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CLOSE TO OUR CUSTOMERS

# WITOS FleetView Terms & Conditions (“#WG-3”)

Release Date: 2021-03-22  
Language: English

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**CLOSE TO OUR CUSTOMERS****1. Entering WITOS FleetView**

This agreement (“**Agreement**”) governs the creation, maintenance, access to, and use of WITOS FleetView (“**FleetView**”). FleetView is a hosted account where you may collect and manage information from your operation and equipment, including machine information, data, and communications relating to your business operations (collectively, your “**Content**”).

By creating, claiming, registering, accessing or using FleetView, you confirm that you accept the terms of this Agreement and that you agree to comply with them, and you enter into a legally binding contract with Wirtgen Road Technologies GmbH, Reinhard-Wirtgen-Str. 2, 53578 Windhagen, Germany (“**WIRTGEN**”, “**we**”, and “**us**”). By using FleetView, you represent and warrant that you are at least 18 years of age. If you are acting on behalf of an entity or another person, you represent and warrant that you have the authority to bind that entity or person under this Agreement, and all instances of “you” and “your” below refer to that entity or other person. If you do not agree to this Agreement, you must not use, or access FleetView. We recommend that you print a copy of this Agreement for future reference.

With this agreement you acknowledge our WITOS FleetView Privacy Notice #WG-6 (European Economic Area [EEA]) and #WG-7 (Rest of World) which can be found in [WIRTGEN GROUP Portal](#).

**2. Creating and Managing FleetView****2.1 Assign an Owner-Administrator**

To create FleetView, you must provide the required contact information, including identification of an “owner-administrator” for FleetView. Your owner-administrator is our primary point of contact with you and you hereby authorize this individual to provide instructions to us, receive notices from us on your behalf, enter into licenses and other agreements, and transact or contract with us on your behalf. You may reassign this role to another user within FleetView.

**2.2 Designate other Administrators**

You may also designate other administrators of your account and assign various abilities, including: the right to invite users to FleetView; the right to access, use, and share your Content; and (if permitted by your owner-administrator) the right to enter into contracts on your behalf.

**2.3 Add and Manage Users**

You may designate individuals as your users and you may give those users various rights in FleetView, such as read selected, read, read & write or supervisor role to access and share your Content.

1. You must create a separate user account for each user. For each user you can provide additional information like username, complete name, e-Mail address or language.
2. You are responsible for the activities and breaches of your users as well as for all Content your users upload or share and all transactions your users enter into FleetView.
3. If users’ contact information or other information related to FleetView or their user accounts changes you must notify us promptly and provide current information.

**2.4 Keep your Contact Information Current**

If your contact information or other information related to FleetView changes, you must notify us promptly and provide current information.

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**CLOSE TO OUR CUSTOMERS****2.5 Protect your Information and Passwords**

If you wish to protect your transmission of data or files to or from FleetView or the Tools, it is solely your responsibility to establish and use a secure connection to communicate through FleetView and the Tools. You and your users are responsible for protecting passwords and credentials relating to FleetView.

**2.6 Represent Yourself Accurately**

We strive to maintain a fair and transparent ecosystem and we ask you to support this effort. You must not impersonate another business or person, create or use an account for anyone other than yourself, provide an email address other than your own, or create multiple accounts for the same business entity. We reserve the right to close your account at any time if you breach the terms of this clause, without notice or liability.

**2.7 Honor Commitments**

You must honor the terms of all licenses and other agreements, including payment of any agreed fees, you enter into or accept through FleetView or the Tools, including agreements entered into by your owner-administrator and other administrators/ users, and agreements that your owner-administrator or other administrators/ users may purchase from WIRTGEN. You are responsible for any activity using FleetView, whether or not you authorized that activity. You must notify us immediately of any unauthorized use of FleetView or any Users' user accounts. You can contact us via the following e-mail address: [support@witos.com](mailto:support@witos.com).

**3. Using FleetView****3.1 Use of FleetView**

You understand and agree that FleetView may be modified or updated at any time, at our sole discretion, without notice or liability. We may also remove any content from FleetView at our discretion, without notice or liability.

