

## PICOWAN END USER LICENSE AGREEMENT AND TERM OF SERVICES

THIS END USER LICENSE AGREEMENT AND TERM OF SERVICES (“Agreement”) SETS OUT THE TERMS AND CONDITIONS FOR USING PICOWAN SOFTWARE and DEVICES AND IS A CONTRACT BETWEEN YOU (“YOU”) AND PICOWAN SA, (“PICOWAN”). PLEASE READ THIS Agreement CAREFULLY BEFORE DOWNLOADING, INSTALLING OR USING THE PICOWAN SOFTWARE OR DEVICES AND TAKING ANY STEPS TO SET UP OR ACTIVATE YOUR PICOWAN DEVICES.

### 1. Definitions

**PICOWAN** is a French company, with headquarters located at 12 rue Ampère 91430 Igny and registered under n° 820 817 525 of the Register of Trade of Evry.

**YOU or You** designate the owner of a PicoWAN Device or devices.

**PicoWAN Community Member** designates any owner of a PicoWAN Gateway, registered in the PicoWAN Network and maintaining its Gateway properly activated.

**PicoWAN Device or Devices** : Designates a PicoWAN Gateway and PicoWAN PicoSmartTag and any PicoWAN enabled sensor.

**PicoWAN Gateway or Access Point**: Designates any PicoWAN enabled access point capable of collecting messages under the PicoWAN Protocol. The PicoWAN PicoPlug is one of the PicoWAN Gateways.

**PicoWAN PicoSmartTag** : Is a geolocalization and movement sensor PicoWAN enabled

**PicoWAN enabled** : designates any connected object embedding the PicoWAN Protocol

**PicoWAN Protocol** : is a Software developed by PicoWAN which manages the protocol of communication between an RF device and the PicoWAN Network

**PicoWAN Network** designates the infrastructure covering the PicoWAN Gateways and the servers managing the messages.

**PICOWAN Software** designates any part of software development created by PicoWAN (including but not limited to the PicoWAN Application (all versions) and the PicoWAN Protocol.

**PicoWAN Sensors Data Access (PSDA)** designates the service of receiving/transmitting the data sent/received by the Sensors.

**Third Party** means any person or entity that is not a party to this Agreement.

**ISP** means Internet service provider.

**WiFi** means Wireless communications technology.

## 1. PicoWAN Application

In order to use your PICOWAN devices you will need to install PICOWAN Application onto your smartphone or computer or mobile device capable of running the PICOWAN Application. You are permitted to do this only if you accept all the terms and conditions of this Agreement.

BY DOWNLOADING, INSTALLING OR USING THE PICOWAN APPLICATION, YOU INDICATE THAT YOU UNDERSTAND AND ACCEPT ALL THE TERMS OF THIS AGREEMENT. IF YOU DO NOT ACCEPT OR AGREE TO THE TERMS OF THIS AGREEMENT, YOU ARE NOT AUTHORIZED TO USE ANY PART OF THE PICOWAN SERVICES.

As these terms are used in this Agreement, "Software" means any executable PICOWAN software or any accompanying documentation ("Documentation") and "PICOWAN" includes any part of the Software or Documentation and includes any and all software embedded in the PicoWAN devices, as well as any software forming part of or residing on the PICOWAN server network which enables access to a PICOWAN for remote configuration. Subject to Section 4, if there are any releases or any updates to the PICOWAN Software, your right to install or use those updates will be subject to your acceptance of such amendments or supplemental terms to this Agreement as PICOWAN may consider appropriate (if any) having regard to the nature and function of the particular update.

## 2. License Grant

Subject to your compliance with the terms and conditions of this Agreement and subject in particular to Sections 3 and 4 below, PICOWAN grants you a personal limited, non-exclusive, non-transferable license (without the right to sublicense)

(a) to install and use the executable form of Software on computers or other compatible devices owned by or controlled by you, and otherwise to use PICOWAN Software solely for your personal non-commercial use only in connection with a PicoWAN Device owned by you ("Authorized Use");

(b) to use the Documentation in support of your Authorized Use;

(c) to make one copy of the PICOWAN Software, in object code form only, solely for backup purposes, provided that all titles and trademark, copyright and restricted rights notices are reproduced on the copy.

