

Data Sharing Agreement

on data access and use between data holders and users of connected products and related services

1. Parties and Product/Related Service

1.1 Parties to the contract

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

LEMKEN GmbH & Co. KG

Weseler Straße 5

46519 Alpen

(‘Data Holder’)

and any party that identifies itself as the user within the meaning of the Data Act and declares its assent to the terms of this contract by taking the following steps:

- Purchase of **‘Product’**
- Usage of **‘Related Services’**
- Creation of iQblue go account

(‘User’)

referred to below collectively as **‘the Parties’** and individually as **‘the Party’**.

1.2 Product/Related Service

This contract is made with regard to:

(a) the following connected product(s) (**‘the ‘Product’**):

- agricultural machinery such as ploughs, seed drills, fertilizer spreaders or CCI-Terminals purchased or rented from the **Data Holder** by the **User**

(b) the following related services (**the ‘Related Services’**):

- LEMKEN iQblue online services
- CCI Services such as CCI.Maps provided by LEMKEN

The User declares that they are either the owner of the Product or contractually entitled to use the Product under a rent, lease or similar contract and/or to receive Related Services under a service contract. The User commits to provide upon duly substantiated request to the **Data Holder** any relevant documentation to support these declarations, where necessary.

2. **Data covered by the Contract**

The data covered by this contract (**the 'Data'**) consists of any readily available **Product Data** or **Related Services Data** within the meaning of the Data Act. The **Data Holder** provides the **User** with specific information according to Art. 3 (2) and (3) Data Act about the data covered by this contract in the **EU Data Act section** on the website. The Data consists of the Data listed in the **EU Data Act section** on the website with a description of the type or nature, estimated volume, collection frequency, storage location and retention periods of the Data. If, during this contract, new data is made available to the **User**, this information will be amended accordingly.

3. **Data use and sharing by the Data Holder**

3.1 **Agreed use of non-personal Data by the Data Holder**

3.1.1 The **Data Holder** undertakes to use the **Data** that are non-personal Data only for the purposes agreed with the **User** as follows:

- (a) performing any agreement with the **User** or activities related to such agreement (e.g. issuing invoices, generating and providing reports or analysis, financial projections, impact assessments, calculating staff benefit);
- (b) providing support, warranty, guarantee or similar services or to assess **User's**, **Data Holder's** or third party's claims (e.g. regarding malfunctions of the Product) related to the Product or Related Service;
- (c) monitoring and maintaining the functioning, safety and security of the **Product** or **Related Service** and ensuring quality control;
- (d) improving the functioning of any product or related service offered by the **Data Holder**;
- (e) developing new products or services, including artificial intelligence (AI) solutions, by the **Data Holder**, by third parties acting on behalf of the **Data Holder** (i.e. where the **Data Holder** decides which tasks will be entrusted to such parties and benefits therefrom), in collaboration with other parties or through special purpose companies (such as joint ventures);
- (f) aggregating these Data with other data or creating derived data, for any lawful purpose, including with the aim of selling or otherwise making available such aggregated or derived data to third parties, provided such data do not allow

specific data transmitted to the Data Holder from the connected product to be identified or allow a third party to derive those data from the dataset.

- 3.1.2 The **Data Holder** undertakes not to use the Data to derive insights about the economic situation, assets and production methods of the **User**, or about the use of the **Product** or **Related Service** by the **User** in any other manner that could undermine the commercial position of the **User** on the markets in which the **User** is active;

None of the Data uses agreed to under clause 3.1.1 may be interpreted as including such Data use, and the **Data Holder** undertakes to ensure, by appropriate organisational and technical means, that no **third party**, within or outside the **Data Holder's** organisation, engages in such Data use.

3.2 Sharing of non-personal data with third parties and use of processing services

- 3.2.1 The **Data Holder** may share non-personal data with third parties, if:

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

- i) assisting the **Data Holder** in achieving the purposes permitted under clause 3.1.1;
- ii) achieving, in collaboration with the **Data Holder** or through special purpose companies, the purposes permitted under clause 3.1.1;

(b) the **Data Holder** contractually binds the **third party**:

- i) not to use the Data for any purposes or in any way going beyond the use that is permissible in accordance with previous clause 3.2.1 (a);
- ii) to comply with clause 3.1.2;
- iii) to apply the protective measures required under clause 3.4.1; and
- iv) not to share these Data further unless the User grants general or specific agreement for such further transfer, or unless such Data sharing is required, in the interest of the User, to fulfil this Contract or any contract between the third party and the User.

