicable exception pursuant to Article 9 of that Regulation and Article 5, (3) of Directive (EU) 2002/58) requesting the provision of personal data.

5.3.   The Data Subject shall make the Data available to a Data Recipient in at least the same quality as it is made available to the Data Subject and, in any case, in a complete, structured, commonly used and machine-readable format, in an easy and secure manner.

5.4.   When the User submits such a request, the Data Subject shall agree with the Data Recipient on the arrangements for the Data to be made available under fair, reasonable and non-discriminatory conditions and in a transparent manner in accordance with Chapters III and IV of the Data Act.

5.5.   The User acknowledges that a request under clause 7.1 cannot benefit a third party considered a gatekeeper under Article 3 of Regulation (EU) 2022/1925 and cannot be made in the context of the testing of new connected products, substances or processes that have not yet been placed on the market.

6. Assignment of use and multiple users

6.1.   Transfer of use

6.1.1 Where the User contractually transfers (i) ownership of the Product, or (ii) its temporary rights to use the Product, and/or (ii) its rights to receive Related Services to a subsequent natural or legal person ('Downstream User') and loses the status of user after the transfer to a downstream User, the Parties undertake to comply with the requirements set out in this clause.

6.1.2 The User must:

(a)   ensure that the Subsequent User cannot use the Initial User's account,

(b)   notify the Transfer Holder.

6.1.3 Data generated prior to the transfer will not be affected by a transfer, i.e. the rights and obligations relating to the Data transferred under the Contract prior to the transfer will continue after the transfer.

6.2.   Multiple users

6.2.1 Where the Initial User grants a right to use the Related Product and/or Service(s) to another party ('Additional User') while retaining his/her status as a user, the Parties undertake to comply with the requirements set out in this clause.

6.2.2 The User must ensure that the Additional User is unable to use the Initial User's account.

Responsibility of the initial user

If the User's failure to comply with its obligations under clauses 6.1 or 6.2 leads to the Data Subject's use and sharing of Related Product or Service Data in the absence of a contract with the Downstream or Additional User, the User shall indemnify the Data Subject and hold it harmless in respect of any claim by the Downstream or Additional User towards the Data Subject for use of the Data after transfer.

7. Date of application and duration of the Contract and Termination

7.1. Date of application and duration

7.1.1 This Agreement is effective immediately.

7.1.2 The Contract is concluded for an unspecified period unless it expires or is terminated in accordance with clauses 7.2 and 8.2.

7.2. Termination

Regardless of the contract period agreed under clause 7.1, this contract terminates:

(a)   in the event of destruction of the Product or permanent interruption of the Related Service, or when the Product or Related Service becomes unavailable or loses its ability to generate the Data irreversibly; or

(b)   when the User loses ownership of the Product or when the User's rights to the Product under a rental, lease or similar agreement or the User's rights with respect to the related service terminate; or

(c)   when both Parties so agree, with or without the replacement of this contract by a new contract.

Points (b) and (c) shall be without prejudice to the fact that the contract remains in force between the Data Subject and any Subsequent or Additional User.

7.3. Effects of expiration and termination

7.3.1 The expiry of the contract period or the termination of this Agreement releases both Parties from their obligation to perform and receive future performance, but does not affect any rights and liabilities that have accrued up to the time of termination.

Expiration or termination does not affect any provision of this Agreement that must operate even after the Agreement has come to an end, in particular Clause 9.1 on Confidentiality, Clause 9.3 on Applicable Law, and Clause 9.6 on Dispute Resolution, which remain in full force and effect.

7.3.2 The termination or expiration of the Contract shall have the following effects:

(a)   the Data Subject will immediately cease to retrieve the Data generated or recorded as of the date of termination or expiration;

(b)   the Data Subject continues to have the right to use and share the Data generated or recorded prior to the termination or expiration date as specified in this Agreement.

8. Remedies for breach of contract

8.1. Cases of non-compliance

8.1.1 A Party's breach of an obligation is fundamental to this Agreement if:

(a) strict performance of the obligation is essential to this Agreement, in particular because the breach would cause significant harm to the other Party, the User or other protected third parties; or

(b) the breach substantially deprives the aggrieved Party of what it was entitled to expect under this Agreement, unless the other Party did not foresee and could not reasonably have foreseen that outcome; or

(c) the breach is intentional.

8.1.2 A Party's failure to perform is excused if it proves that it is due to an impediment beyond its control and that it could not reasonably have been expected to have taken the impediment into account at the time of the conclusion of this Agreement, or to have avoided or overcome the impediment or its consequences.

When the impediment is only temporary, the excuse takes effect during the period during which the impediment exists. However, if the delay amounts to a fundamental breach, the other Party may treat it as such.

The defaulting Party must ensure that notice of the impediment and its effect on its ability to perform is received by the other Party within a reasonable time after the defaulting Party knew or should have known of these circumstances. The other Party is entitled to damages for any loss resulting from the failure to receive such notice.

8.2. Remedies

8.2.1 In the event of a Party's non-compliance, the aggrieved Party shall have the remedies listed in the following clauses, without prejudice to any other remedies available under applicable law.