**3.2 Availability of FleetView**

We do not guarantee that FleetView will always be available or be uninterrupted. We may suspend, discontinue, or restrict the availability of FleetView for business or operational reasons. We will try to give you reasonable notice of any suspension or discontinuation of FleetView.

**3.3 Communications**

You hereby agree to receive electronic communications regarding FleetView concerning maintenance, availability, functionality, or other matters including offers for products and services relating to FleetView, subject to all applicable laws regarding electronic communications.

**3.4 Prohibited Uses**

Without limiting any other terms in this Agreement, you agree that you will not (and you will not permit, assist, encourage or enable anyone to) use FleetView to:

1. violate this Agreement;
2. probe, scan, or test the vulnerability of any system or network;
3. send unsolicited communications, promotions or advertisements, or spam;
4. send altered, deceptive or false source-identifying information, including "spoofing" or "phishing";

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5. adapt, appropriate, reproduce, distribute, translate, create derivative works or adaptations of, publicly display, sell, trade, or in any way exploit;
6. access or search FleetView by any means other than our publicly supported interfaces (for example, “scraping” is expressly prohibited);
7. take any action that imposes, or may impose, in our sole discretion, an unreasonable or disproportionately large load on WIRTGEN's technology infrastructure;
8. attempt to gain unauthorized access to FleetView, user accounts, computer systems or networks connected to FleetView through hacking, password mining or any other means;
9. plant malware or otherwise use FleetView or any Content to distribute malware, computer viruses, spyware, worms, defects, Trojan horses or other items of a destructive nature;
10. use any device, software or routine that interferes with the proper working of FleetView;
11. use FleetView to violate the security of any computer network, crack passwords or security encryption codes;
12. disrupt or interfere with the security of, or otherwise cause harm to FleetView;
13. remove, circumvent, disable, damage or otherwise interfere with any security-related features of FleetView;
14. share your user account or credentials, access FleetView using another person’s user account, or provide false or misleading information when establishing or using any WIRTGEN user account;
15. promote or advertise products or services;
16. impersonate or misrepresent your affiliation with any person or entity;
17. threaten, stalk, harm, bully, or harass others, or promote or propagate bigotry or discrimination; or
18. violate applicable law in any way, or violate the privacy of others, or defame others.

In the event that you use FleetView for any of the Prohibited Uses, your right to use FleetView will cease immediately. Where your use of FleetView for any of the Prohibited Uses constitutes a criminal offence, we will report any such breach to the relevant authorities and we will co-operate with those authorities by disclosing your identity to them, where necessary.

**4. How We Use your Information**

1. To Support you. You grant WIRTGEN the right to copy, modify, display, transmit, and otherwise use your Content, your business name and your contact information as needed to fulfill all uses and to provide all services and functionalities described in this Agreement and/or the WITOS FleetView Privacy Notice #WG-6 (EEA) and #WG-7 (Rest of World) which can be found in WIRTGEN GROUP Portal, to support FleetView. These rights extend to third parties engaged by WIRTGEN to provide the services under this Agreement. You understand and agree that the existence of FleetView is not confidential, and that a primary purpose in establishing and maintaining FleetView is that your staff, partners, WIRTGEN, WIRTGEN Affiliates & Dealers, and others may identify or find you, and additionally that you enable WIRTGEN and WIRTGEN Affiliates & Dealers to understand which products and services you use so that they can support you.
2. Use by WIRTGEN. You acknowledge and agree that we may use your Content and contact information as provided in this Agreement and as described in the Privacy Notice.
3. We may impose limits in our sole discretion on the quantity and size of Content stored in FleetView and the duration that Content may be stored. We may also remove any Content from FleetView at our discretion, without notice or liability.
4. We may also disclose Content to outside parties when we have a good faith belief that disclosure is reasonably necessary to (a) comply with any applicable law, regulation or compulsory legal request; (b) protect the safety of any person from death or serious bodily injury; (c) prevent fraud or abuse against us or our users; (d) protect our property rights; or (e) defend WIRTGEN and its affiliates or personnel from any legal proceedings arising out of such Content.

