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Data Use Agreement

between the data holder and the user of a connected product

1. Contracting parties

1.1 This data use agreement (hereinafter referred to as **this Agreement**) is entered into between

Grimme Landmaschinenfabrik SE & Co. KG, represented by its personally liable partner Grimme Landmaschinenfabrik Beteiligungs SE, which is represented by the Executive Board which is represented by Mr. Christoph Grimme and Mr. Richard Weiß, Hunteburger Straße 32, 49401 Damme, Germany (hereinafter referred to as the **data holder**)

and

the user.

Together the **parties** are designated as such, and individually they are designated as **party**.

1.2 This Agreement applies to the following connected products: [name the products] (hereinafter also referred to as **the product(s)**);

1.2.1 The user declares that it is the owner of the product(s) or is contractually entitled, on the basis of a rental contract, lease contract or comparable contract, or of a plurality of such contracts, to use the product(s) and/or to make use of the service(s) on the basis of a service contract.

1.2.2 The user represents that it will provide all necessary documents upon the data holder's first request in order to prove that it is a user within the meaning of clause 1.2.1.

2. Product data

2.1 The subject of this Agreement is all product data within the meaning of the Data Act (hereinafter also referred to as: **data as well as non-personal data**).

2.2 A schedule of this data can be found in Annex x [data list "Classification of data"].

3. Data use by the data holder

3.1 Agreed use of non-personal data by the data holder

3.1.1 The user permits the data holder to use non-personal data for the following purposes:

a) the performance of a contract with the user or activities related to such a contract, e.g. for invoicing and the production and provision of reports or analyses;

b) the monitoring and maintenance of the functional capability and safety of the product and for the purpose of quality management;

c) improving the functionality of each product and/or service offered by the data holder;

d) offering customer support, handling warranty and guarantee cases or comparable services, and assessing the legal relationship of the user, data holder or third party to the product;

e) the development of new products and/or services, including the training of Artificial Intelligence by the data holder or a third party acting on behalf of the data holder, cooperatively with others or through a company set up specifically for this purpose, inter alia by the data holder;

f) the sharing of data with third parties at the request of the user, whereby the third party inter alia owes remuneration for this;

g) the aggregation of the data with other data or the derivation of data for any legitimate purpose, including in particular with the objective of selling such data for a fee or making it available to third parties in any other way, subject to the proviso that: such data does not allow the third parties to derive from the dataset the underlying data that the product has transmitted to the data holder.

[h) How is product data currently used by the data holder? Are these purposes already covered? If not, add here if possible.

3.1.2 The data holder shall not use data for the following purposes:

a) to derive therefrom knowledge about the economic situation, assets and production methods of the user or to deal with them in any other way likely to jeopardise the competitiveness of the user in the market in which it is active;

b) in any other way that clearly is substantially contrary to the legitimate interests of the user, in particular if the data are commercially relevant trade secrets or intellectual property rights of the user.

None of the permitted uses under clause 3.1.1 of this Agreement may be interpreted as covering data whose use is prohibited for certain or all purposes under this clause.

3.1.3 The data holder shall adopt such protective measures in respect of the data as can reasonably be expected of it on the basis of the circumstances of the individual case, the taking into account of the state of the art in science and technology, the possible extent of the harm to the user in the event of loss of the data or unauthorised accessing of the data by third parties, as well as the costs associated with such protective measures.

3.2 Protection of personal data

The data holder shall not use personal data, pass it on to third parties or process it in any other way, unless this is permitted under the General Data Protection Regulation (GDPR) and, where applicable, the Data Protection Directive for Electronic Communications (ePrivacy Directive).

3.3 Use of data processing services and sharing of non-personal data with third parties – include if relevant.

3.3.1 The data holder is entitled to share non-personal data with third parties if:

a) the data are used by the third party for one of the purposes specified in clause 3.1.1 of this Agreement [there may be other possibilities, but extension of 3.1.1 tends to be more expedient] and

b) the data holder subjects the third party to the following contractual obligation:

i) the requirement to use the data only for a purpose permitted under clause 3.1.1 and a prohibition on using the data for a purpose that would be impermissible under clause 3.1.2 of this Agreement;

ii) to adopt protective measures in respect of the data which at least correspond to those under clause 3.1.3 of this Agreement, and

iii) not to share the data if the user has not consented to such a course of action generally or by way of a specific agreement, unless the sharing of the data is necessary in order to safeguard the interests of the user or to fulfil the obligations arising from this Agreement or from any agreement between the user and the third party.