PICOWAN reserves all rights in the PICOWAN Software not expressly granted to you under this Agreement.

## 3. Restrictions

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You recognize and agree that the PICOWAN Software including its structure, source code and the design and structure of modules or programs, constitute valuable trade secrets owned by PICOWAN or its licensors. You will not copy or use the PICOWAN Software except as expressly permitted by this Agreement and, specifically, you will not

- a) Transfer, sublicense, rent, lease, distribute or lend the PICOWAN Software to any third party or use it for any commercial use;
- b) yourself or through any third party modify, reverse engineer, disassemble or decompile the PICOWAN Software in whole or part, except to the extent expressly permitted by applicable law, and then only after you have notified PICOWAN in writing of your intended activities;
- c) Make the functionality of the PICOWAN Software available to any other party by any means, without limitation including by uploading any part of the PICOWAN Software to a network or file sharing service or through any application services provider, service bureau or any other type of similar service. The PICOWAN Software may only be used in connection with your PicoWAN Devices and may not be used to access another party's PicoWAN Device. Your administrator password, user password or PICOWAN ID may not be shared with anyone for the purpose of giving them access to your PicoWAN Device in any manner which is not permitted by this Agreement.

## **4. Ownership and Trademarks**

The PICOWAN Software is licensed, not sold to you. This means you have a right to use the PICOWAN Software but do not own it. PICOWAN and its licensors retain all ownership of the PICOWAN Software and all intellectual property in the PICOWAN Software. You must not delete or in any way alter the copyright, trademark and other proprietary rights notices or markings appearing on any PICOWAN Software or Devices.

PICOWAN trademarks contained in the PICOWAN Software are trademarks or registered trademarks of PICOWAN SA. All other third party trademarks, trade names, product names and logos may be the trademarks or registered trademarks of their respective owners. You may not remove or alter any trademark, trade names, product names, logo, copyright or other proprietary notices, legends, symbols or labels in the PICOWAN Software. This AGREEMENT does not authorize you to use or its licensors' names or any of their respective trademarks.

## **5. GNU General Public License**

PicoWAN Software includes certain software programs (and/or derivatives therefrom) which are governed under the terms of the GNU General Public License Version 2. Your use of any GPL derived code is excluded from the terms of this Agreement and is expressly and exclusively subject to the terms of the GNU General Public License Version 2 ("GPL"). A copy of the GPL is at [www.gnu.org/licenses/old-licenses/gpl-2.0.txt](http://www.gnu.org/licenses/old-licenses/gpl-2.0.txt). You must please read the GPL to understand your

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rights to included GPL software. Nothing in this Agreement is intended to or shall limit your rights to use GPL software under the GPL. Except to the extent (a) applicable GPL programs and inconsistent with the terms of the GPL, and/or (b) not permitted by applicable law, your use of PICOWAN Software shall be subject to the terms of this Agreement.

## **6. Service Scope and Standards**

By setting-up your PicoWAN Gateway, you are joining the PicoWAN Network and You agree to be bound by this Agreement all other related terms and conditions.

Please read this Agreement. If You do not agree to this Agreement, You may not use this service.

### **a. Installation and Activation of the Gateway**

You become a PicoWAN Community Member by accepting this Agreement, having a PicoWAN Account and owning a PicoWAN Gateway (or several Gateways).

Your PicoWAN Gateway is a gateway to which PicoWAN enabled Sensors can connect in order to transfer their data to the PicoWAN servers. The collected data can then be retransferred to the sensor's owners. Sensor's owner can send data to their PicoWAN enabled Sensors through PicoWAN servers too.

In order to benefit from the services and functionalities of your PicoWAN PicoPlug you will need to set-up and activate your PicoWAN Gateway and register as a PicoWAN Network Member.

The PicoWAN Gateway is also a connected plug which can be remotely accessed through the PicoWAN Android Application.

In order to be able to use the PicoWAN Gateway as a connected remotely accessible plug, You will need to connect the Gateway to your Internet connection (using WiFi or Ethernet).

