

End User License Terms

End User License Agreement for paid services (“Additional Applications”) 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 9, 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 paid services. These paid services are the subject of this End User License Agreement (“**EULA**”) and are further specified in their respective product description. This End User License Agreement (“**EULA**”) is a legal agreement between you (a natural or legal person) and FarmFacts. The FarmFacts offer under this EULA 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 *Provision of Paid Services*

The subject matter of this agreement is the provision of paid tools and functionalities to which the platform “NEXT Farming” provides access (the “**Additional Applications**”). The Additional Application “NEXT Fertilisation” provides the following core functionalities:

- Determination of fertiliser demand (nitrogen, phosphorus, potash) based on the new German Fertiliser Ordinance (Düngeverordnung June 2017)
- Determination at individual field level
- Result as PDF analysis

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)

2.2 *Login Data and Passwords*

2.2.1 Access to the Additional Applications requires account registration on the “NEXT Farming” web portal. The use of the full functionality of the Additional Applications requires payment of the corresponding fees.

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; 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 8, 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 Additional Application. Access to the "NEXT Farming" web portal and to the Additional Application 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.

3. 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, to use the Additional Application for purposes solely in the context of your own business operations. The use of the Additional Application beyond this purpose is not permitted.

4. Reservation of Rights and Ownership

FarmFacts reserves all rights pertaining to the Additional Application 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. Additional Application Service Level Commitment

The Additional Application is available to the user with a monthly uptime percentage of 98%, excluding the times during which maintenance and repair work is carried out. Access may be restricted during necessary maintenance and repair work. FarmFacts will strive to inform the user about planned maintenance windows in good time.

6. Warranty

6.1 *Warranty and Rectification of Damages*

FarmFacts warrants that the Additional Application 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 Additional Application. 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.

6.2 *New Software Versions*

FarmFacts is entitled to replace the Additional Application 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 Additional Application or its user interface, and that such training is not a disproportionate adjustment in terms of the above section.

6.3 *Defects in Title*

6.3.1 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 Additional Application (“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 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 Additional Application in accordance with the terms and conditions of this EULA.

6.3.2 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, 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 Additional Application,

FarmFacts will promptly

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

6.4 *Limitation Period*

Subject to the provision of the following sentence 2 of this clause 6.4, your warranty claims, including claim for damages, shall become time-barred within one (1) year following initial access to the Additional Application pursuant to clause 6.1, and for deficiencies arising from later versions/releases of the Additional Application 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.

7 **FarmFacts Liability**

7.1 *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.

7.2 *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. Liability for minor negligence is otherwise expressly excluded.

7.3 *Extension of Limited Liability in this Clause 7*

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.

8. 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 FarmFacts. In the case of termination or expiration of this EULA, your right to use the Additional Application shall cease.

9. Right of Modification

FarmFacts may, upon reasonable notice, at any time modify this EULA as well as the services outlined in the product description, while maintaining the fundamental overall functionality of the Additional Application. 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 months notice to the end of the month.

10. Other Stipulations

- 10.1** This EULA (including all supplements and additional agreements to this EULA) constitutes the entire agreement between you and FarmFacts with regards to the use of the Additional Application. 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.
- 10.2** This EULA, as well as all legal relations between you and FarmFacts in regards to the use of the Additional Application, 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.
- 10.3** Should individual provisions of this EULA be invalid or incomplete, the validity of the other provisions remains in full force and effect.