If the user consents to sharing by the third party, the data holder shall subject the third party with which it is sharing the data to an obligation to subject fourth parties with which the third party is in turn sharing the data to obligations in accordance with clause 3.3.1 b).

3.3.2 The data holder shall be entitled to use the services of data processing services for the purpose of the uses specified in clause 3.1.1 of this Agreement and the third parties shall be subject to the obligations under clause 3.3.2 of this Agreement.

4. The user's right of access to data and user rights under the Data Act

4.1 Direct data access by the user

The user shall have access to the data directly on the product.

4.2 Data access at the request of the user

4.2.1 The data holder shall make available to the user the data – as well as all metadata relevant to the interpretation of these data – that the data holder is required to make available to the user at the user's request or at the request of a person acting on its behalf under the Data Act. For this purpose , the form attached as Annex x or a substantially comparable form must be used and sent to the data holder.

4.2.2 The data holder, the user or the data recipient may use the services of a third party, including a data intermediary under the DGA, in order to assert the data access rights under clause 4.2 of this Agreement. Such third parties shall not be deemed to be data

recipients within the meaning of the Data Act unless they use the data for their own purposes. If a party makes use of such a third party, it shall inform the other party of this in advance in writing.

4.3 Data quality, data access and support

4.3.1 The data holder must provide the user with data of at least the same quality as received by the data holder. At a minimum, data must be made available in a comprehensible and structured manner and in a common machine-readable format.

4.3.2 The user shall receive access to the data from the data holder as follows:

a) easily and securely by accessing myGrimme or a physical interface

b) without significant delay, as soon as the data is available to the data holder, and

c) at an appropriate frequency (approximately 10 seconds).

4.3.3 The data holder must provide the user free of charge with the support/customer service which is necessary so that the user can exercise the rights under clause 4 of this Agreement in a meaningful way and which the user cannot be expected to obtain from a third party if this would make the rights of the user impossible or gives rise to outlay and costs for the user that are appreciably disproportionate to the outlay and costs for the data holder. This shall apply in particular to information regarding the origin of the data and rights of third parties thereto, e.g. such rights arising from the GDPR, which the data holder has readily available to it.

4.3.4 If the user becomes aware of a putative breach of clauses 4.3.1 – 4.3.3 of this Agreement or if the data made available are not able to be ready by the user, the user shall provide the data holder with a detailed description of the putative breach.

If the data holder fails to remedy the breach within a reasonable period of time, this shall be considered a serious breach of an obligation, with the consequence that the user can have recourse to the legal remedies specified in clause 7 of this Agreement. If the user believes that its right of access under clause 4 of this Agreement has been infringed, it shall be entitled to lodge a complaint with the competent authority.

If any of the specifications relating to the data quality, the access conditions or the customer support are insufficient to meet the requirements set forth in clause 4 of this

Agreement, the parties shall enter into negotiations and adjust the characteristics such that they are able to meet these requirements. This shall also apply if the circumstances change so that the specifications cannot be achieved or can be achieved only with disproportionate outlay.

The data holder shall be entitled to unilaterally adjust specifications of the data, the access conditions and the support, provided that this is done in good faith, if this is objectively necessary. This is especially the case when such adjustment is made necessary by technical changes to the product or changes to the data infrastructure of the data holder. In this case, the data holder must inform the user of this immediately and in advance, unless, on an exceptional basis, an immediate adjustment is required, in particular for reasons of data security.

4.4 Data sharing at the request of the user

4.4.1 At the request of the user or a third party acting on behalf of the user, the data holder must make data available to the data recipient together with the relevant metadata that are required. For this purpose , the form attached as Annex x or a substantially comparable form must be used and sent to the data holder.

4.4.2 If the user addresses such a request to the data holder, the data holder shall reach the agreements with the data recipient regarding the sharing of data that are necessary for this purpose. In this context, the data holder shall comply with the provisions of the Data Act in respect of such agreements. The user is aware that these requests cannot be carried out in favour of a recipient which is a gatekeeper within the meaning of Article 3 of the Digital Markets Act. The same applies for the testing of new products or services that are not yet being offered on the market.

