

## End User License Terms

### End User License Agreement for “NEXT Machine Management” to which the “NEXT Farming” web portal provides access

#### 1 Parties to the Agreement

“NEXT Farming” is a web portal belonging to FarmFacts GmbH, Rennbahnstraße 7, D-84347 Pfarrkirchen, Germany („**FarmFacts**“). The web portal “NEXT Farming”, the use of which is subject to its own platform terms and conditions, grants you access to the “Additional Application” (as defined in B 1. of the NEXT Farming General Terms and Conditions) NEXT Machine Management (“**NMM**”). The NMM is the subject of this End User License Agreement (“**EULA**”) and is further specified in its product description. This End User License Agreement (“**EULA**”) is a legal agreement between you (a natural or legal person) and FarmFacts.

The offer of FarmFacts under this EULA is exclusively for entrepreneurs as defined in Sec. 13 Para. 1 German Civil Code (BGB), i.e. natural or legal persons, who or which, when entering into this EULA, act in exercise of their trade, business or profession. In the event that you are an employee or agent on behalf of another entity, this EULA is entered into between on one hand your employer or that entity and on the other hand FarmFacts. In such case, the term “you” will for the purposes of this EULA mean your employer or that entity, and you shall ensure that you have the authority to bind such employer or entity to this EULA.

#### 2 Subject Matter of the Agreement

##### 2.1 *Provision of Paid Services*

The subject matter of this agreement is the provision of the NMM functionalities to which the platform “NEXT Farming” provides access. NMM provides the following core functionalities:

- Receipt and visualization of data sent from agricultural machinery to the “agrirouter”:
  - Time-referenced position data
  - Time and geographically referenced data for specific DDIS of the ISOBUS standard
  - Time and geographically referenced data on the state of the machine sending the data
  - Additional data that exists in the dataset provided by the agrirouter.
- Processing of above data for reports
- Processing of this data for tasks within the application "NEXT Crop Planning and Documentation<sup>LIVE</sup>"
- Receipt, temporary storage, and sending of data packets via the agrirouter

Details of the NMM functionalities are set forth in the applicable product description.

You are required to comply with the following system requirements:

- Use of PC/laptop/tablet computer with a current internet browser version (for full functionality we recommend the use of Google Chrome).
- Internet connection (min. DSL 1000)
- Existing agrirouter account and connection

## **2.2** *Login Data and Passwords*

**2.2.1** Access to the NMM requires account registration on the “NEXT Farming” web portal. In order to register an account, you will be asked to provide certain contact information. By registering you warrant that the information you have provided is accurate. If your contact information or other information related to your account changes, you must notify us promptly and provide current information.

**2.2.2** To protect your account, you are obligated to keep your password and login details confidential. You will further immediately notify FarmFacts if you become aware of any loss or theft of your password or any other unauthorized use of your username and password (or related account). FarmFacts does not and will not inquire as to your password; the password is therefore also to be kept confidential from FarmFacts. You are liable for damages caused by third party use, unless such occurs without negligence on your part.

### **2.2.3** Should

- you provide your password or login details to any third party or;
- FarmFacts have reason to suspect third party use or misuse of your login details on the “NEXT Farming” web portal;
- FarmFacts have reason to suspect a contractual breach or unlawful conduct by you,

FarmFacts reserves the right to deny you further access to the NMM, either temporarily or permanently. FarmFacts is entitled to restrict your further usage of the NMM. Access to the “NEXT Farming” web portal and to the NMM will be restored as soon as the suspected illicit use or misuse has been ruled out and/or respective additional security measures (for e.g. amendments to login data) have been carried out. The right of FarmFacts to terminate this agreement in accordance with clause 9 of this EULA remains unaffected.

**2.2.4** The use of the full functionality of the NMM requires payment of the corresponding agreed fees.

### **3. Agrirouter Connectivity**

For the connection of agricultural machinery to NMM, the use of the connectivity platform agrirouter ([www.my-agrirouter.com](http://www.my-agrirouter.com)) is required. All agrirouter functionalities are provided by DKE GmbH & Co. KG, Albert-Einstein-Str. 42, 49076 Osnabrück (“**DKE**”) and are therefore outside FarmFacts’ control or responsibility. Use of the connectivity functionality of the agrirouter will require that you create an agrirouter account and, in the course of the registration conclude the required contract with DKE.

### **4. Grant of License**

FarmFacts grants you a personal, nonexclusive, nontransferable and non-sublicenseable license, conditioned on your continued compliance with the terms and conditions of this EULA and with any applicable product description, to access and use the NMM by your Authorized Users for purposes solely in the context of your own business operations. The use of the NMM beyond this purpose is not permitted. For the purpose of this EULA, "Authorized Users" means the natural persons authorized to access and use the NMM on your behalf. Unless agreed otherwise in writing, the Authorized Users may include employees, representatives, and agents, of the Licensee who have a legitimate interest to access and use the NMM your own behalf and under your control and responsibility in accordance with this EULA.