If the **User** agrees to the further transfer, the **Data Holder** should oblige the **third party** with whom they share Data to include the clauses corresponding to points (i) to (iv) in their contracts with recipients.

- 3.2.2 The **Data Holder** 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 agreed purposes under clause 3.1. The third parties may also use such services to achieve the agreed purposes under clause 3.2.1 (a).

3.3 Use and Sharing of Personal Data by the Data Holder

The **Data Holder** may use, share with **third parties** or otherwise process any Data that is personal data, under a legal basis provided for and under the conditions permitted under Regulation (EU) 2016/679 (GDPR) and, where relevant, Directive 2002/58/EC (Directive on privacy and electronic communications).

3.4 Protection measures taken by the Data Holder

- 3.4.1 The **Data Holder** undertakes to apply the protective measures for the Data that are reasonable in the circumstances, considering the state of science and technology, potential harm suffered by the **User** as a result of Data loss or disclosure of Data to unauthorised third parties and the costs associated with the protective measures.
- 3.4.2 The **Data Holder** may also apply other appropriate technical protection measures to prevent unauthorised access to Data and to ensure compliance with this contract.
- 3.4.3 The **User** agrees not to alter or remove such technical protection measures unless agreed by the **Data Holder** in advance and in writing.

4. Data access by the User upon request

4.1 Obligation to make data available

- 4.1.1 The Data, together with the relevant metadata necessary to interpret and use those Data, is made accessible to the **User** by the **Data Holder** as described in the **EU Data Act section** on the website.
- 4.1.2 The **Data Holder** shall make the Data which is personal data available to the **User**, when the User is not the data subject, only when there is a valid legal basis for making personal data available under Article 6 of Regulation (EU) 2016/679 (GDPR) and only, where relevant, the conditions set out in Article 9 of that Regulation and of Article 5(3) of Directive 2002/58/EC (Directive on privacy and electronic communications) are met.

In that respect, when the User is not the data subject, the User is responsible for providing proof to the **Data Holder**, in each request presented under the previous clause, for the legal basis for processing under Article 6 of Regulation (EU) 2016/679 (and, where relevant, the applicable derogation under Article 9 of that Regulation and Article 5(3) of Directive (EU)2002/58) upon which the making available of personal data is requested.

4.2 Data characteristics and access arrangements

- 4.2.1 The **Data Holder** must make the Data available to the **User**, free of charge for the

User, with at least the same quality as it becomes available to the **Data Holder**, and in any case in a comprehensive, structured, commonly used and machine-readable format. The **Data Holder** provides detailed information about the Data characteristics in the **EU Data Act section** on the website.

4.2.2 The **Data Holder** and **User** may use the services of a third party (including a third-party providing Data Intermediation Services as defined by Article 2 of Regulation (EU) 2022/868) to allow the exercise of the User's rights under clause 4.1 of this contract. Such third party will not be considered a Data Recipient under the Data Act, unless they process the Data for its own business purposes. The party requiring the use of such a third party must notify the other party in advance.

4.2.3 The **User** receives access to the Data in accordance with article 4 of the Data Act. The User can easily and securely access the Data where it is stored. The **Data Holder** provides specific information about the access arrangements in the **EU Data Act section** on the website. This **EU Data Act section** includes, in particular, information regarding the origin of the Data and any rights which third parties might have with regard to the Data, such as rights of data subjects arising under Regulation (EU) 2016/679 (GDPR), or facts that may give rise to such rights. In order to meet these requirements, the Parties agree on the specifications set out in **EU Data Act section on the website** which forms an integral part of this Contract.