4.5 Compliance with data protection law and other legal provisions

If the user is not the data subject, the following shall apply:

a) The data holder may not disclose to the user or a data recipient data that are personal data of the data subject, unless a legal basis within the meaning of Article 6 of the GDPR exists;

b) The user may share or use and process such data which represent personal data of the data subject only insofar as it is permitted to do so under the GDPR.

When making any request under this Agreement by which it requests the communication of product data, the user must inform the data holder of the legal basis under Article 6 of the GDPR or the other applicable legal provisions.

4.6 Protection of trade secrets

4.6.1 Applicability of the provisions regarding the protection of trade secrets

4.6.1.1 If the user requests access to data, the parties must agree on confidentiality measures if the data to be made available contain trade secrets within the meaning of Section 2 of the German Act on the Protection of Trade Secrets, the owner of which is the data holder or a third party.

4.6.1.2 These confidentiality measures shall apply to all trade secrets.

4.6.1.3 The confidentiality measures shall continue to apply without any time limit even after the termination of this Agreement, unless the parties expressly agree to said confidentiality measures coming to an end.

4.6.2 Confidentiality measures by the user

4.6.2.1 The user must adopt the confidentiality measures listed in Annex x in order to protect trade secrets.

4.6.2.2 These confidentiality measures serve the purpose of preventing unlawful disclosures of trade secrets without discriminating against individual data recipients or preventing access to data, even if the latter include trade secrets.

4.6.3 Confidentiality measures of the data holder

Before making trade secrets available to the user, the data holder shall apply all reasonable technical and organisational confidentiality measures. In doing so, the data holder must ensure that the safety of the product is maintained and that it is in compliance with EU law and/or the applicable national law.

4.6.4 Rights of the data holder

4.6.4.1 At the request of the user, the data holder shall be obliged to make data available, including any trade secrets contained therein, unless this Agreement makes provision to the contrary.

4.6.4.2 If the confidentiality measures are not sufficient to appropriately protect trade secrets, the data holder shall inform the user of this, specifying in detail the reasons for the unsuitability of the confidentiality measures. Specifically, the data holder may unilaterally impose appropriate confidentiality measures with regard to individual trade secrets, or request that appropriate measures be agreed to by the user. If the user does not declare its agreement to these confidentiality measures within a reasonable period of time, the data holder shall be entitled, in the first instance, not to continue to share with the user the data which contains such trade secrets, whereby the data holder shall be obliged to inform the competent supervisory authority of this and to provide the user with a copy of the information notice without delay.

4.6.4.3 If in an individual case there is a high probability that the data holder will suffer significant economic damage if it shares certain trade secrets with the user, the data holder shall, by way of exception, be entitled not to share the data with the user. If the data holder considers that this precondition is fulfilled, it shall inform the user, stating the reasons, that, in the first instance, it will not continue to share with the user the data which contains such trade secrets, whereby the data holder shall be obliged to inform the competent supervisory authority of this and to provide the user with a copy of the information notice without delay.

4.6.4.4 If the user does not implement or does not maintain the confidentiality measures required in accordance herewith, the data holder shall be entitled no longer to share trade secrets with the user until the user is (again) in compliance with its obligations. The data holder shall inform the user of this, specifying the reasons in detail, and shall also be obliged to inform the competent supervisory authority thereof and to provide the user with a copy of the information notice without delay.

4.6.5 Third parties

4.6.5.1 Clause 4.5 of this Agreement applies mutatis mutandis if one or more secret holders are third parties.

4.6.5.2 Pursuant to clause 4.5 of this Agreement, the data holder declares that it has all necessary permissions from third parties whose trade secrets are affected by this Agreement.

4.7 Prohibited use or sharing by the user

4.7.1 Except for the restrictions specified below, the user may use and share data without restriction.

4.7.2 The following actions are prohibited for the user:

a) using the data or sharing it with third parties in order to develop a product that is in competition with the product;

b) using the data to obtain knowledge about the economic situation, assets and production methods of the manufacturer or data holder;

c) applying coercive measures to gain access to data or exploiting security loopholes in the data holder's technical infrastructure for this purpose;

d) sharing the data with a third party which is a gatekeeper within the meaning of Article 3 of the Digital Markets Act;

e) using the data for a purpose that violates EU law or the applicable national law.