PicoWAN may use information about the location of your PicoWAN Gateway (as provided by You upon registering) within the PicoWAN Network while this Agreement is in force. This is essential for other users to access the Service. You may deactivate your Gateway at any moment if you want to but you will reduce the quality and/or range of the PicoWAN Network and none of your own PicoWAN enabled Sensors can use your deactivated PicoWAN Gateway.

### **b. PicoWAN Community Member Rights & Obligations**

PicoWAN Community Member shall have the following rights and obligations:

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- If You register as a PicoWAN Community Member You understand that as a result of connecting a PicoWAN Gateway to the PicoWAN Network and registering with PicoWAN, You will create a PicoWAN Access point.
  - Your PicoWAN Access Point shall only be an access point for PicoWAN enabled sensors which can send/receive messages to/from the PicoWAN Network through any PicoWAN Access Point.

The provision of the PicoWAN Service to you, subject to any additional requirements for non-standard deployment, is dependent upon you having:

- suitable and sufficient bandwidth capacity over an operational internet connection;
- a current subscription to DSL Internet services or other Internet services;
- a mains socket. (a functional Electric plug to which the PicoWAN PicoPlug shall be plugged)

You agree to operate the PicoWAN Gateway to enable the PicoWAN Service. You acknowledge that the PicoWAN Service is a shared service: your Sensor(s) can use other Members PicoWAN Gateways or Access Points while you permit your Gateway or Access Point to collect messages from other user's Sensors. You understand that this is a key aspect of the PicoWAN Services.

The use of radio frequencies is limited by national regulations. The devices have been designed to comply with the European Union's RED (Radio Equipment) Directive 2014/53/EU and can be used within the European Union. National laws and regulations, as well as their interpretation can vary with the country. In case of uncertainty, it is recommended to contact an accredited Test Center or to consult the local authorities of the relevant countries.

The access provided is strictly limited to reception/transmission of small data messages sent/received by the Sensors.

All messages envelopes and content are encrypted and therefore no PicoWAN Community Member (or any Third Party) can access to the content of any of the messages sent/received by the sensors, except for the messages sent/received by its own Sensors (but only through the Sensors Data Access or Sensors 's software).

The PicoWAN Community Member provides Access Points to sensors only in a manner that is incidental to its original services (connected plug and PicoWAN Gateway). PicoWAN Community Member shall not receive any compensation whatsoever for the provision of the Access Point.

- In order to guarantee the correct functioning of the PicoWAN Gateways, the PicoWAN Community Member shall exclusively use the official versions of the PicoWAN Software.
- PicoWAN Community Member shall check if the PicoWAN Services are in accordance with its ISP user agreement. The PicoWAN Community Member is the sole responsible for compliance with the contractual obligations towards such ISP. PICOWAN will not bear any responsibility whatsoever towards any ISP.
- PicoWAN Community Member agrees to use the PicoWAN Services and accept to use them only for lawful purposes. If you use PicoWAN Services for any unlawful purposes, or provide any unlawful or illegal content, or breach this AGREEMENT, PicoWAN may disconnect

immediately your PicoWAN Gateway from the PicoWAN Network and terminate this Agreement.

- Respect the intellectual property rights of others. Do not use business names and/or logos of others in a manner that can mislead, confuse, or deceive users. PicoWAN is not responsible for the use by PicoWAN Community Member of Third Party's intellectual property.
- PicoWAN Community Member will not challenge PicoWAN's ownership of, the validity of any license to use or otherwise copy or exploit the PicoWAN Trademark during or after the termination of this Agreement except as specifically authorized herein. Any rights not expressly granted herein are withheld.
- PicoWAN may suspend or revoke access if PicoWAN believes the PicoWAN Network Member is in violation of the obligations or the spirit of the Agreement.

### **c. PicoWAN Rights & Obligations**

The services provided by PicoWAN consist in providing and controlling services for the PicoWAN Network and the PicoWAN enabled sensors (including but not limited to the PicoWAN PicoSmartTag)

- Quality of Service

PicoWAN is unable to provide any warranties as to the levels of connectivity that the PicoWAN Network will have in any area as this depends on the number of Gateways, their activation, their location and their surrounding environment. PicoWAN will not accept any responsibility for any connectivity issues You may experience.

