**Contract on data access and use between data holder and user under the Data Act**

1.  **Parties and Products/Related Services**

1.1     **Parties to this Contract**

This contract (this 'Contract') on the access to and use of data is made between

Kobelco Construction Machinery Co., Ltd., a company having its principal place of business at 2-1, Itsukaichikou 2-chome, Saeki-ku, Hiroshima Japan (the 'Data Holder')

and

any party that identifies itself as the user within the meaning of the Regulation (EU) 2023/2854 (the 'Data Act') and declares its assent to the terms of this Contract by clicking on the consent button to this Contract (the 'User')

referred to in this Contract collectively as the 'Parties' and individually as the 'Party'. This Contract constitutes an integral part of the Terms and Conditions for each Products (hereinafter defined) and Related Services (hereinafter defined) (the 'T&C') and is legally binding upon the parties to T&C. The terms and conditions set forth in this Contract have the same force and effect as the other terms and conditions of T&C. If there is any conflict or inconsistency between the terms of T&C and the terms of this Contract, the latter prevails.

1.2     **Products/Related Services**

This Contract is made with regard to:

(a)  the following connected products (the 'Products') set forth in **Appendix 1**.

(b)  the following related services (the 'Related Services') set forth in **Appendix 1**.

The User declares that they are either the owner of the Products or contractually entitled to use the Products under a rent, lease or similar contract and/or to receive the Related Services 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 this Contract**

The data covered by this Contract consists of any readily available product data within the meaning of the Data Act ('Product Data') or related service data within the meaning of the Data Act ('Related Service Data') within the meaning of the Data Act, and includes both non-personal and personal data (the 'Data').

The Data Holder lists the Data in **Appendix 2**, with a description of the type or nature, collection frequency, storage location and duration of retention of the Data.

If, during this Contract, data other than those specified in **Appendix 2** must be made available to the User, **Appendix 2** 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 only for the purposes agreed with the User as follows:

(a)     performing an agreement with the User or activities related to such agreement;

(b)    providing support, warranty, guarantee or similar activities or assessing the User's, the Data Holder's or a third party's claims related to the Products or Related Services;

(c)    monitoring and maintaining the functioning, safety and security of the Products or Related Services and ensuring quality control;

(d)    maintaining and improving the functioning of, or manufacturing, supplying, or offering any product or related service offered by the Data Holder;

(e)    developing new products or services by the Data Holder, by third parties acting on behalf of the Data Holder, or in collaboration with other parties; and

(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.

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 Products or Related Services 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 in contradiction with this clause, and the Data Holder undertakes to ensure, by appropriate contractual, organisational and technical means, that no third party, within 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, the purposes permitted under clause 3.1.1;

   iii)    performing agreements with its customer or activities related to such agreement;

   iv)    providing support, warranty, guarantee or similar activities or assessing claims related to the Data by a customer, the third party or any other parties;

   v)    monitoring and maintaining the functioning, safety and security of its products or services and ensuring quality control;

   vi)    maintaining and improving the functioning of, or manufacturing, supplying, or offering any product or related service offered by the third party;

   vii)    developing new products or services by the third party, by any other parties acting on behalf of the third party, or in collaboration with any other parties; and

   viii)    aggregating these Data with other data or creating derived data, for any lawful purposes, including with the aim of selling or otherwise making available such aggregated or derived data to any other parties, 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)    not disclose the Data to any other third party without prior written consent of the User, unless required for management in accordance with previous clause 3.2.1 (a) or

requested under the law; and

iii) to cause confidentiality obligations.

3.2.2    Notwithstanding clause 3.2.1, the Data Holder may use processing services, such as cloud computing services (including infrastructure as a service, platform as a service and software as a service), hosting services, or similar services to achieve, for their own account and under their own responsibility, the agreed purposes under clause 3.1.1. The third parties may also use such services to achieve, for their own account and under their own responsibility, the agreed purposes under clause 3.2.1 (a).