8.2.2 Resources that are not incompatible may be accumulated.

8.2.3 A Party may not resort to any of the remedies to the extent that its own act or state of affairs has caused the other Party to default, such as where a deficiency in its own data infrastructure did not enable the other Party to properly perform its obligations. A Party may also not invoke a claim for damages for the loss suffered to the extent that it could have reduced the loss by taking reasonable measures.

8.2.4 Each party may:

(a)   request that the breaching Party perform, without undue delay, its obligations under this Agreement, unless it is unlawful or impossible or the breaching Party would cause the breaching Party unreasonable effort or expense;

(b)   request that the breaching Party delete Data accessed or used in violation of this Agreement and any copies thereof;

(c)   to claim damages for pecuniary damages caused to the aggrieved Party for the breach that is not excused under clause 8.1.2. The breaching Party is only liable for damages that it foresaw or could reasonably have foreseen at the time of entering into this Contract as a likely result of its breach, unless the breach was intentional or grossly negligent.

8.2.5 The Data Subject may also suspend the exchange of Data with the User until the User complies with its obligations, duly notifying the User without undue delay if the breach of the User's obligations is fundamental.

8.2.6 The User may also:

(a)   suspend the permission granted to the Data Subject under clauses 3 or the limitations made under clause 8, until the Owner complies with its obligations, unless this would foreseeably cause harm to the Data Subject that is obviously disproportionate in light of the seriousness of the breach;

(b)   withdraw the permission granted to the Data Subject under clauses 3, notifying the Data Subject, if:

(i)   the non-compliance of the Data Subject is fundamental; or

(ii)   in the event of non-compliance that is not fundamental, the user has notified setting a reasonable period of time to remedy the non-compliance and the period has elapsed without the Data Subject remedying the non-compliance. If the indicated period is too short, the User may terminate the Contract, but only after a reasonable period from the time of notification.

9. General Layout

9.1.   Confidentiality

9.1.1 The following information shall be considered confidential information:

(a)   information relating to the other Party's trade secrets, financial condition or any other aspect of the other Party's operations, unless this information has been made public by the other Party;

(b)   information relating to the User and any other protected third party, unless you have already made this information public;

(c)   information regarding the performance of this Agreement and any disputes or other irregularities arising in the course of its execution;

9.1.2 Both Parties agree to take all reasonable steps to securely store and maintain in full confidence the information referred to in this contract and not to disclose or make available such information to any third party unless one of the Parties

(a)   you have a legal obligation to disclose or make available the relevant information; or

(b)   has to disclose or make available relevant information in order to perform its obligations under this Agreement, and the other Party or third party providing the confidential information or affected by its disclosure may reasonably be deemed to have agreed to it; or

(c)   has obtained the prior written consent of the other Party or the party providing the confidential information or is affected by its disclosure.

9.1.3 These confidentiality obligations remain applicable after the termination of the Contract for a period of two years.

9.1.4 These confidentiality obligations do not remove any stricter obligations under (i) Regulation (EU) 2016/679 (GDPR), (ii) the implementing provisions of Directive 2002/58/EC or Directive (EU) 2016/943, or (iii) any other Union or Member State law (iv).

9.2.   Media

Any notice or other communication required by this Agreement must be in writing and may be delivered by hand, sent by prepaid mail, or transmitted by electronic means, including email, provided that the sender retains proof of postage to the addresses listed below:

Party	Contact Person	Email	Telephone	Address
User	His own	The employee when registering for the service	Not applicable.	Not applicable.
Data recipient	Nest Platform Manager	info@smilics.com	+34 935 158 548	Baldrich 222 08233 TerrassaBarcelona, Spain

Any such notice or communication shall be deemed to have been received:

(a)   if delivered by hand, on the date of delivery;

(b)   if sent by prepaid mail, on the third business day after posting;

(c)   if sent by electronic means, on the date of transmission, provided that the sender has not received an error message indicating that it has not been delivered.

9.3.   Applicable law

This Agreement is governed by the law of the Kingdom of Spain.

9.4.   Entire contract, modifications and severability

9.4.1 This Agreement (together with its appendices and any other documents referenced in this Agreement) constitutes the entire Agreement between the Parties with respect to the subject matter of this Agreement and supersedes all prior agreements or understandings of the Parties, oral and written, with respect to the subject matter of this Agreement.

9.4.2 Any modification to this Agreement shall be valid only if agreed in writing, including in any electronic form which, in accordance with good business practice, is deemed to meet the requirements of a written document.

9.4.3 If any provision of this Agreement is held to be void, invalid, voidable or unenforceable for any reason, and if this provision is severable from the remaining terms of the contract, these remaining provisions shall not be affected by this and shall remain valid and enforceable. Any resulting gaps or ambiguities in this Agreement will be dealt with in accordance with clause 9.5**.**

9.5.   Interpretation

9.5.1 The Parties enter into this Agreement in the context of the Parties' rights and obligations under the Data Act. Any provision of this Agreement shall be construed in a manner that complies with Data Law and other EU laws or national legislation adopted in accordance with EU law, as well as any applicable national law that is compatible with EU law and cannot be derogated from by agreement.