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## 5. Feedback

We welcome your feedback. By sending us any ideas, suggestions, documents or proposals ("**Feedback**"), you agree and warrant that (i) your Feedback does not contain any personal, confidential, or proprietary information, (ii) we are under no obligation of confidentiality, express or implied, with respect to the Feedback, (iii) we may have something similar to the Feedback already under consideration or in development, and (iv) we may use, modify, publish, distribute and sublicense the Feedback without any obligation or compensation to you or any third party.

## 6. Mandatory Privacy Notices and Explanation of Data Subject Rights

All data collected under this Agreement are collected for the purpose of fulfilling the services provided under this Agreement or for further purposes cited in this Agreement.

### 6.1 Collection of data to activate FleetView

WIRTGEN collects and processes data like customer number, customer, address, zip code, country, name, first name, phone, e-mail address, language and WIRTGEN GROUP subsidiaries and authorized dealers' information. Further details are provided in the WITOS FleetView Privacy Notice #WG-6 (EEA), #WG-7 (Rest of World).

### 6.2 Collection of data to provide FleetView

WIRTGEN will host, manage, and use the machine data pursuant to the terms of this Agreement in order to provide FleetView. Furthermore, depending on the machine type and service levels, the data may include operational data provided by your machine.

### 6.3 Access to and Use of Data

By default all WIRTGEN GROUP subsidiaries and authorized dealers connected to you have access to your Content through FleetView until you restrict this via WITOS User Control (please contact [support@witos.com](mailto:support@witos.com)). You may also authorize or restrict WIRTGEN GROUP subsidiaries or authorized dealers and other partner organizations' access via WIRTGEN GROUP subsidiaries or authorized dealers or WITOS User Control at any time to the data collected (please contact [support@witos.com](mailto:support@witos.com)).

### 6.4 WIRTGEN usage of data

WIRTGEN is entitled to access the data to provide the contractually defined FleetView Services. You agree that we may access and use the data in anonymized or pseudonymized form for statistical purposes as well as to improve or enhance the services provided under this Agreement, develop additional or new WIRTGEN products and services, and/or identify new usage types of equipment.

### 6.5 Data Privacy and Compliance

We will process all data and provide underlying FleetView Services in line with applicable laws and regulations e.g. Regulation (EU) 2016/679 (EU General Data Protection Regulation – "**GDPR**"). Unless otherwise agreed, we act as a data controller. Further details are provided in the FleetView Privacy Notice #WG-6 (EEA), #WG-7 (Rest of World).

You shall also ensure compliance with all applicable laws and regulations (including GDPR) in your operation. If your machine is used by third parties including natural persons (e.g. employees, drivers) on your behalf, you are obliged to secure that all applicable laws and regulations (e.g. GDPR, employment law), are met.

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**CLOSE TO OUR CUSTOMERS****In particular, Customer shall**

- **provide all relevant WIRTGEN privacy notices to the user and other affected data subjects,**
- **ensure an adequate legal basis for the data provided to WIRTGEN (e.g. contact data of the user) and the data processed by WIRTGEN as a data controller as described in this Agreement and the relevant privacy notices (e.g. via works council agreements, employment contracts, legitimate interest or individual consent), and**
- **provide as a data controller of its own corresponding data privacy information to the user and other affected data subjects.**

With regard to data protection matters affecting this Agreement the Parties shall use reasonable efforts to cooperate with each other.

**7 Copyright and Trademark Disputes**

We respect intellectual property rights, and we expect users of our services and systems to do the same. If you are a copyright or trademark owner, authorized to act on behalf of one, or authorized to act under any exclusive right under copyright or trademark, you agree to promptly report any alleged copyright or trademark infringements taking place on or through FleetView by providing a written notice with the following information:

1. Identification of the copyrighted work or trademark that you claim has been infringed;
2. A statement of your interest or right with respect to that copyrighted work or trademark;
3. Identification of the allegedly infringing Content, and information reasonably sufficient to permit us to locate it on our systems (e.g. the URL for the web page, or identification of the Tool in which the content appears);
4. A statement by you that you have a good faith belief that the use of the content identified in your notice in the manner complained of is not authorized by the copyright/trademark owner, its agent, or the applicable law;
5. A statement by you that you attest, under penalty of perjury, that the information in your notice is accurate and that you are the copyright/trademark owner or otherwise authorized to act on the owner's behalf; and
6. Your physical or electronic signature, together with your contact information (address, telephone number and, if available, email address).