- Customer Care

PicoWAN shall have a Customer Care Service available with the aim of responding to the queries related to the provision of PicoWAN Services. If You are a PicoWAN Community Member You can contact the Customer Care Service writing to following E-Mail address: [support@picowan.net](mailto:support@picowan.net). Any claim related to PicoWAN Services should be addressed to the Customer Care Service, in written form or e-mail, within a month of the date that the PicoWAN user has become aware of the issue relating to the claim. The acceptance or rejection of the claim will be communicated to You in a month after its reception by PicoWAN.

## **7. Personal Information, data & privacy**

### **PicoWAN Community Members registration and activation information**

PicoWAN collects information You give us when registering (such as email, name, or address) and information You provide by using our services (such as gateway MAC address or gateway IP address, gateway location ). PicoWAN uses the information to provide, maintain, protect and improve our services, to develop new services and protect our company and our users. You agree

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that PicoWAN may use this information, observing the Data Protection Laws, as long as it is in a form that does not personally identify you, to improve its products or to provide services or technologies to you and unless you object to such use in writing.

PicoWAN will not share personal information with any 3rd parties, unless we have previously collected your consent (in such case we will request formally your consent in an personal email, opt-in box or click through agreement acceptance with details regarding the intended use of the information, accessibility of theses information and way to amend and or revoke the collected consent).

## **PicoWAN Community Members data**

PicoWAN collects information emitted by PicoWAN enabled sensors through the PicoWAN Network. These Data will be primarily used for the purpose of delivering them to the sensor's owners as PicoWAN Sensors Data Access (PSDA) is a fundamental Service provided to PicoWAN enabled sensors users. PicoWAN uses these Data to provide, maintain, protect and improve our services, to develop new services and protect our company and our users.

PicoWAN will not share data with any 3rd parties, unless we have previously collected your consent (in such case we will previously request formally your consent in a dedicated email with details regarding the intended use of the information, accessibility of theses information and way to amend and or revoke the collected consent).

## **8. Limited Warranty**

### **SOFTWARE**

You acknowledge and agree that software in general is not error-free and agree that the existence of any errors in the Software shall not constitute a breach of this AGREEMENT by the Licensor. PICOWAN warrants to you that: for 30 days following the date of purchase or download that the Software will perform substantially in accordance with the Documentation. In the case of any Software returned under the warranty, PICOWAN shall at its option either correct the Software or replace the non-performing Software free of charge. The foregoing are your sole and exclusive remedies and PICOWAN's sole and exclusive liabilities. For breach of warranty. PICOWAN does not warrant that the PICOWAN Software will meet your requirements, that the operation of the PICOWAN Software will be error-free or uninterrupted, or that all PICOWAN Software errors will be corrected. The limited warranties in this Section 8 shall not, in any event, apply to the extent that you have not properly used or installed the PICOWAN Software in accordance with the Documentation. PICOWAN shall have no obligation hereunder for any PICOWAN Software that has been modified by you or any third party or any PICOWAN Software other than the then current release.

### **Hardware**

PicoWAN Devices (Gateways and Sensors) when provided by PicoWAN, benefit from a Commercial Warranty for a duration of 2 years after purchase. This Warranty covers usual manufacturer warranty on defects. Requests under this Warranty shall be addressed to PicoWAN after sales service. The Warranty is limited to either the procurement of a functional device upon return of a

defective device according to the After Sales Service guidelines or a refund of the purchase price of the defective Device (when purchased directly from PicoWAN). In case the defective device has been purchased by a distributor which is not PicoWAN, warranty requests shall be directed towards the distributor (the distributor being the legal entity which has invoiced the PicoWAN Device to You upon the purchase).

## **9. Term**

This AGREEMENT shall continue until terminated. You may terminate this AGREEMENT at any time by destroying all copies of the Software and Documentation in your possession or control. This AGREEMENT will automatically terminate without notice if you breach any term of this AGREEMENT. On termination of this AGREEMENT for whatever reason, you must promptly destroy all copies of the Software and Documentation in your possession or control and cease to use all Software and Documentation.