4.3 Feedback loops

If the **User** identifies an incident related to clause 2 on the Data covered by this Contract, to the requirements of clauses 4.2.1 or 4.2.3 on the Data quality and access arrangements and if the User notifies the **Data Holder** with a detailed description of the incident, the **Data Holder** and the **User** must cooperate in good faith to identify the reason of the incident. If the incident was caused by a failure of the **Data Holder** to comply with their obligations, they must remedy the breach within a reasonable period of time. If the **User** considers their access right under Article 4 (1) of the Data Act to be infringed, the **User** is also entitled to lodge a complaint with the competent authority, designated in accordance with Article 37(5), point (b) of the Data Act.

4.4 Unilateral changes by the Data Holder

The **Data Holder** may, in good faith, unilaterally change the specifications of the Data or the access arrangements stated in **EU Data Act section** on the website, if this is objectively justified by the general conduct of business of the **Data Holder**—for example by a technical modification due to an immediate security vulnerability in the line of the products or related services or a change in the Data Holder's infrastructure. In this case, the **Data Holder** will give notice of the change to the **User** without undue delay by providing a notification on the website.

Where the change may negatively affect Data access and use by the **User** more than just to a small extent, the **Data Holder** must give notice to the **User** via e-mail at

least 2 weeks before the change takes effect. A shorter notice period may only suffice where such notice would be impossible or unreasonable in the circumstances, such as where immediate changes are required because of a security vulnerability that has just been detected.

4.5 Information on the User's access

The **Data Holder** undertakes not to keep any information on the **User's** access to the requested data beyond what is necessary for:

- (a) the sound execution of (i) the **User's** access request and (ii) this contract;
- (b) the security and maintenance of the data infrastructure; and
- (c) compliance with legal obligations on the **Data Holder** to keep such information.

5. Protection of trade secrets

5.1 Applicability of trade secret arrangements

- 5.1.1 The protective measures agreed on in clauses 5.2. and 5.3 of this Contract, as well as the related rights agreed in clauses 5.4, apply exclusively to Data or metadata included in the Data to be made available by the **Data Holder** to the **User**, which are protected as trade secrets (as defined in the Trade Secrets Directive (EU) 2016/943), held by the Data Holder or another Trade Secret Holder (as defined in said Directive).
- 5.1.2 As of now, the Data covered by the Contract do not contain any trade secrets as defined in the Trade Secrets Directive (EU) 2016/943). In case Data or metadata included in the Data to be made available by the **Data Holder** to the **User** are protected as trade secrets, the **Data Holder** and **User** undertake to comply with the requirements set out in this clause.
- 5.1.3 In case Data or metadata included in the Data to be made available by the **Data Holder** to the **User** are protected as trade secrets, the **Data Holder** will add **Appendix 4** ('Identified Trade Secrets Measures'), which will be made available to the **User** before accepting this agreement.
- 5.1.4 The **Data Holder** hereby declares to the **User** that they have all relevant authorisations and other rights from the third party Identified Trade Secrets Holder to enter into this Contract regarding the applicable Identified Trade Secrets and all of the related rights and obligations under this Contract. Until the Trade Secret Appendix has been amended and agreed between the Parties, the Data Holder may temporarily suspend the sharing of the specific newly Identified Trade Secret(s) by giving notice to the User and the competent authority designated under Article 37 of the Data Act, with a copy of this sent to the User.
- 5.1.5 The obligations set out in clauses 5.2 and 5.3 remain in effect after any termination of the Contract, unless otherwise agreed by the parties.

5.2 Protective measures taken by the User

- 5.2.1 If applicable, the **User** must apply the protective measures set out **Appendix 4** (hereinafter: 'Identified Trade Secrets Measures').
- 5.2.2 If the User is permitted to make Data protected as Trade secrets available to a third party, the User must inform the Data Holder of the fact that Identified Trade Secrets have been or will be made available to a third party, specify the Data in question, and give the Data Holder the identity and contact details of the third party.

5.3 Protective measures taken by the Data Holder

- 5.3.1 The **Data Holder** may apply any appropriate technical and organisational protection measures set out in detail **Appendix 4** to preserve the confidentiality of the shared and otherwise disclosed Identified Trade Secrets (hereinafter: 'Identified Trade Secrets Measures').
- 5.3.2 The **Data Holder** may also add unilaterally appropriate technical and organisational protection measures, if they do not negatively affect the access and use of the Data by the **User** under this contract.
- 5.3.3 The User undertakes not to alter or remove such Identified Trade Secrets Measures, unless otherwise agreed by the Parties.