We will delete any Content that infringes or that we suspect infringes any third party rights in our sole discretion. It is our policy to terminate relationships regarding Content with parties who infringe the intellectual property rights of others.

**8. Indemnity**

You will indemnify, defend, and hold WIRTGEN, its parents, subsidiaries, affiliates, any related companies, dealers, suppliers, licensors and partners, and the officers, directors, employees, contractors, agents, and representatives of each of them (collectively, the "**WIRTGEN Entities**") harmless, including for costs, liabilities, damages, penalties, and legal fees (on a solicitor and own client basis), from any claim, demand, or damage arising out of or relating to (i) your (or your Users') access to or use of FleetView, (ii) your (or your Users') violation of this Agreement, (iii) any products or services purchased or obtained by you or your Users in connection with other than those purchased or obtained from a WIRTGEN Entity, or (iv) the infringement by you, your Users or any third party using your account, of any intellectual property or other right of any person or entity. You agree that WIRTGEN may, at your expense, assume the exclusive defense and control

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of any matter for which you are required to indemnify us and you agree to cooperate at your cost with our defense of these claims. You agree not to settle any matter without the prior written consent of WIRTGEN. WIRTGEN will use reasonable efforts to notify you of any such claim, action or proceeding upon becoming aware of it.

**9. Disclaimers and Limitations of Liability**

Please read this section carefully because it limits the liability of WIRTGEN Entities. Each of the subsections below applies to the maximum extent permitted under applicable law. We do not exclude or limit in any way our liability to you where it would be unlawful to do so.

1. While WIRTGEN endeavors to provide a functional and convenient site, FleetView is made available to you on an "as is", "with all faults" and "as available" basis. Your use of FleetView is at your own discretion and risk. The WIRTGEN Entities make no claims or promises about the quality, accuracy, or reliability of FleetView, its safety or security, availability or uptime, or content. Accordingly, the WIRTGEN Entities exclude all implied conditions, warranties, representations or other terms that may apply to FleetView or any content on it.
2. The WIRTGEN Entities will not be liable to you (nor to your Users or any other person claiming rights derived from your rights) for any loss or damage, whether in contract, tort, delict (including, without limitation, negligence and strict liability), breach of statutory duty, or otherwise, even if foreseeable, that might arise in relation with FleetView, including any (i) indirect or consequential loss or damage; (ii) loss of profits, sales, business, revenue or use; (iii) business interruption; (iv) loss of business opportunity, goodwill or reputation; or (v) loss of information or data.
3. The WIRTGEN Entities make no claims or promises with respect to any third party. Accordingly, the WIRTGEN Entities are not liable to you for any loss or damage that might arise from their actions, including, for example, if another user misuses your content or identity. Your use of third-party content is at your own discretion and risk.
4. The WIRTGEN Entities expressly disclaim all warranties, whether express or implied, including warranties, guarantees, conditions or terms, as to any products, information or services offered through the tools, and implied or imposed by law, warranties of merchantability, fitness for a particular purpose, quality, and non-infringement. No oral or written information or advice provided to you by a representative of one of the WIRTGEN Entities shall create a representation or warranty.
5. While WIRTGEN will use commercially reasonable endeavors to deliver and support you, the WIRTGEN Entities do not guarantee that FleetView will be secure or free from bugs or viruses. You are responsible for configuring your information technology to access FleetView and you should use your own virus protection software.
6. Your sole and exclusive right and remedy in case of dissatisfaction with FleetView, related services or any other grievance shall be your termination and discontinuation of access to or use FleetView.
7. The WIRTGEN Entities' maximum aggregate liability to you for losses or damages that you suffer in connection with FleetView, related services or this Agreement is limited to a maximum of EUR 12,500.
8. Notwithstanding any other term of these Terms, nothing in these Terms excludes or limits the WIRTGEN Entities' liability for (i) death or personal injury caused by the WIRTGEN Entities' negligence; (ii) fraud or fraudulent misrepresentation; or (iii) any other liability that cannot be excluded or limited as a matter of law.