## **10. Disclaimer**

The limited remedies set forth in Section 8 shall be your sole and exclusive remedies and PICOWAN sole and exclusive liabilities, for breach of warranty. THE LIMITED WARRANTIES SET FORTH IN SECTION 8 ARE IN LIEU OF, AND PICOWAN EXPRESSLY DISCLAIMS, ALL OTHER WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT, AND ANY WARRANTIES AND CONDITIONS ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM PICOWAN OR ELSEWHERE WILL CREATE ANY WARRANTY OR CONDITION NOT EXPRESSLY STATED IN THIS AGREEMENT. Some jurisdictions do not allow limitations on how long an implied warranty last, so the above limitation may not apply to you. All warranties implied by statute are limited to the duration of the express warranty set forth above.

## **11. LIMITATION OF LIABILITY**

(A) NEITHER PICOWAN , NOR ITS LICENSORS OR SUPPLIERS SHALL BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, COVER OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR THE INABILITY TO USE EQUIPMENT OR ACCESS DATA, LOSS OF BUSINESS, LOSS OF PROFITS, BUSINESS INTERRUPTION OR THE LIKE), ARISING OUT OF THE USE OF, OR INABILITY TO USE, THE SOFTWARE AND BASED ON ANY THEORY OF LIABILITY INCLUDING BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

(B) PICOWAN' TOTAL LIABILITY TO YOU FOR ACTUAL DAMAGES FOR ANY CAUSE WHATSOEVER WILL BE LIMITED TO THE GREATER OF \$500 OR THE AMOUNT PAID BY YOU FOR THE PICOWAN software THAT CAUSED SUCH DAMAGE.



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(C) (USA only) SOME STATES DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU AND YOU MAY ALSO HAVE OTHER LEGAL RIGHTS THAT VARY FROM STATE TO STATE.

(D) THE FOREGOING LIMITATIONS ON LIABILITY ARE INTENDED TO APPLY TO THE WARRANTIES AND DISCLAIMERS ABOVE AND ALL OTHER ASPECTS OF THIS AGREEMENT.

## **12. Basis of Bargain**

The Limited Warranty, Disclaimer, and Limitation of Liability stated above are fundamental elements of the basis of the agreement between PICOWAN and You. PICOWAN would not be able to provide PICOWAN on an economic basis without such limitations. Such Limited Warranty and Disclaimer, and Limitation of Liability shall also be for the benefit of PICOWANs' licensors.

## **13. General**

This AGREEMENT shall be governed by the laws of France, without giving effect to principles of conflict of laws. You hereby consent to the exclusive jurisdiction and venue of the state courts sitting in Evry, France to resolve any disputes arising under this AGREEMENT. The United Nations Convention on the International Sale of Goods will not apply to this AGREEMENT and is expressly excluded.

This AGREEMENT contains the complete agreement between the parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements or understandings, whether oral or written. You agree that any varying or additional terms contained in any communications, purchase order or other written notification or document issued by you in relation to the PICOWAN Software licensed hereunder shall be of no effect. The failure or delay of PICOWAN to exercise any of its rights under this AGREEMENT or upon any breach of this AGREEMENT shall not be deemed a waiver of those rights or of the breach.

No PICOWAN dealer, agent or employee is authorized to make any amendment to this AGREEMENT unless such amendment is in writing and signed by a duly authorized representative of PICOWAN.

The limitations or exclusions of warranties, remedies or liability contained in this AGREEMENT shall apply to you only to the extent such limitations or exclusions are permitted under the laws of the jurisdiction where you are located.

If any provision of this AGREEMENT shall be held by a court of competent jurisdiction to be contrary to law, then that provision will be enforced to the maximum extent permissible and the remaining provisions of this AGREEMENT will remain in full force and effect.

This version of AGREEMENT is current as of 1 December 2017.

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IF YOU AGREE TO ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT AND WISH TO PROCEED WITH INSTALLING AND USING THE SOFTWARE, PLEASE CLICK ON THE "I ACCEPT THE TERMS OF THIS LICENSE" BUTTON BELOW. IF YOU DO NOT AGREE, PLEASE CLICK THE "I DO NOT ACCEPT THE TERMS OF THIS LICENSE" BUTTON.

PICOWAN SAS

Dated: 1 December 2017