Contracts 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

Sony Corporation, a Japanese corporation, having its principal place of business at 7-1, Konan 1-chome, Minato-ku, Tokyo 108-0075, Japan*)* (‘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: by agreeing to the terms and conditions provided by clicking ‘OK’ for the use of the Product (defined below) and/or Related Services (defined below) (‘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’): product identified in the data provision request form separately submitted to the Data Holder by the User;

(b) the following related service(s) (the ‘Related Service(s)’): services identified in the data provision request form separately submitted to the Data Holder by the User.

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 the Related Service(s) 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’) consist of any readily available Product Data or Related Service(s) Data within the meaning of the Data Act. The Data consist of the Data listed in https://www.sony.lu/fr/electronics/support/articles/00356769, with a description of the type or nature, estimated volume, collection frequency, storage location and duration of retention of the Data. If, during this contract, new data are made available to the User, https://www.sony.lu/fr/electronics/support/articles/00356769 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 for the purposes including, but not limited to, as follows (provided that, if the User agrees to a broader scope of use of non-personal Data by the Data Holder in other agreements than this contract, no provision of this contract shall reduce such scope of use agreed upon in those other agreements):

(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 with third parties the Data and which is non-personal data, 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;

iii) other purposes the Data Holder deems appropriate and

(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; and

iii) to apply the protective measures required under clause 3.4.1;

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 must be made accessible to the User by the Data Holder, at the request of the User or a party acting on their behalf. The request can be made at https://services.sony.lu/supportmvc/fr/Contact/datarequestpersonaluse or https://services.sony.lu/supportmvc/fr/Contact/datarequest3rdparty.

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 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. The User warrants that the data subject' e-mail address indicated in such request is accurate and that the data subject consented to the sharing of its personal data from the Data Holder to the User.

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 as well as the relevant metadata necessary to interpret and use those Data.

The Data Holder must specify the Data characteristics and inform the User of these specifications separately in writing.

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 must receive access to the Data:

(a) easily and securely by the Data being transmitted or by access to the Data where it is stored, either of which shall separately be designated by the Data Holder; and

(if applicable) (b) without undue delay after the Data becomes available to the Data Holder.

The Data Holder must specify these access arrangements and inform the User of these specifications separately in writing.

4.2.4 The Data Holder must provide to the User, at no additional cost, the means and information strictly necessary for accessing the Data in accordance with article 4 of the Data Act.

This includes, in particular, the provision of information readily available to the Data Holder 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 separately in writing, 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 the 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 Data Holder does not do so, it is considered as a fundamental breach and the User may invoke clause 12 of this contract (remedies for non-performance). 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, 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.

The Data Holder must in this case give notice of the change to the User without undue delay after deciding on the change. 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 with a reasonable period of time 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. *(if the Data made available by the Data Holder upon request of the User must be protected as trade secrets)* 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 The Data protected as trade secrets (hereafter referred to as 'Identified Trade Secrets') and the identity of the Trade Secret Holder(s) are separately identified by the Data Holder in writing , which forms an integral part of this Contract.

5.1.3 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.

5.1.4 If, during this Contract, new data are made available to the User that is protected as trade secrets as set forth in clause 5.1.1, the Data Holder will separately identify in writing.

Until the Trade Secret has been amended, 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 The User must apply the protective measures separately identified by the Data Holder in writing (hereinafter: 'Identified Trade Secrets U Measures').

5.2.3 In order to verify if and to what extent the User has implemented and is maintaining the Identified Trade Secrets U Measures, the User agrees to either (i) annually obtain, at User's expense, a security conformity assessment audit report from an independent third party chosen by the User, or (ii) to annually allow a security conformity assessment audit from the Data Holder. Such security audit report in (i) above must demonstrate User's compliance with availability, integrity, confidentiality principles as further described in the Trade Secrets as applicable at that time. The results of the audit report in (i) above will be submitted to both Parties without undue delay.

5.3 Protective measures taken by the Data Holder

5.3.1 The Data Holder may apply any appropriate technical and organisational protection measures to preserve the confidentiality of the shared and otherwise disclosed Identified Trade Secrets (hereinafter: 'Identified Trade Secrets DH 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 DH 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 U Measures and the Identified Trade Secrets DH 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, at the Data Holder's discretion, that additional protection measures be taken. If no additional measures are taken, 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 U Measures and the Identified Trade Secrets DH 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 U 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 immediately (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 a separate writing by the Data Holder).

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 *(insert 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**.**

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 using the form specified in https://services.sony.lu/supportmvc/fr/Contact/datarequestpersonaluse or https://services.sony.lu/supportmvc/fr/Contact/datarequest3rdparty.

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 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 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 Limitations on User's rights

The User agrees to inform separately in writing the Data Holder of the purpose, nature and duration of the limitation of the User's right to use or share the Data, and the part of the Data concerned by such limitations, if the User desires to put such limitations.

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10 Transfer of use and multiple users

10.1.1 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.

10.1.2 The User must:

(if use of the Product and/or Service involves a new Contract between the Subsequent User and the Data Holder (for example, via creation of a new account)

(a) ensure that the Subsequent User cannot use the initial User's account,

(b) notify the Data Holder of the transfer.