**10. Termination**

1. You may terminate this Agreement at any time by closing FleetView, discontinuing your use of the Tools, and providing WIRTGEN with a notice of termination. Your termination of this Agreement may result in termination of other WIRTGEN Service Agreements associated with FleetView. Please review the terms

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for your other WIRTGEN Service Agreements to understand how termination of this Agreement may impact them.

2. We may suspend or end this Agreement, FleetView, or your access to the Tools at any time, with or without cause, and with or without notice.
3. In the event of any termination, whether by you or us, section about “Disclaimers and Limitations of Liability” of this Agreement and any other terms that are intended to survive termination will continue in full force and effect.
4. On termination the personal information associated with FleetView will be deleted, destroyed, returned to you or de-identified, unless there is a justification in law for the retention of such personal information.

**11. General Terms**

1. Except as otherwise stated in related WIRTGEN Service Agreements, this Agreement contains the entire agreement between you and us regarding its subject matter, and supersedes any prior agreement between you and us on such subject matter. The parties acknowledge that no reliance is placed on any representation made but not expressly contained in this Agreement.
2. Any failure on WIRTGEN's part to exercise or enforce any right or provision of this Agreement does not constitute a waiver of such right or provision. Any failure of WIRTGEN to exercise in any respect any right provided for herein shall not be deemed a waiver of any further rights hereunder. All waivers must be in writing and signed by WIRTGEN to be effective.
3. If any provision of this Agreement is found to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable.
4. This Agreement is not assignable, transferable or sub-licensable by you except with WIRTGEN's prior written consent but may be assigned or transferred by us without restriction. Any assignment attempted to be made in violation of this Agreement shall be void.
5. WIRTGEN and you are independent contractors, and not agents, legal partners, or engaged in any employment relationship.
6. The section titles in this Agreement are for convenience only and have no legal or contractual effect.
7. WIRTGEN will not be liable for any delay, interruption or failure in the performance of its obligations if caused by acts of God, war (declared or undeclared), fire, flood, storm, slide, earthquake, power failure, extensive disease outbreaks like epidemics and pandemics (e.g. Ebola, measles, SARS, MERS, Covid 19, or similar serious viral diseases, cholera, etc.), inability to obtain equipment, supplies or other facilities not caused by a failure to pay, labor disputes, or other similar event beyond the control of WIRTGEN which may prevent or delay such performance. If any such act or event occurs or is likely to occur, WIRTGEN will use reasonable efforts to notify you, and will use reasonable efforts to eliminate or remedy the event.
8. This Agreement, and any and all disputes (including in relation to any non-contractual disputes and obligations) directly or indirectly arising out of or in relation to the Terms, will be governed by and construed in accordance with the laws of the Federal Republic of Germany.
9. In the unlikely event that you and WIRTGEN have a dispute (including any non-contractual disputes and obligations) related to these Terms, you and WIRTGEN agree to submit to the exclusive jurisdiction of the courts of WIRTGENS' place of business.
10. The parties agree that a person who is not a party to these Terms shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of these Terms in the UK. This provision does not affect any right or remedy of any person which exists, or is available, other than pursuant to that Act.

We may modify this Agreement from time to time. When changes are made, we will provide notice to you of such changes by making the revised version available at login and will indicate the date that revisions



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were last made. We will also provide notice to you of such changes via email delivered to the email address provided for your owner-administrator. You should revisit this Agreement on a regular basis as revised versions will be binding on you if you continue to use or access FleetView. Any such modification will become effective, going forward, upon our posting of new terms. You understand and agree that your continued access to or use of FleetView after any modification to this Agreement are posted indicates your acceptance of the modified terms. We may also choose, in our sole discretion, to notify you directly of certain modifications to this Agreement and we may require your direct agreement to the updated terms before you may continue to use or access FleetView. If you do not agree to any updated terms, you must immediately stop using FleetView, and we may suspend or terminate FleetView.