Agreement pursuant to Article 4 Data Act

Preamble

This agreement governs the conditions for the making available and use of data in connection with connected products. The Parties agree on the arrangements for making data available and their use in accordance with the provisions of the Data Act, and in particular pursuant to Article 4 Data Act.

1. Definitions

1.1 „**Data Act**“ means Regulation (EU) 2023/2854.

1.2 **„Data Holder**“ means Elli Mobility GmbH, Karl-Liebknecht-Str. 32, 10178 Berlin, Deutschland.

1.3 „**Third Party**“ means any natural or legal person who is neither the Data Holder nor the User.

1.4 „**GDPR**“ means Regulation (EU) 2016/679.

1.5 „**Charging Data**“ means readily available data pursuant to Article 2(17) Data Act, including the relevant metadata. It includes all data generated for charging products and charging services.

1.6 „**Trade Secret**“ has the meaning given in Article 2(1) of Directive (EU) 2016/943.

1.7 „**GIS-Portal**“ refers to the digital infrastructure through which the making available and access to data within the meaning of the Data Act is facilitated.

1.8 „**User**“ means a user as defined in Article 2(12) Data Act.

1.9 „**Party**“ or „**Parties**“ means the Data Holder and/or the User.

1.10 „**Security-Relevant Data**“ means Charging Data where, pursuant to Article 4(2) Data Act, disclosure would impair compliance with statutory safety requirements applicable to the charging and could therefore result in serious adverse effects on the health or safety of natural persons.

1.11 „**Agreement**“ means this agreement pursuant to Article 4 Data Act.

Unless otherwise defined herein, the definitions set out in the Data Act shall apply.

2. Offer and Conclusion of the Agreement

2.1 The Data Holder shall make a binding offer to the User for the conclusion of the Agreement via the GIS-Portal.

2.2 The Agreement between the Parties shall be concluded upon the User’s confirmation of these contractual terms and by clicking the corresponding button on the GIS-Portal (“EU Data Act Portal”).

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3. General Obligations of the User

The User undertakes to take all reasonable measures to ensure that the following requirements are met throughout the term of the Agreement:

3.1 The User shall either be the owner of the connected product or be contractually entitled to use the connected product and/or to access the related services under a contractual arrangement for the period during which data is requested pursuant to the Data Act. Upon request by the Data Holder, the User shall provide reasonable information and documentation to demonstrate ownership or contractual entitlement.

3.2 The provision of connected products or related services by the User to Third Parties shall be at the User's own responsibility. In the event of a change in the User's status (e.g. resale, termination of a lease), the User shall ensure in a reasonable manner that unauthorized continued use by Third Parties is prevented. In particular, it must be ensured that a new User cannot access Charging Data pursuant to the Data Act unless duly authorized. This may include, among other measures, the deletion of relevant user accounts.

4. Use of Charging Data by the User

4.1 The User may only use the Charging Data in accordance with applicable legal provisions (in particular the Data Act and the GDPR) and the terms set out in the Agreement.

4.2 In particular, the User is prohibited from,

(a) pursuant to Article 4(10) Data Act, using the Charging Data to develop a connected product that competes with the connected product from which the Charging Data originate, or from sharing the Charging Data with a Third Party with that intent, or using the Charging Data to derive insights into the economic situation, assets, or production methods of the manufacturer or, where applicable, the Data Holder;

(b) pursuant to Article 4(11) Data Act, employ coercive means or abuse gaps in the technical infrastructure of the Data Holder which is designed to protect the data in order to obtain access to data;

(c) making the Charging Data available to any undertaking designated as a gatekeeper pursuant to Article 3 of Regulation (EU) 2022/1925.

5. Confidentiality of Trade Secrets

5.1 The Data Holder is entitled to designate specific data or categories of data as Trade Secrets at any time. Such designation shall be made by appropriate marking, in particular within the data dictionary of the GIS-Portal. The data dictionary is accessible via the following link: „eu-data-act.drivesomethinggreater.com/mt/en/service/data-dictionary".

5.2 The User undertakes to treat all Charging Data designated by the Data Holder pursuant to clause 5.1 as Trade Secrets with strict confidentiality.

5.3 The User shall be informed in an appropriate manner of reasonable and specific protective measures to be taken. Such information shall be deemed an integral and binding part of the Agreement.

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5.4 The obligation of confidentiality shall apply indefinitely, regardless of termination or other cessation of the Agreement, as long as the relevant information is not publicly known or accessible.

6. Security-Relevant Data

6.1 Where Security-Relevant Data within the meaning of Article 4(2) Data Act is concerned, such data shall not be made available to the User (Article 4(1) Data Act) or to Third Parties (Article 5(1) Data Act).

7. Duration and Termination

7.1 The Agreement shall remain in effect for the duration of the data provision, unless terminated in accordance with clause 7.2.

7.2 Either Party may terminate the Agreement at any time by giving notice pursuant to clause 8 of the Agreement.

7.3 The termination or other cessation of the Agreement shall have the following effects:

7.3.1 From the time of termination, the Data Holder shall cease to provide new Charging Data. The User may continue to access Charging Data made available prior to termination within the timeframe specified in connection with the data provision, in accordance with the terms set out on the GIS-Portal.

7.3.2 All provisions under clause 5 of the Agreement shall remain fully effective with respect to Charging Data designated as Trade Secrets.

8. Notices

8.1 Any notice to be given by one Party to the other in connection with the Agreement shall be made in text form. The central contact address for the Data Holder is: „euda-support@cariad.technology“.

8.2 Each Party shall promptly inform the other Party of any changes to the information relevant under the Agreement. The Data Holder shall make all relevant information concerning itself available via the GIS-Portal.

9. Limitation of Liability

9.1 The Data Holder shall be liable - regardless of the legal basis - for damages arising from intentional or grossly negligent breaches of duty by the Data Holder or its legal representatives or vicarious agents, without limitation.

9.2 In the event of a breach of duty due to ordinary negligence by the Data Holder or its legal representatives or vicarious agents, the Data Holder shall be liable without limitation only for damages resulting from injury to life, body, or health. For other breaches of duty due to ordinary negligence, the Data Holder shall only be liable for the violation of essential contractual obligations, and such liability shall be limited to damages that are foreseeable and typical for the contract at the time of its conclusion. Essential contractual obligations are those whose fulfilment is necessary for the proper execution of the Agreement, whose breach endangers the achievement of the contractual purpose, and on whose compliance the User regularly relies.

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9.3 The liability of the Parties under mandatory statutory provisions on product liability, including the EU Product Liability Directive (Directive (EU) 2024/2853) and comparable legal provisions, shall remain unaffected.

10. Final Provisions

10.1 If the User is a consumer, the statutory provisions on jurisdiction shall apply to all disputes arising from or in connection with the Agreement.

10.2 If the User is a merchant, a legal entity under public law, or a special fund under public law, the exclusive place of jurisdiction for all disputes arising from or in connection with the Agreement shall be Berlin, Germany. The same jurisdiction shall apply if the User does not have a general place of jurisdiction in within Germany, or if the User is sued and has moved their residence or habitual place of abode outside Germany after the conclusion of the Agreement, or if their residence or habitual place of abode is unknown at the time the action is brought.

10.3 The Agreement shall be governed by German law, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG). The application of mandatory provisions that restrict the choice of law shall remain unaffected. Notwithstanding the application of German law, Users who are consumers shall benefit from the protection of mandatory provisions of the law of the country in which the consumer has their habitual residence, such as consumer protection laws.

10.4 Article 10 Data Act (Dispute Settlement) shall remain unaffected.

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