5.4 Obligation to share and right to refuse, withhold or terminate

- 5.4.1 The **Data Holder** must share the Data, including Identified Trade Secrets, in accordance with this Contract, and may not refuse, withhold or terminate the sharing of any Identified Trade Secrets, except as explicitly set forth in the clauses 5.4.2, 5.4.3 and 5.4.4.
- 5.4.2 Where the Identified Trade Secrets Measures and the Identified Trade Secrets Measures do not materially suffice to adequately protect a particular Identified Trade Secret, the **Data Holder** may, by giving notice to the user with a detailed description of the inadequacy of the measures:
 - (a) unilaterally increase the protection measures regarding the specific Identified Trade Secret in question, provided this increase is compatible with its obligations under this Contract and does not negatively affect the User, or
 - (b) request that additional protection measures be agreed. If there is no agreement on the necessary additional measures after a reasonable period of time and if the need of such measures is duly substantiated, e.g. in a security audit report, the **Data Holder** may suspend the sharing of the specific Identified Trade Secret by giving notice to the User and to the competent authority designated pursuant to Article 37 of the Data Act, with copy of this sent to the User.

The **Data Holder** must continue to share any Identified Trade Secrets other than these specific Identified Trade Secrets.

- 5.4.3 If, in exceptional circumstances, the **Data Holder** is highly likely to suffer serious economic damage from disclosure of a particular Identified Trade Secret to the User despite the Identified Trade Secrets Measures and the Identified Trade Secrets Measures having been implemented, the Data Holder may stop sharing the specific Identified Trade Secret in question.

They may do this only if they give a duly substantiated notice to the User and to the competent authority designated pursuant to Article 37 of the Data Act, with a copy being sent to the User.

However, the Data Holder must continue to share any Identified Trade Secrets other than those specific Identified Trade Secrets.

- 5.4.4 If the **User** fails to implement and maintain their Identified Trade Secrets Measures and if this failure is duly substantiated by the **Data Holder**, e.g. in a security audit report from an independent third party, the **Data Holder** is entitled to withhold or suspend the sharing of the specific Identified Trade Secrets, until the User has resolved the incident or other issue as described in the following two paragraphs.

In this case, the **Data Holder** must, without undue delay, give duly substantiated notice to the **User** and to the competent authority designated pursuant to Article 37 of the Data Act, with a copy sent to the **User**.

On receiving this notice, the **User** must address the incident/issue without undue delay (i.e., they must (i) assign the appropriate priority level to the incident/issue based on its potential detrimental impact and (ii) resolve the issue in consultation with the **Data Holder** and otherwise in accordance with the applicable proceedings as set out in **Appendix 4**).

- 5.4.5 Clause 5.4.2 does not entitle the **Data Holder** to terminate this contract.

Clauses 5.4.3 or 5.4.4 entitle the **Data Holder** to terminate his contract only with regard to the specific Identified Trade Secrets, and if:

(i) all the conditions of clause 5.4.3 or clause 5.4.4 have been met;

(ii) no resolution has been found by Parties after a reasonable period of time, despite an attempt to find an amicable solution, including after intervention by the competent authority designated under Article 37 of the Data Act; and

(iii) the **User** has not been awarded by a competent court with court decision obliging the **Data Holder** to make the Data available and there is no pending court proceedings for such a decision.

5.5 End of production and destruction of infringing goods

Without prejudice to other remedies available to the **Data Holder** in accordance with this contract or applicable law, if the **User** alters or removes technical protection measures applied by the **Data Holder** or does not maintain the technical and organisational measures taken by them in agreement with the **Data Holder** in accordance with clauses 5.2 and 5.3, the **Data Holder** may request the **User**:

- (a) to erase the data made available by the **Data Holder** or any copies thereof; and/or
- (b) end the production, offering or placing on the market or use of goods, derivative data or services produced on the basis of knowledge obtained through the Identified Trade Secrets, or the importation, export or storage of infringing goods for those purposes, and destroy any infringing goods, where there is a serious risk that the unlawful use of those data will cause significant harm to the **Data Holder** or the Trade Secret Holder or where such a measure would not be disproportionate in light of the interests of the Data Holder or the Trade Secret Holder; and/or
- (c) compensate a party suffering from the misuse or disclosure of such unlawfully accessed or used data.