4.7.3 The data holder shall be entitled to implement the necessary technical protective measures necessary to prevent unauthorised access to data and to ensure compliance with this Agreement. The user declares that it agrees that it will not remove or modify such protective measures unless the data holder has given its prior consent thereto.

5. Passing on of the product and plurality of users

5.1 Passing on of the product

5.1.1 If the user transfers ownership of the product or the right to use the product permanently or temporarily to another natural or legal person and thereby loses its status as a user to the other person (hereinafter for short: **new user**), the rights and obligations of the parties shall be governed by clause 5.1 of this Agreement.

5.1.2 The User must do its utmost to transfer to the new user, from the time of the transfer of rights, the rights and obligations under this Agreement also. To this end, it must use the draft data use agreement attached as Annex x, whereby the data holder hereby already consents to such an agreement. In addition, the user must immediately inform the data holder about the transfer of rights and name the new user, and also provide the data holder with a copy of the fully completed data use agreement between the new user and the data holder (cf. Annex x). If the new user refuses to enter into such an agreement with the user, the user shall also inform the data holder of this immediately so that the data holder is enabled not to use the data of the new user and not to make them available under clause 4 of this Agreement.

5.1.3 The right of the data holder to use data generated prior to the transfer of rights described in clause 5.1.1 of this Agreement shall not be affected by the transfer of rights.

5.1.4 If the user does not comply with its obligations specified in clause 5.1.2 of this Agreement and if this results in the data holder using or sharing data relating to the new user without there being a data use agreement with the new user, the user shall indemnify and hold the data holder harmless from all claims on the part of the new user based on the unlawful use or sharing of data.

5.2 Plurality of users

5.2.1 If the user grants a third party the right to use the product in such a way that this third party can itself be classed as a user within the meaning of the Data Act (hereinafter also: "**further user**"), the rights and obligations shall be governed by clause 5.2.2 of this Agreement.

5.2.2 The User shall include in an agreement between itself and the further user provisions which substantially correspond to the content of this Agreement, in particular with regard to clauses 3 and 4 of this Agreement. The user shall be the primary point of contact for the further user if the further user asserts claims under Articles 4 and 5 of the Data Act or claims based on the use and sharing of the data by the data holder under this Agreement. The user shall inform the data holder immediately about all such interactions with the further user and shall cooperate collaboratively with the data holder in connection with the satisfaction of the claim.

6. Term and Termination

6.1 Term

6.1.1 This Agreement shall apply from the time at which the user has given its consent to it.

6.1.2 This agreement is entered into for an indefinite period of time. The Agreement may be terminated in particular on the basis of the grounds specified in clause 6.2.1 of this Agreement.

6.2 Termination

6.2.1 This Agreement shall come to an end if

a) the product is destroyed or the ability to transmit data to the data holder has been irreversibly cancelled;

b) the user loses ownership of the product or terminates any rental, lease or other comparable contract relating to the product;

c) if both parties so agree;

d) one of the parties breaches its obligations and the other party therefore gives notice of termination.

6.2.2 Termination of the Agreement on the basis of a ground for termination pursuant to clause 6.2.1 of this Agreement shall entail the following consequences:

a) the data holder shall immediately cease using the data transmitted to it;

b) the data holder shall remain entitled to use and share data in accordance with clause 3.1.1 of this Agreement that was transmitted to it prior to the termination date.

7. Liability

7.1 Non-performance

7.1.1 The failure by a party to perform an obligation arising from this Agreement (non-performance) shall be deemed to be serious if

a) strict compliance with the obligation is a material obligation of this Agreement;

b) the non-performance deprives the other party of what it may legitimately expect under this Agreement;

c) the non-performance occurs intentionally.

7.1.2 A party shall not be responsible for its non-performance if it proves that this has occurred due to a circumstance outside of its sphere of influence and responsibility, and that it could not reasonably have been expected to adopt measures to prevent the occurrence of this circumstance or to avoid its consequences.

If the impediment is by its nature temporary, the party shall not be responsible for the non-performance only until the impediment has ceased. However, if the period is so significant that it is equivalent to a permanent impediment, this circumstance shall be deemed to be a permanent impediment.