### **5. General restrictions**

You shall not modify, translate, reverse engineer, decompile, or disassemble the NMM as well as the accompanying documentation and information without prior written consent by FarmFacts, unless and to the extent permitted by applicable mandatory law. If you intend to decompile the NMM in order to obtain information that is necessary to establish interoperability of an independently created computer program with other programs, you shall inform FarmFacts in writing of its intention and FarmFacts shall, at its sole discretion, provide the necessary information within a reasonable period. Only if FarmFacts fails to provide the necessary information within a reasonable period, you shall be entitled to make use of your rights granted by Section 69e of the German Copyright Act (*Urheberrechtsgesetz*).

You may not change or remove any copyright and/or authorship notices attributable to the NMM.

You acknowledge and agree that FarmFacts does not monitor or police the content of communications or your data uploaded in or transmitted through the NMM and that FarmFacts shall not be responsible for the content of any such communications or transmissions. You shall use the NMM exclusively for authorized and legal purposes in accordance with all applicable laws. You agree not to load into the NMM any content or data which (i) is libelous, defamatory, obscene, pornographic, abusive, harassing or threatening; (ii) contains malicious code; (iii) violates the rights of others, such as data which infringes on any Intellectual Property Rights or violates any right of privacy or publicity; or (iv)

otherwise violates any applicable laws (including, without limitation, the laws and regulations governing unfair competition). FarmFacts reserves the right to delete, move or edit any of your data that it may determine, in its reasonable discretion, violates the EULA and/or applicable laws. You shall indemnify and hold harmless FarmFacts from and against all third party claims that result from a breach to this obligation by you, unless such breach occurred without negligence on your part.

## **6. Reservation of Rights and Ownership**

FarmFacts reserves all rights pertaining to the NMM not expressly granted to you in this EULA, and protected by copyright and other intellectual property laws and treaties. FarmFacts or its suppliers have and retain title, and all copyright and other intellectual property and commercial software rights.

## **7. NMM Service Level Commitment**

The NMM is available to the user with a monthly uptime percentage of 98,5%, excluding the times during which maintenance and repair work is carried out ("**Service Availability**"). Service Availability will be measured by FarmFacts at the service demarcation point from the FarmFacts data center to the general internet.

Access may be restricted during scheduled or unscheduled maintenance and repair work, security and capacity issues as well as incidences beyond FarmFacts control or without FarmFacts' fault (*Verschulden*) (e.g. force majeure, strike, civil disturbance, natural catastrophe, epidemic, disturbance of public communication networks, power blackout) that may lead to short-time disturbances or temporary suspension of NMM. Likewise FarmFacts may disable NMM for security reasons (e.g. if necessary to fix security vulnerabilities) or to prevent violations of your obligations under this EULA.

Where appropriate, FarmFacts will inform you about planned maintenance windows and other availability restrictions two (2) weeks prior to such event. Maintenance shall take place no more than four (4) times per month, and no more than maintenance windows of 24 hours in total per month will take place.

## **8. Warranty**

### **8.1 *Warranty and Rectification of Damages***

FarmFacts warrants that the NMM is free of material defects at the point of risk transmission and does not infringe on third party rights in the country of implementation. FarmFacts shall at its discretion remedy deficiencies through correction and repair (correction patch) or the installation of a new release/new version of the NMM. If a defect cannot be rectified through software repair or reinstallation, FarmFacts is entitled to provide workaround solutions. Where reasonable, these workaround solutions are to be deemed a rectification of deficiencies. Your statutory rights to abatement, rescission, damage claims, and reimbursement of expenses incurred remain unaffected.

## **8.2** *New Software Versions*

FarmFacts is entitled to replace the NMM with a new version/new release, provided that (i) the performance and functionality of the new version is equivalent to or better than the version/release being replaced, and (ii) the new version/release avoids disproportionate adjustments on your part (for e.g. usage of a different operating system, or usage of more technically advanced hardware). It is stipulated that additional training may be required due to eventual minor modifications to the structure of the NMM or its user interface, and that such training is not a disproportionate adjustment in terms of the above section.

## **8.3** *Defects in Title*

**8.3.1** Information and Indemnity: You must notify FarmFacts adequately and promptly if a judicial and/or extrajudicial claim is brought against you for alleged violation of copyright laws or other protected third party rights related to your authorized use of the NMM (“infringement proceedings”). FarmFacts shall defend or (at its option) settle any such third party claim conditioned on (i) your prompt provision of written notice of the claim to FarmFacts; (ii) FarmFacts having the sole right to conduct and control all judicial and extrajudicial defense activities in its discretion; (iii) your provision of reasonable assistance to FarmFacts in connection with the claim. You have the right to defend against any such claim should FarmFacts fail to act within thirty (30) days following receipt of notification regarding infringement proceedings. In this case, FarmFacts will support you in your defense. FarmFacts will indemnify you from reasonable attorney fees incurred by you and damages finally awarded against you due to infringement of copyright or other intellectual property third party rights arising from your authorized use of the NMM in accordance with the terms and conditions of this EULA.