5.6 Retention of Data protected as Identified Trade Secrets

5.6.1 Where under clauses 5.4.2, 5.4.3 and 5.4.4 the **Data Holder** exercises the right to withhold, suspend or in any other way end or refuse the data sharing to the **User**, it will need to ensure that the particular Data that is the subject matter of the exercising of such right is retained, so that said Data will be made available to the **User**:

- (a) once the appropriate protections are agreed and implemented, or
- (b) a binding decision by a competent authority or court is issued requiring the **Data Holder** to provide the Data to the **User**.

Above retention obligation ends where a competent authority or court in a binding decision allows the deletion of such retained data or where the contract terminates.

5.6.2 The **Data Holder** will bear the necessary costs for retaining the data under clause 5.6.1. However, the User will cover such costs in part or in full where and to the extent the withholding, suspension or refusal to provide data was caused by the User acting in bad faith.

6. Data use by the User

6.1 Permissible use and sharing of data

The **User** may use the Data made available by the **Data Holder** upon their request for any lawful purpose and/or share the Data freely subject to the limitations below.

6.2 Unauthorised use and sharing of data

6.1.1 The **User** undertakes not to engage in the following:

- (a) use the Data to develop a connected product that competes with the Product, nor share the Data with a third party with that intent;
- (b) use such Data to derive insights about the economic situation, assets and production methods of the manufacturer or, where applicable the **Data Holder**;
- (c) use coercive means to obtain access to Data or, for that purpose, abuse gaps in the **Data Holder's** technical infrastructure which is designed to protect the Data;
- (d) share the Data with a third-party considered as a gatekeeper under article 3 of Regulation (EU) 2022/1925;
- (e) use the Data they receive for any purposes that infringe EU law or applicable national law.

7 Data sharing upon the User's request with a Data Recipient

7.1 Making Data available to a Data Recipient

7.1.1 The Data, together with the relevant metadata necessary to interpret and use those Data, must be made available to a **Data Recipient** by the **Data Holder**, free of charge for the **User**, upon request presented by the **User** or a party acting on its behalf. The request can be made via e-mail (data-act@lemken.com).

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

In that respect, when the **User** is not the data subject, the **User** is responsible to provide proof for and must indicate to the **Data Holder**, in each request presented under the previous clause, the legal basis for processing under Article 6 of Regulation (EU) 2016/679 (and, where relevant, the applicable derogation under Article 9 of that Regulation and Article 5(3) of Directive (EU)2002/58) upon which the making available of personal data is requested.

7.1.3 The **Data Holder** must make the Data available to a **Data Recipient** with at least the same quality as they become available to the **Data Holder**, and in any case in a comprehensive, structured, commonly used and machine-readable format, easily and securely.

7.1.4 Where the **User** submits such a request, the **Data Holder** will agree with the **Data Recipient** the arrangements for making the Data available under fair, reasonable and non-discriminatory terms and in a transparent manner in accordance with Chapter III and Chapter IV of the Data Act.

- 7.1.5 The **User** acknowledges that a request under clause 7.1.1 cannot benefit a third party considered as 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 are not yet placed on the market.

8 Transfer of use and multiple users

8.1 Transfer of use

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

- 8.1.2 The **User** must:

- (a) unbind their machine from their iQblue account,
- (b) ensure that the **Subsequent User** cannot use the initial **User's** account,
- (c) notify the **Data Holder** of the transfer, if necessary.

- 8.1.3 The rights of the **Data Holder** to use Product Data or Related Services 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 before the transfer will continue after the transfer.

8.2 Multiple users

Where the **Initial User** grants a right to use of the Product and/or Related Service(s) to another party (**'Additional User'**) while retaining their quality as a user, the **Initial User** must ensure that the **Additional User** cannot use the **Initial User's** account.

8.3 Liability of the Initial User

If the **User's** failure to comply with their obligations under clauses 8.1 or 8.2 leads to the use and sharing of Product or Related Services Data by the **Data Holder** in the absence of a contract with the **Subsequent or Additional User**, the **User** will indemnify the **Data Holder** and hold them harmless in respect of any claims by the **Subsequent or Additional User** towards the **Data Holder** for the use of the Data after the transfer.