**3.3    Irrevocable Use and Sharing of Data**

The User hereby grants to the Data Holder an irrevocable license under the right to use and share the Data in accordance with clauses 3.1 and 3.2.

**3.4    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, only if there is 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).

**3.5    Protection measures taken by the Data Holder**

3.5.1    The Data Holder undertakes to apply the protection measures to prevent Data loss and unauthorised access to the Data that are reasonable in the circumstances, considering the state of science and technology, potential harm suffered by the User and the costs associated with the protective measures.

**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 using the form specified in **Appendix 3** in the manner designated by the Data Holder. For the purpose of verifying that the request is made by the User, the Data Holder shall not require to provide any information beyond what is necessary. If the request is made by a party acting on behalf of the User, evidence of their mandate shall be attached to the request.

4.1.2    When the User is not the data subject, the Data Holder shall make the Data which is personal data only available to the User, 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.

**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.

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 ('Data Recipient') and such services may be offered by a provider considered as a gatekeeper under article 3 of Regulation (EU) 2022/1925, unless they process the Data for its own business purposes.

4.2.2    The User must receive access to the requested Data:

(a) easily and securely;

(b) without undue delay;

4.2.3    In order to meet the requirements of clauses 4.2.1 and 4.2.2, the Data Holder specifies these access arrangements in **Appendix 2**.

4.2.4    The Data Holder must provide to the User, at no additional cost, the  information 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 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.

4.2.5    The Data Holder must not 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.

**4.3    Feedback loops**

If the User identifies an incident related to the Data covered by this Contract, to the requirements of clauses 4.2.1 or 4.2.2 or of **Appendix 2** on the Data characteristics 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.

**4.4    Unilateral changes by the Data Holder**

The Data Holder may unilaterally change the specifications of the Data characteristics or the access arrangements stated in  **Appendix 2**, if this is objectively justified by the normal 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. Any change must meet the requirements of clauses 4.2.1 and 4.2.2.

To the extent permitted by applicable law, the Data Holder must give a prior notice of the change to the User before the change takes effect. 4

### 5. Protection of trade secrets

**5.1 Applicability of trade secret arrangements**

5.1.1 Under this Contract, the following terms have the following meanings:

(a) 'Identified Trade Secret' means Data which is protected as trade secrets (as defined in Article 2(1) of the Trade Secrets Directive (EU) 2016/943), held by the Trade Secrets Holder, and designated as Data protected as trade secrets in **Appendix 4**.

(b) 'Trade Secret Holder' means the Data Holder and/or another trade secret holder (as defined in Article 2(2) of said Directive) as identified in **Appendix 4**.

5.1.2 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 Identified Trade Secret.

5.1.3 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, at the request of the Data Holder, **Appendix 5** will be amended accordingly.

Until **Appendix 5** has been amended and agreed between the Parties, the Data Holder may temporarily suspend the sharing of the new data protected as trade secrets in accordance with the procedure under the Data Act.

5.1.4 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 set out in **Appendix 5** (the 'User's Protection Measures').

5.2.2 If the User is permitted to make the Identified Trade Secret available to a third party, the User must inform the Data Holder without undue delay of the fact that Identified Trade Secret has been or will be made available to a third party, specify the Identified Trade Secret in question, and give the Data Holder the identity, place of establishment and contact details of the third party.

5.2.3 The Data Holder may, or may have external auditors, during reasonable business hours and upon reasonable prior notice, audit the User's compliance with clause 5.2 of this Contract and the User's operational and security policies and procedures, including, but not limited to, the User's physical site security and information security, confidentiality practices and standards with respect to the trade secrets.

**5.3 Protective measures taken by the Trade Secret Holder**

5.3.1 The Data Holder may apply the measures set out in **Appendix 5** and the measures increased or agreed pursuant to clauses 5.4.1(a) and 5.4.1(b) to preserve the confidentiality of the Identified Trade Secret (the 'Data Holder's Protection Measures').