(*alternatively, if use of the product and/or related service does not involve a new Contract between the Subsequent User and the Data Holder*)

(a) use their best efforts to assign to the Subsequent User, as of the transfer date, their rights and obligations as a User and the Data Holder agrees hereby in advance to such assignment;

(b) without undue delay notify the Data Holder of the transfer and the identity of the Subsequent User and provide the Data Holder with a copy of the assignment; if absent an assignment under point (a), the User must without undue delay notify the Data Holder of the refusal, in which case the Data Holder may not use the Subsequent User's Data or make them available to third parties under clause 3.

10.1.3 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.

10.2 Multiple users

10.2.1 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 Parties undertake to comply with the requirements set out in this clause.

10.2.2 The User must:

(if the use of the Product and/or Related Service involves a new Contract between the Additional User and the Data Holder (for example, via creation of a new account) ensure that the Additional User cannot use the Initial User's account.

(alternatively, if the use of the Product and/or Related Service does not involve a new Contract between the Additional User and the Data Holder)

(a) include in the Contract between the User and the Additional User, as of the transfer date, on behalf of the Data Holder, provisions substantially reflecting the content of this contract and in particular clause 3 on the use and sharing of the Product and/or Related Service Data by the Data Holder ('Flow Down Provisions');

(b) act as a first contact point for the Additional User if the Additional User makes a request under Articles 4 or 5 of the Data Act or a claim regarding the use or making

available of the Data by the Data Holder under this contract. The Data Holder should be notified of any request or claim in that regard without undue delay and the Parties must collaborate to address any request or claim.

10.3 Liability of the Initial User

If the User's failure to comply with their obligations under clauses 10.1 or 10.2 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.

11 Date of application and duration of the Contract and Termination

11.1 Date of application and duration

11.1.1 This Contract takes immediate effect.

11.1.2 The Contract is concluded for unspecified time, unless it expires or is terminated in accordance with clauses 11.2 and 12.2.

11.2 Termination

Irrespective of the contract period agreed under clause 11.1, 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.

11.3 Effects of expiry and termination

11.3.1 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 13.1 on confidentiality, clause 13.3 on applicable law and clause 13.6 on dispute resolution, which remain in full force and effect.

11.3.2 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.

12 Remedies for breach of contract

12.1 Cases of non-performance

12.1.1 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.

12.1.2 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 nonperforming 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.

12.2 Remedies

12.2.1 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.

12.2.2 Remedies which are not incompatible may be cumulated.

12.2.3 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.

12.2.4 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 nonperformance which is not excused under clause 12.1.2. 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 nonperformance was intentional or grossly negligent.

12.2.5 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:

(i) if the non-performance of User's obligations is fundamental;

(ii) *(if applicable)* provided that, where applicable, all other conditions set out in clause 5.4.3 are met.

12.2.6 The User can also:

(a) suspend the permission given to the Data Holder under clauses 3 or the limitations made under clause 8, 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 in clause 8, 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.

13 General Provision

13.1 Confidentiality

13.1.1 The following information disclosed by the Data Holder to the User will be considered confidential information:

(a) information referring to the trade secrets, financial situation or any other aspect of the operations of the Data Holder, unless the Data Holder has made this information public;

(b) information referring to 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;

(d) the existence of this Contract and the identity of the Parties;

(e) the terms and conditions of this Contract.

13.1.2 The User agrees to take all reasonable measures to store securely and keep in full confidence the information referred to in clause 13.1.1. and not to disclose or make such information available to any third party unless the User

(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; or

(c) has obtained the prior written consent of the Data Holder or the party providing the confidential information or affected by its disclosure.

13.1.3 These confidentiality obligations remain applicable after the termination of the Contract for a period of five years.

13.1.4 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.

13.2 Means of communication

Any notification or other communication required by this Contract must be in writing and may be delivered by hand, or transmitted by electronic means, including email, provided that the sender retains proof of sending to the addresses separately designated in writing.

Any such notice or communication will be deemed to have been received:

(a) if delivered by hand, on the date of delivery;

(b)

(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.

13.3 Applicable law

This Contract is governed by the law of Japan, unless the User is a consumer in which case the law of where the User resides applies.

13.4 Entire Contract, modifications and severability

13.4.1 This Contract (together with its appendices and any other documents referred to in this Contract) 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.

13.4.2 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.

13.4.3 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 13.5**.**

13.5 Interpretation

13.5.1 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.

13.5.2 If any gap or ambiguity in this Contract cannot be resolved in the way referred to by clause 13.5.1, this Contract shall be interpreted in the light of the rules of interpretation provided for by the applicable law (see clause 13.3) and, in any case, according to the principle of good faith and fair dealing.

13.6 Dispute settlement

13.6.1 The Parties agree to use their best efforts to resolve disputes amicably and, before bringing a case before a court or tribunal, to submit their dispute to a competent dispute settlement body according to Article 10 of the Data Act.

13.6.2 Submission of a dispute to a dispute settlement body in accordance with clause 13.6.1. does, however, not affect the User's right to lodge a complaint with the national competent authority designated in accordance with Article 37 of the Data Act, or the right of any Party to seek an effective remedy before a court or tribunal in a Member State.

13.6.3 If the user is a business: for any dispute that cannot be settled in accordance with clause 13.6.1, the courts of Switzerland, canton Zurich will, to the extent legally possible, have exclusive jurisdiction to hear the case.