

## **End User License Agreement for the free native “NEXT Farming app”**

### **1 Parties to the Agreement**

The “NEXT Farming app” is a software belonging to FarmFacts GmbH, Rennbahnstraße 9, D-84347 Pfarrkirchen, Germany („**FarmFacts**“). This End User License Agreement (“**EULA**”) is a legal agreement between you (a natural or legal person) and FarmFacts. The following FarmFacts offer is exclusively for entrepreneurs, i.e. persons who use the product within the scope of their commercial or freelance professional activities. In the event that you are a natural person, this EULA is entered into between your employer and FarmFacts. In such case, the term “You” will mean your employer for the purposes of this EULA, and you are responsible for ensuring that you have the authority to bind such entity to this agreement.

### **2 Subject Matter of the Agreement**

#### **2.1 “Next Farming app”**

The subject matter of this agreement is FarmFacts provision of the “NEXT Farming app” for download. The use of the app functionality requires a synchronization with the main system. You are able to activate the synchronization functionality as well as further functionalities within the NEXT Farming platform at the prices displayed therein. This provides the app with the complementary functionality of using NEXT Farming content in offline mode.

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

**2.2.1** The download of the NEXT Farming app is free of charge and provides access to other fee-based FarmFacts services. Access to these fee-based services is subject to a separate EULA and requires account registration on the “NEXT Farming” web portal as well as a corresponding activation.

**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.

FarmFacts cannot and will not be liable for any loss or damage arising from your failure to comply with these obligations, unless such occurs without negligence on your part.

**2.2.3** Should you provide your password or login details to any third party or; should FarmFacts have reason to suspect third party use or misuse of your login details on the NEXT Farming web portal or; should FarmFacts have reason to suspect a contractual breach or unlawful conduct by you, FarmFacts reserves the right to deny you further access as set forth in clause 7, either temporarily or permanently, and is entitled to extraordinarily terminate the license agreement and delete your registration as an authorized user. FarmFacts is entitled to restrict your further usage of the “NEXT Farming app”. Access to the “NEXT Farming app” will be restored as soon as the suspected illicit use or misuse has been ruled out and/or respective additional security measures (for eg. amendments to login data) have been carried out.

**2.3** *Download of the NEXT Farming app via App Store / Google Play*

The NEXT Farming app is available for download from the App Store/ Google Play.

### **3. Grant of License**

FarmFacts grants you a personal, nonexclusive, royalty-free, nontransferable and non-sublicenseable license, conditioned on your continued compliance with the terms and conditions of this EULA, to use the “NEXT Farming app” for purposes solely in the context of your own business operations. The use of the “NEXT Farming app” beyond this purpose is not permitted.

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

FarmFacts reserves all rights pertaining to the “NEXT Farming app” 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.

### **5. Warranty**

#### **5.1** *Warranty*

FarmFacts ensures that the the “NEXT Farming app” has the functions as described above at the point of risk transmission. This description of characteristics under no circumstances represents or implies a warranty commitment.

## 5.2 *New Software Versions*

FarmFacts is entitled to replace the “NEXT Farming app” 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 eg. 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 “NEXT Farming app” or its user interface, and that such training is not a disproportionate adjustment in terms of the above section.

## 5.3 **Defects in Title**

**5.3.1 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 “NEXT Farming app” (“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 as set out in sentence 3.

FarmFacts will pay 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 “NEXT Farming app” basic module in accordance with the terms and conditions of this agreement.

**5.3.2 Rectification of Defects in Title:** Immediately following (a) a final and conclusive court decree determining an infringement of copyright or other intellectual property third party rights, or (b) a preliminary injunction issued against you, or (c) a FarmFacts breach of copyright or other intellectual property third party right in conjunction with your use of the “NEXT Farming app”,

FarmFacts will promptly

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

#### **5.4 Limitation Period**

Subject to the provision of the following sentence 2 of this clause 5.4, your warranty claims, including claim for damages, shall become time-barred within one (1) year following initial access to the “NEXT Farming app” pursuant to clause 5.1, and for deficiencies arising from later versions/releases of the “NEXT Farming app” 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.

### **6 FarmFacts Liability**

#### **6.1 *Unlimited Liability***

FarmFacts is liable 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.

Any liability for simple or slight negligence is excluded.

#### **6.2 Extension of Liability**

The foregoing limits and exclusions of liability as set out in clause 6 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.

### **7. 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.

In the case of termination or expiration of this EULA, your right to use the “NEXT Farming app” shall cease.

## **8. Right of Modification**

FarmFacts reserves the right at any time to modify this EULA as well as the services outlined in the product description upon reasonable notice of their intention to do so.

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 modified and/or extended version of this EULA upon 6 weeks following such notification, your acquiescence shall be deemed acceptance of each such modification or amendment and the modified EULA shall supersede and replace any previous version. FarmFacts shall advise you of the consequences of failure to object in the notification of change. If consent is withheld, 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.

## **9. Other Stipulations**

**9.1** This EULA (including all supplements and additional agreements to this agreement) constitutes the entire agreement between you and FarmFacts with regards to the use of the “NEXT Farming app”. It takes precedence over all prior or contemporaneous, whether verbal or in writing, notifications, proposals, or assurances regarding the “NEXT Farming app” or any other subject matter of this EULA.

**9.2** This EULA, as well as all legal relations between you and FarmFacts in regards to the use of the “NEXT Farming app”, 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 law states a different exclusive jurisdiction.

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