9 Date of application and duration of the Contract and Termination

9.1 Date of application and duration

- 9.1.1 This Contract takes immediate effect.

- 9.1.2 The Contract is concluded for an unspecified time, unless it expires or is terminated in accordance with clauses 9.2 and 9.2.

9.2 Termination

Irrespective of the contract period agreed under clause 9.1, this contract terminates:

- (a) upon the destruction of the Product or permanent discontinuation of the Related Service, or when the Product or Related Service is otherwise put out of service or loses its capacity to generate the Data in an irreversible manner; or
- (b) upon the **User** losing ownership of the Product or when the **User's** rights with regard to the Product under a rental, lease or similar agreement or the user's rights with regard to the related service come to an end; or
- (c) when both **Parties** so agree, with or without replacing this contract by a new contract.

Points (b) and (c) shall be without prejudice to the contract remaining in force between the **Data Holder** and any **Subsequent or Additional User**.

9.3 Effects of expiry and termination

- 9.3.1 Expiry of the contract period or termination of this Contract releases both **Parties** from their obligation to effect and to receive future performance but does not affect the rights and liabilities that have accrued up to the time of termination.

Expiry or termination does not affect any provision in this contract which is to operate even after the contract has come to an end, in particular clause 11.1 on confidentiality, clause 11.3 on applicable law and clause 11.6 on dispute resolution, which remain in full force and effect.

- 9.3.2 The termination or expiry of the Contract will have the following effects:

- (a) the **Data Holder** shall immediately cease to retrieve the Data generated or recorded as of the date of termination or expiry;
- (b) the **Data Holder** remains entitled to use and share the Data generated or recorded before the date of termination or expiry as specified in this Contract.

10 Remedies for breach of contract

10.1 Cases of non-performance

- 10.1.1 A non-performance of an obligation by a **Party** is fundamental to this Contract if:

- (a) strict compliance with the obligation is of the essence of this Contract, in particular because non-compliance would cause significant harm to the other **Party**, the **User** or other protected third parties; or

- (b) the non-performance substantially deprives the aggrieved **Party** of what it was entitled to expect under this Contract, unless the other Party did not foresee and could not reasonably have foreseen that result; or
- (c) the non-performance is intentional.

10.1.2 A **Party's** non-performance 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 take the impediment into account at the time of the conclusion of this Contract, or to have avoided or overcome the impediment or its consequences.

Where the impediment is only temporary the excuse has effect for the period during which the impediment exists. However, if the delay amounts to a fundamental non-performance, the other **Party** may treat it as such.

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

10.2 Remedies

10.2.1 In the case of a non-performance by a **Party**, the aggrieved **Party** shall have the remedies listed in the following clauses, without prejudice to any other remedies available under applicable law.

10.2.2 Remedies which are not incompatible may be cumulated.

10.2.3 A **Party** may not resort to any of the remedies to the extent that its own act or state of affairs caused the other **Party's** non-performance, such as where a shortcoming in its own data infrastructure did not allow the other **Party** to duly perform its obligations. A Party may also not rely on a claim for damages for loss suffered to the extent that it could have reduced the loss by taking reasonable steps.

10.2.4 Each **party** can:

- (a) request that the non-performing **Party** comply, without undue delay, with its obligations under this Contract, unless it would be unlawful or impossible or specific performance would cause the non-performing Party unreasonable effort or expense;
- (b) request that the non-performing **Party** erases Data accessed or used in violation of this Contract and any copies thereof;
- (c) claim damages for pecuniary damages caused to the aggrieved **Party** by the non-performance which is not excused under clause 10.1.2. The non-performing Party is liable only for damages which it foresaw or could reasonably have foreseen at the time of conclusion of this Contract as a likely

result of its non-performance, unless the non- performance was intentional or grossly negligent.

10.2.5 The **Data Holder** can also suspend the sharing of Data with the **User** until the **User** complies with their obligations, by giving a duly substantiated notice to the User without undue delay:

- (a) if the non-performance of **User's** obligations is fundamental;
- (b) provided that, where applicable, all other conditions set out in clause 5.4.3 are met.