9.5.2 If any gaps or ambiguities in this Agreement cannot be resolved in the manner referred to in clause 9.5.1, this Agreement shall be interpreted in the light of the rules of interpretation provided for by applicable law and, in any event, in accordance with the principle of good faith and fair dealing.

9.6.   Dispute settlement

9.6.1 The Parties agree to make every effort to resolve disputes amicably and, before bringing a case before a court or tribunal, to submit their dispute to the Centre de Mediació de Catalunya, under the Department of Justice of the Generalitat de Catalunya.

9.6.2 The submission of a dispute to a dispute settlement body in accordance with clause 9.6.1. it does not, however, affect the user's right to lodge a complaint with the competent national authority designated in accordance with Article 37 of the Data Act, nor the right of any of the Parties to bring an effective remedy before a court of a Member State.

9.6.3 If the User is a business, for any dispute which cannot be resolved in accordance with clause 13.6.1, the courts of Terrassa, Barcelona, Spain shall, to the extent legally possible, have jurisdiction to hear the case.

Appendix 1: Details of the data covered by this contract and access agreements

A. Specifying Data Points

A.1 Product data

The data collected by the product and sent to the Wibeee Nest service is detailed in a structured way in the following table:

☐ Active energy (kWh)	☐ Active power (kW)
☐ Apparent power (kVA)	☐ Capacitative reactive power (k...
☐ CO$_2$ (g)	☐ Current (A)
☐ Frequency (Hz)	☐ Fundamental (V)
☐ Fundamental (A)	☐ Harmonics 11 (A)
☐ Harmonics 11 (V)	☐ Harmonics 3 (A)
☐ Harmonics 3 (V)	☐ Harmonics 5 (A)
☐ Harmonics 5 (V)	☐ Harmonics 7 (A)
☐ Harmonics 7 (V)	☐ Harmonics 9 (A)
☐ Harmonics 9 (V)	☐ Inductive reactive power (kVar)
☐ Power Factor	☐ Reactive energy (kVArh)
☐ THD-A (%)	☐ THD-V (%)
☐ Voltage (V)	☐ Wireless Signal (dBm)

A.2 Service Data

Service data includes
a) The product data referred to in section A.1
b) On a mandatory basis,
   a. Name, surname, email, language, postal address.
   b. Average consumption in kWh
c) Optionally, the user can provide
   a. the surface area in m2 of your home and the number of people living in it, in the case of a residential use.
   b. the electricity tariff.
   c. the appliances that it wants to be detected by the electricity consumption disaggregation algorithm (NILM).
   d. the time zone
   e. Description for the space where you install your Wibeee meter.
d) automatically, the system also registers
   a. the MAC address.
   b. the IP assigned on the internal network.
   c. the firmware version.
   d. the direction in which the (toroidal) clamps have been installed
   e. ll size of the tweezers.

B. Duration of Withholding

B.1 The User's personally identifiable data is retained on the Nest platform until the User is removed from it, autonomously and voluntarily (the User has the mechanisms to delete their account) or by the Data Subject according to any of the cases defined in the contract.

B.2 Electrical measurement data collected by the Wibeee devices listed in this contract is retained on the Wibeee Nest platform according to the following guidelines:

B.2.1 Second data, stored for 14 days.

B.2.2 Aggregated minute data, stored for 60 days.

B.2.3 Aggregated data of 15 minutes and 60 minutes, stored for 730 days.

B.3 The data referred to in point B.2 are deleted when any of the conditions set out in section B.1 are met. and always within a maximum period of 30 days from the deletion of the personal data.

C. Classification of data

Only data referring to the User's Name and Surname, Address, Email and Language are classified as personal data.

D. Data structure and format

The User can download the data collected by their meter autonomously and without limits for the duration of the contract. To this end, it has a Web and App user interface (iOS and Android) designed to make this experience simple.

D.1 From the interface, on any meter, you have the Export option.

D.2 From the interface, in the Reports section, you can generate any report with any stored data.

D3 Programmatically, using the REST API documented in:

https://nest.wibeee.com/swagger-ui.html

E. Access Policy

It may happen that the User transfers his or her rights to use the Product or to receive the Related Services to a Subsequent User or that multiple users share these rights.

In such cases,

E.1 Removable User Data: The user is permitted to delete data generated in the course of its use. In case of transfer, the user must delete such data. Otherwise, such Data may be accessible to the downstream user;

E.2 Residual data: other data other than extractable data; such Data will not be removable and will not be subject to a confidentiality agreement (i.e., the Data will also be available to new Subsequent Users). Such Data may include Data that is required to be accessible to the Downstream User by operation of law or in practice (e.g., related to updates made to the connected device

F. Means and information necessary for the exercise of the User's access rights

The right of access to data is granted by the use of the User's account on the web interface of the Nest platform or its equivalents on the iOS and Android app.

If the User needs to solve technical problems, he has several means that the Data Subject makes available to him/her. Specifically

F.1 ChatBot available on the https://smilics.com and https://support.wibeee.com Web

F.2 'WiKi' support pages, available at address https://support.wibeee.com

F.3 Mail support@wibeee.com