The non-performing party must ensure that it immediately notifies the other party of the circumstance and its effects on the performance obligations as soon as it becomes aware, or should have become aware, of this circumstance.

7.2 Rights in the event of non-performance

7.2.1 In the event of non-performance pursuant to clause 7.1 of this Agreement, the party affected shall have the rights set out below:

a) the right to require the non-performing party to immediately comply with its performance obligation under this Agreement;

b) the right for the data holder, contrary to clause 4 of this Agreement, not to make data available to the user or no longer to make it available to the user, in which case the data holder shall immediately notify the user of this decision in writing and inform the competent authority pursuant to the Data Act thereof;

c) the right for the user to revoke the permission under clause 3 of this Agreement, unless this results in a disadvantage for the data holder which is disproportionate to the severity of its non-performance;

d) the right for the user to give notice of termination of the permission under clause 3 of this Agreement by a written declaration made to the data holder if

i) the data holder has committed a serious breach of an obligation or

ii) in the event of non-performance which does not pass the threshold for a serious breach of an obligation, if the user has asked the data holder to comply with the obligation within a reasonable period of time, once that period has expired without result.

e) the right to require the non-performing party

i) to delete any data it has accessed or used in breach of this Agreement, including any copies of such data;

ii) to cease the production, offering for sale and marketing of products, derived data or services that have been unlawfully manufactured or developed on the basis of such data or the knowledge derived therefrom, if any of these acts or the interaction thereof is likely to cause significant damage to the affected party or to the owner of a trade secret and the interests of the affected party or the owner of a trade secret outweigh those of the other party.

f) the right to claim damages, unless responsibility is excluded pursuant to clause 7.1.2 of this Agreement. Insofar as the breach of an obligation has not been committed intentionally or as a result of gross negligence and it is not a cardinal obligation for the purposes of this Agreement, the liability for damages shall be limited to damages that were foreseeable at the time at which the Agreement was entered into.

7.2.2 A party shall be prohibited from asserting any of the rights set forth in clause 7.2.1 of this Agreement to the extent that the party's own conduct has caused the other party's non-performance. This shall apply in particular if a party's own data infrastructure makes it impossible or significantly more difficult for another party to comply with an obligation. The claiming of damages shall also be excluded if and to the extent that a party could have prevented them by means of reasonable damage-mitigation measures.

7.2.3 In the event of a culpable breach of the obligations specified in this Agreement[, in particular of the obligation to protect confidentiality], the debtor undertakes to pay a reasonable contractual penalty to the creditor. The amount of the contractual penalty shall

be determined by the creditor. The debtor may have the amount of the contractual penalty reviewed by the competent court.

8. General provisions

8.1 Confidential Information

8.1.1 The parties agree that the following types of information shall be classified as confidential information:

- Information that constitutes trade secrets or relates to a party's trade secrets;
- Information relating to the financial and/or economic situation of a party or its business activities;
- [Information relating to the user or to another protected third party;]
- Information relating to the performance of this Agreement and to any disputes or disagreements arising from or in connection with the performance.

Information shall not be deemed to be confidential information if the party to which such information relates has made the information public or if it is generally known.

8.1.2 The Parties agree that they will adopt all reasonable measures to securely keep or store confidential information in such a way that its confidentiality is maintained. In particular, they undertake not to pass on confidential information to third parties, not to communicate it to third parties and not to make it available to third parties, unless a party

- is required to do so by law or on the basis of an order of a public authority or a court;
- is obliged to disclose or make available this information in order to comply with the obligations under this Agreement and can legitimately assume that the affected party is in agreement with this;
- obtains the prior written consent of the affected party to do so.

8.1.3 Any stricter statutory obligations shall remain unaffected by these confidentiality obligations.

8.2 Applicable law

This Agreement shall be governed by the substantive law of the Federal Republic of Germany, with the UN Convention on Contracts for the International Sale of Goods being excluded.

8.3 Dispute resolution

For all disputes arising from or in connection with this Agreement, the competent courts for Damme shall have exclusive jurisdiction.

9. Severability clause

Should any provision of this Agreement be invalid, ineffective or unenforceable for any reason whatsoever, this shall not affect the effectiveness of the remaining provisions of these Agreements.

Damme, on	Damme, on .....
for the data holder:	for the user:
.....	.....
Grimme	[●]

Annexes

Data list "Classification of data"

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