5.3.2 The User undertakes not to alter or remove the Data Holder's Protection Measures, unless otherwise agreed by the Parties.

**5.4 Obligation to share and right to refuse, withhold or terminate**

5.4.1 Where the User's Protection Measures and the Data Holder's Protection 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 their obligations under this Contract and does not negatively affect the User; or

(b)　request that additional protection measures be agreed. If there is no agreement on the necessary additional measures after a reasonable period of time and the Data Holder reasonably believes the additional measures are effective to protect the Identified Trade Secret as trade secret, the Data Holder may suspend the sharing of the specific Identified Trade Secret. In such case, the Data Holder must give notice to the User. The notice must be duly substantiated, indicate which measures have not been agreed, and be given in writing without undue delay. The Data Holder must continue to share any Identified Trade Secret other than the specific Identified Trade Secret.

5.4.2　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 User's Protection Measures and the Data Holder's Protection Measures having been implemented, the Data Holder may refuse or suspend sharing the specific Identified Trade Secret in question.

The Data Holder must give a duly substantiated notice without undue delay to the User and to the competent authority designated pursuant to Article 37 of the Data Act.

However, the Data Holder must continue to share any Data protected as trade secrets other than those specific Identified Trade Secret.

5.4.3　If the Data Holder reasonably believes that the User failed or will fail to implement and maintain their User's Protection Measures, the Data Holder is entitled to withhold or suspend the sharing of the specific Identified Trade Secret, until the User has resolved the non-compliance and risk of non-compliance.

In this case, the Data Holder must, without undue delay, give duly substantiated notice in writing to the User and to the competent authority designated pursuant to Article 37 of the Data Act.

5.4.4　Clause 5.4.1 does not entitle the Data Holder to terminate this Contract.

Clause 5.4.2 or 5.4.3 entitles the Data Holder to terminate this Contract only with regard to the specific Identified Trade Secrets, and if:

(i) all the conditions of clause 5.4.2 or clause 5.4.3 have been met;

(ii) no resolution has been found by Parties after 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 Identified Trade Secret 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:

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(a)     to erase the data made available by the Data Holder or any copies thereof;

(b)     to 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; and/or

(c)     to 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 the Data Holder exercises the right to refuse, withhold or suspend the Identified Trade Secret sharing to the User in accordance with clauses 5.4.1, 5.4.2 and 5.4.3, the Data Holder must need to ensure that the particular Identified Trade Secret that is the subject matter of the exercising of such right is retained, so that said Identified Trade Secret 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 said Identified Trade Secret to the User.

Above retention obligation ends where a competent authority or court in a binding decision allows the deletion of said Identified Trade Secret or where this Contract terminates.

5.6.2     The Data Holder must bear the necessary costs for retaining the data under clause 5.6.1. However, the User must cover such costs to the extent the withholding or suspension of Data sharing occurs in accordance with clause 5.4.3**.**

**6.    Data use by the User in the case where the Data is made available by the Data Holder upon request by the User**

**6.1     Permissible use and sharing of data**

6.1.1     The User may use the Data made available by the Data Holder upon their request for any lawful purpose and/or, to the extent that the Data is transferred to or can be retrieved by the User, share the Data freely subject to the limitations in clause 6.2.

**6.2     Unauthorised use and sharing of data and restrictions for security reasons**

6.2.1     The User undertakes not to engage in the following:

(a)     use the Data to develop a connected product that competes with the Products, nor share the Data with a third party for that purpose;

(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 or abuse gaps in the Data Holder's technical infrastructure which is designed to protect the Data in order to obtain access to Data;

(d)     share the Data with a third-party considered as a gatekeeper under Article 3 of Regulation (EU) 2022/1925.

6.2.2     Furthermore and in accordance with Article 4 (2) of the Data Act, the User and the Data Holder agree to restrict or prohibit any processing including accessing, using and/or further sharing of the Data, which could undermine security requirements for the Products, as laid down by

applicable EU law and member state law  resulting in a serious effect on the health, safety or security of natural persons.