**8.3.2** Rectification of Defects in Title: Following (a) a final and conclusive court decree determining an infringement of copyright or other intellectual property third party rights by FarmFacts, or (b) a preliminary injunction issued against you, or (c) a corresponding settlement with the third party, concluded with consent of FarmFacts and stipulating a breach of copyright or other intellectual property third party right by FarmFacts in conjunction with your use of the NMM

FarmFacts will promptly

- Acquire a license, at no further charge to you, for your future use of the NMM or, if this is not possible
- Adapt or replace the NMM so that it does not infringe third party rights, while substantially preserving its form and functionality.

## **8.4** *Limitation Period*

Subject to the provision of the following sentence 2 of this clause 8.4, your warranty claims, including claim for damages, shall become time-barred within one (1) year following initial access to the NMM pursuant to clause 8.1, and for deficiencies

arising from later versions/releases of the NMM upon initial deployment of the defective release/deficient version. Claims arising from the intentional or grossly negligent breach of obligations, injury to life, body or damage to health, fraudulent misrepresentation, as well as claims based on product liability laws are subject to statutory time limitation periods.

## **9 FarmFacts Liability**

### **9.1 *Unlimited Liability***

FarmFacts is liable in accordance with statutory law for all damages on account of an intentional or grossly negligent breach of its obligations as set out in this EULA, injury to life, body, or damage to health, fraudulent misrepresentation, and as defined and prescribed by the German Product Liability Act.

### **9.2 *Limited Liability***

For damages resulting from a negligent breach of a substantial contractual obligation (cardinal obligation), FarmFacts liability is limited to the compensation of losses foreseeable and typical for licensing agreements of this nature. Substantial contractual obligations are such obligations of FarmFacts on which you are usually and legitimately entitled to rely on as a precondition for due performance of your contract with FarmFacts. Liability for minor negligence is otherwise expressly excluded.

### **9.3 *Extension of Limited Liability in this Clause 9***

The foregoing limits and exclusions of liability shall also apply with reference to the liability of FarmFacts legal representatives or vicarious agents. Insofar as FarmFacts liability is excluded or limited according to the provisions above, this shall also apply to the personal liability of FarmFacts staff members and vicarious agents.

## **10. Termination**

The parties have the right to extraordinary termination for good cause. Good cause is deemed to exist, in particular, when a permanent and justified suspension exists as set out in clause 2.2.3, and a grace period has been set in vain by the respective party. In the case of termination or expiration of this EULA, your right to use the NMM shall cease.

## **11. Right of Modification**

FarmFacts may, upon reasonable notice in textual form, at any time modify this EULA as well as the services outlined in the product description, while maintaining the fundamental overall functionality of the NMM. FarmFacts will, in the event of any modifications to the EULA, notify you of the amendment and clearly indicate the amendments that have been made ("**notification of change**"). Should you not object to the notification of change upon 4 weeks following your receipt of such notification of change, your acquiescence and further use of the NMM shall be

considered acceptance of each such modification or amendment and the modified EULA and/or product description shall supersede and replace any previous version. FarmFacts shall advise you of the consequences of failure to object in the notification of change. If you object to the notification of change within due time, the contractual relationship will continue to be governed by the unmodified version of the EULA; this EULA shall terminate automatically and shall be deemed terminated by you with one month's notice to the end of the month.

## **12. Other Stipulations**

### **12.1** *Data Processing Agreement with FarmFacts*

If the data produced or imported into NMM contains personal data, in particular, personal data of employees or data subjects otherwise affiliated with you, FarmFacts shall process such personal data in compliance with applicable data protection law and according to the conditions laid down in a separate process on the NEXT Farming platform.

### **12.2** *Data Processing Agreement with SAP*

Please note that the data processing regarding the agrirouter, which is carried out by affiliated companies of DKE's subcontractor SAP Deutschland SE & Co. KG will require signature of the SAP Standard Contract Clauses data processing agreement, which shall be provided to you by DKE.

FarmFacts reserves the right to restrict your use of NMM until the above agreement has been signed.

**12.3** This EULA (including all supplements and additional agreements to this EULA) constitutes, together with the product description, the entire agreement between you and FarmFacts with regards to the use of the NMM. It takes precedence over all prior or contemporaneous, whether verbal or in writing, notifications, proposals, or assurances regarding the "NMM" or any other subject matter of this EULA. This EULA is not assignable, transferable or sublicensable by you except with FarmFacts' prior written consent.

**12.4** This EULA, as well as all legal relations between you and FarmFacts in regards to the use of NMM, shall be subject exclusively to the laws of the Federal Republic of Germany, without regard to conflict of law provisions under a different governing law or the UN Convention of the International Sale of Goods (CISG). Provided that you are a merchant, a legal entity under public law, a special asset body under public law, or do not have a place of general jurisdiction in the Federal Republic of Germany, the exclusive place of jurisdiction is Munich (Landgericht München I). The aforesaid shall not apply where the applicable mandatory law states a different exclusive jurisdiction.

**12.5** Should individual provisions of this EULA be invalid or incomplete, the validity of the other provisions remains in full force and effect.