10.2.6 The **User** can also:

- (a) suspend the permission given to the **Data Holder** under clauses 3 or the permission to limitations on User's rights agreed upon (if applicable), until the **Data Holder** complies with their obligations, unless this would foreseeably cause a detriment to the **Data Holder** that is obviously disproportionate in the light of the seriousness of the non-performance;
- (b) withdraw the permission given to the **Data Holder** under clauses 3 and/or their agreement to the limitations on User's rights agreed upon between the Parties, by giving notice to the **Data Holder**, if:
 - (i) the **Data Holder's** non-performance is fundamental; or
 - (ii) in the case of non-performance which is not fundamental, the **User** has given a notice fixing a reasonable period of time to remedy the breach and the period has lapsed without the **Data Holder** remedying the breach. If the period stated is too short, the **User** may nevertheless terminate the Contract, but only after a reasonable period from the time of the notice.

11 General Provision

11.1 Confidentiality

11.1.1 The following information will be considered confidential information:

- (a) information referring to the trade secrets, financial situation or any other aspect of the operations of the other party, unless the other Party has made this information public;
- (b) information referring to the **User** and any other protected third party, unless they have already made this information public;
- (c) information referring to the performance of this Contract and any disputes or other irregularities arising in the course of its performance;

11.1.2 Both **Parties** agree to take all reasonable measures to store securely and keep in full confidence the information referred to in clause 11.1.1. and not to disclose or make such information available to any third party unless one of the **Parties**

- (a) is under a legal obligation to disclose or make available the relevant information; or
- (b) has to disclose or make the relevant information available in order to fulfil its obligations under this Contract, and the other Party or the third party providing the confidential information or affected by its disclosure can reasonably be considered to have accepted this; or
- (c) has obtained the prior written consent of the other Party or the party providing the confidential information or affected by its disclosure.

11.1.3 These confidentiality obligations remain applicable after the termination of the Contract for a period of (specify the period).

11.1.4 These confidentiality obligations do not remove any more stringent obligations under (i) the Regulation (EU) 2016/679 (GDPR), (ii) the provisions implementing Directive 2002/58/EC or Directive (EU) 2016/943, or (iii) any other Union or Member State law (iv) (if applicable) clause 6 of this Contract.

11.2 Means of communication

Any notification or other communication required by this Contract must be in writing and may be delivered by hand, sent by prepaid post, or transmitted by electronic means, including email (data-act@lemken.com). Any such notice or communication will be deemed to have been received:

- (a) if delivered by hand, on the date of delivery;
- (b) if sent by prepaid post, on the third business day after posting;
- (c) if sent by electronic means, on the date of transmission, provided that no error message indicating failure to deliver has been received by the sender.

11.3 Applicable law

This Contract is governed by German law.

11.4 Entire Contract, modifications and severability

11.4.1 This Contract (together with the **information provided in the EU Data Act section on the website according to Art. 3 Data Act** as well as its appendices and any other documents referred to in this Contract, if available) constitutes the entire Contract between the Parties with respect to the subject matter of this Contract and supersedes all prior contracts or agreements and understandings of the Parties, oral and written, with respect to the subject matter of this Contract.

11.4.2 Any modification of this Contract shall be valid only if agreed to in writing, including in any electronic form that, in line with good commercial practices, is considered as fulfilling the requirements of a written document.

11.4.3 If any provision of this Contract is found to be void, invalid, voidable or unenforceable for whatever reason, and if this provision is severable from the remaining terms of the contract, these remaining provisions shall be unaffected by this and will continue to be valid and enforceable. Any resulting gaps or ambiguities in this Contract shall be dealt with according to clause 11.5.

11.5 Interpretation

11.5.1 This Contract is concluded by the **Parties** against the background of the Parties' rights and obligations under the Data Act. Any provision in this Contract must be interpreted so as to comply with the Data Act and other EU law 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.

11.5.2 If any gap or ambiguity in this Contract cannot be resolved in the way referred to by clause 11.5.1, this Contract shall be interpreted in the light of the rules of interpretation provided for by the applicable law (see clause 11.3) and, in any case, according to the principle of good faith and fair dealing.