### 7. Data sharing upon the User's request with a Data Recipient

**7.1     Making Data available to a Data Recipient**

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 **Appendix 4** in the manner designated by the Data Holder. For the purpose of verifying that the request is made by the User, the Data Holder shall not require to provide any information beyond what is necessary. If the request is made by a party acting on behalf of the User, evidence of their mandate shall be attached to the request.

7.1.1    When the User is not the data subject, the Data Holder shall make the Data which is personal data only available to a third party following a request of the User, 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.

7.1.2    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.

7.1.3    Where the User submits such a request, the Data Holder will agree with the Data Recipient the arrangements for making the Data available in accordance with Chapter III and Chapter IV of the Data Act.

7.1.4    The User acknowledges that a request under clause 7.1.1 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.

7.1.5    The User acknowledges that the third party shall only process the Data made available to them pursuant to clause 7.1.1 for the purposes and under the conditions agreed with the User. The Data Holder may not be held liable towards the User for the absence of such an agreement between the User and the third party.

7.1.6    The User acknowledges that the Data Holder shall not be liable for any damages caused by Data Recipient's using the Data made available to the Data Recipient.

### 8. Limitations on User's rights

The User agrees that the Data Holder may limit the User's use of the Data or restrict the User's sharing of the Data with third parties.

9. **Compensation to the User**

The Data Holder shall not compensate the User including for the limitations of the User's rights in accordance with clause 8.

10. **Transfer of use and multiple users**

**10.1 Transfer of use**

Where the User contractually transfers (i) ownership of the Products, or (ii) their temporary rights to use the Products, and/or (ii) their rights to receive Related Services to a subsequent person ('Subsequent User') and loses the status of a user after the transfer, the Parties undertake to comply with the requirements set out in this clause. The initial User must notify the Data Holder of the transfer, and provide the necessary contact details of the Subsequent User, so the Data Holder can conclude a contract with them regarding the Data Holder's use of the data. The rights of the Data Holder to use the Data generated prior to a transfer will not be affected by the transfer; i.e. the rights and obligations relating to the Data before the transfer under this Contract will continue after the transfer.

**10.2 Multiple users**

Where the initial User grants a right to use of the Products and/or Related Services 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.

10.2.1 The Additional User's agreement to the use and sharing of Data by the Data Holder.

In the contract between the initial User and the Additional User, the initial User includes, on behalf of the Data Holder, clauses substantially reflecting the content of this Contract between the initial User and the Data Holder and in particular clause 3 on the use and sharing of the Data by the Data Holder, for the duration of the temporary use of the Products and/or Related Services.

10.2.2 Data Access by the Additional User

The initial User acts as a first contact point for the Additional User, if the Additional User makes a data access request under Articles 4 or 5 of the Data Act. The Data Holder must collaborate with the Initial User to address the request.

**10.3 Liability of the Initial User**

To the extent that the initial User's failure to comply with their obligations under clauses 10.1 and 10.2 leads to the use and sharing of Product or Related Service Data by the Data Holder in the absence of a contract with the Subsequent or Additional User, the initial User will indemnify the Data Holder in respect of any claims for damages by the Subsequent or Additional User towards the Data Holder for their use of the Data after the transfer or temporary use of the Products and/or Related Services.

11. **Date of application, duration of the contract and termination**

**11.1 Date of application and duration**

11.1.1 This Contract takes effect upon the earlier of the execution date or the date the User commences use of the Products and/or Related Services after September 12, 2025.

11.1.2 This Contract is concluded for the same period as the duration of the T&C, subject to any grounds for expiry or termination under this Contract.

**11.2 Termination**

Irrespective of the contract period agreed under clause 11.1, this Contract terminates:

(a) upon the destruction of the Products or permanent discontinuation of the Related Services, or when the Products or Related Services lose their capacity to generate the Data in an irreversible manner;

(b) upon the User losing ownership of the Products or when the User's rights with regard to the Products under a rental, lease or similar agreement or the user's rights with regard to the Related Services come to an end; or

(c) when both Parties so agree.

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 this Contract has come to an end, in particular clause 13.1 on confidentiality, clause 13.4 on applicable law and clause 13.6 on dispute settlement.

11.3.2 The termination or expiry of this Contract will have the following effects:

(a) the Data Holder shall cease to retrieve the Data generated or recorded as of the date of termination or expiry; and

(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) the non-performance substantially deprives the aggrieved Party of what it was entitled to expect under this Contract, unless the non-performing Party did not foresee and could not reasonably have foreseen that result; or

(b) it is clear from the circumstances that the non-performing Party's future performance cannot be relied on.

12.1.2 The non-performing Party's non-performance is excused if it is due to an impediment beyond its control and that the non-performing Party 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. If the impediment is temporary, the excuse has effect for the period during which the impediment exists. However, if the resulting delay is so significant that it constitutes a fundamental non-performance, the aggrieved Party may treat

it as such and exercise the remedies available for fundamental non-performance.

The non-performing Party must ensure that notice of the impediment and of its effect on its ability to perform is received by the aggrieved Party without undue delay after the non-performing Party knew or could be reasonably expected to have become aware of these circumstances. The aggrieved Party is entitled to damages for economic damage 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 will have the remedies listed in the following clauses, without prejudice to any remedies available under applicable law.

12.2.2 Remedies which are not incompatible may be cumulated.

12.2.3 The aggrieved Party may not resort to a remedy to the extent that they cause the non-performing Party's non-performance, such as where a shortcoming in its own data infrastructure did not allow the non-performing Party to duly perform its obligations. The aggrieved Party may also not rely on a claim for damages suffered to the extent that it could have reduced the damage by taking reasonable steps.

12.2.4 The aggrieved 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 unless such specific performance would cause the non-performing Party costs which are disproportionate to the benefit the aggrieved Party would obtain;

    (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 economic damage caused to them by the non-performing Party's non-performance which is not excused under clause 12.1.2. The non-performing Party is liable only for damage which it foresaw or could be reasonably expected to have foreseen at the time of conclusion of this Contract as a result of its non-performance, unless the non-performance 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:

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

    (b) provided that all other conditions set out in clause 5.4.3 are met, in cases described in clause 5.4.3.

## 13. General Provision

## 13.1 Confidentiality

13.1.1 The following information will be considered as confidential:

    (a) information referring to the trade secrets, financial situation or any other aspect of the operations of a disclosing party, unless this information is or became available to the public without any fault of the receiving Party; or

    (b) information referring to the User and any third party, unless this information is or became available to the public without any fault of the receiving Party.

13.1.2 Each Party must take all reasonable measures to store securely confidential information and not to make such information available to any third party, unless

    (a)    one of the Parties is under a legal obligation to or make available the relevant information,

    (b)    it is necessary for one of the Parties to make the relevant information available in order to fulfil their obligations under this Contract, or

    (c)    one of the Parties has obtained the prior consent of the other Party and the party providing the confidential information or affected by its disclosure.

13.1.3 These confidentiality obligations remain applicable after the termination of this 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, (iii) any other EU or Member State law, or (iv) clause 6 of this Contract.

## 13.2 Entire Contract, modifications and severability

13.2.1 This Contract (together with its appendixes 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.

13.2.2 Any modification of this Contract shall be valid only if agreed to in writing, including in any electronic form.

13.2.3 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 this Contract, these remaining provisions will continue to be valid and enforceable. Any resulting gaps or ambiguities in this Contract shall be dealt with according to clause 13.5.

## 13.3 Applicable law

This Contract is governed by the law of the Netherlands.

## 13.4 Interpretation

13.4.1 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.

13.4.2 If any gap or ambiguity in this Contract cannot be resolved in the way referred to by clause 13.5.1, this Contract must be interpreted in the light of the rules of interpretation provided for by the applicable law (see clause 13.3).

## 13.5 Dispute settlement

13.5.1 Any dispute, controversies or differences which may arise out of the performance of this Contract shall be resolved by a mutually amicable arrangement between the Parties. In the event the dispute, controversies or differences cannot be resolved by such amicable arrangement

within thirty (30) days, such dispute, controversies or differences shall be resolved and finally settled under the Rules of Arbitration of the International Chamber of Commerce by one (1) arbitrator appointed in accordance with those Rules. Such arbitration proceedings shall be in English and take place in Amsterdam, the Netherlands. The award of the arbitrator shall be final and binding upon the Parties.

**Appendix 1: the Products and the Related Services**


The Products: Excavators and Cranes manufactured by the Data Holder and/or its affiliates


The Related Services: Not Applicable

**Appendix 2: Details of the data covered by this Contract and of access arrangements**

**A.     Specification of the content of the data**

It is described at the following URL:   https://www.kobelco-europe.com/innovation/komexs/

**B.     Duration of retention**
It is described at the following URL:   https://www.kobelco-europe.com/innovation/komexs/

**C.     Data regime**

Please contact to the Data Holder.

Contact information for the Data Holder: Contact us | Kobelco Construction Machinery Global Website (kobelcocm-global.com)

**D.     Data structure and format**

Please contact to the Data Holder.

Contact information for the Data Holder: Contact us | Kobelco Construction Machinery Global Website (kobelcocm-global.com)

**E.     Access policy**

It may happen that the User transfers their rights to use the Product or to receive the Related Services to a Subsequent User or that multiple users share these rights. In such cases, the Data concerning the initial Users may still remain available to the Data Holder.

**F.     Transfer/Access Medium**

Transfer or access for the Data shall be designated by the Data Holder.

**G.     Information necessary for the exercise of the User's access rights**

Contact information for the Data Holder: Contact us | Kobelco Construction Machinery Global Website (kobelcocm-global.com)

**Appendix 3: Form for an access request by the User**

| | |
|---|---|
| **Identification of the User** | Name: *Specify* <br><br> Contract n°: *Specify* |
| **Identification of the person making the request on behalf of the User (if applicable)** | Name: *Specify* <br><br> Relationship with the User: *Specify* <br><br> Please attach evidence of the power to act on behalf of the User |
| **Products and/or Services concerned by the request** | Product/Service 1: *Specify (e.g. serial number)* <br><br> Product/Service 2: *Specify (e.g. serial number)* |
| **Data points concerned by the request** | |
| **Nature of the requested Data** | ☐ Including personal Data <br><br> ☐ Only non-personal Data |
| **Date / Period of Data concerned by the request** | |
| **Timing of access to the Data** | ☐ Continuously <br><br> ☐ Realtime <br><br> ☐ Other: *please specify* |
| **Modalities for access to the Data** | ☐ Transfer of the Data <br><br> ☐ Access to the Data where it is stored |
| **Destination for the transfer:** | ☐ *Specify depending on the answer to the previous point* |
| **Date of the request** | ☐ *Specify* |

**Appendix 4: Form for an access request by the User to make data available to a third party**

| | |
|---|---|
| **Identification of the User** | Name: *Specify* <br><br> Contract n°: *Specify* |
| **Identification of the person making the request on behalf of the User (if applicable)** | Name: *Specify* <br><br> Relationship with the User: *Specify* |
| **Products and/or Services concerned by the request** | Product/Service 1: *Specify* <br><br> Product/Service 2: *Specify* |
| **Data concerned by the request** <br><br> **Please note:** does not apply in the context of the testing of new connected products, substances or processes that are not yet placed on the market | |
| **If the data includes personal data** | |
| **Identification of the third party** <br><br> **Please note:** cannot be a gatekeeper under Article 3 of Regulation (EU) 2022/1925 | Name: *Specify* <br><br> Contact details: *Specify* |

**Appendix 5: Details of measures for the protection of trade secrets**

Not Applicable