

Data Agreement (My JohnDeereSubscription)

Data Agreement (My JohnDeere Subscription)

Background

- A. **RDO Australia Group** is a dealer of John Deere Limited and sells residential, construction and agricultural John Deere products.
- B. **RDO Australia Group** has the authority of John Deere Limited to provide access to the Subscription Account to purchasers of John Deere products.
- C. The Customer wishes to be provided with access to the Subscription Account from **RDO Australia Group**.
- D. **RDO Australia Group** wishes to provide the Customer access to the Subscription Account.
- E. This Data Agreement sets out general terms which will govern the engagement between **RDO Australia Group** and the Customer in respect of a Subscription Account.

All goods and services are supplied by RDO Australia Group subject to the terms and conditions set out in this Data Agreement:

1. Definitions and interpretation

1.1 Definitions

In this document:

Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Brisbane, Australia.

Commencement Date means:

- (a) where the Customer purchases access to the Subscription Account, the date that the Customer purchases such access; or
- (b) where the Customer receives complimentary access to the Subscription Account as part of a purchase of John Deere products from **RDO Australia Group**, the date that the Customer purchases such equipment.

Consequential Loss means, in respect of a breach of this Data Agreement or any event, fact, matter or circumstance giving rise to a claim:

- (a) any and all loss of revenue, loss of profits, loss of opportunity to make profits, loss of data, damage for crop loss, damage to land, loss of use of equipment, loss of business, loss of business opportunity, loss of use or amenity or loss of anticipated savings;
- (b) special, indirect, exemplary or punitive loss or liability arising from or incurred in connection with that breach or event, fact, matter or circumstance; and
- (c) any loss which does not directly and naturally flow in the normal course of events from the occurrence of the event giving rise to the liability for such loss, whether or not such loss was in the contemplation of the Parties at the time of entry into this Data Agreement, including any of the above types of loss arising from an interruption to a business or activity,

whether arising in contract, tort (including negligence), at common law, equity or under statute.

Customer means the purchaser or user of the Subscription Account.

Customer Data means the information or data which is provided by the Customer to either John Deere or **RDO Australia Group** in relation to the Subscription Account and this Data Agreement and which shall include, but is not limited to, Personal Information and any information collected from or relating to any John Deere products used by the Customer in relation to its property, whether provided by the Customer directly via the Subscription Account or whether obtained automatically from any John Deere products used by the Customer in relation to the Customer's property.

Data Agreement means this document (Data Agreement (My JohnDeere Subscription)).

Data Incident means an 'eligible data breach' as that term is defined in the *Privacy Amendment (Notifiable Data Breaches) Act 2017* (Cth) that has, or is reasonably suspected to have, occurred in respect of any Personal Information **RDO Australia Group** has collected, held, used or disclosed relating to the Customer.

Force Majeure Event means the failure or delay in the performance of a required obligation (excluding an obligation to pay money) if such failure or delay is caused by:

- (a) fire, flood, earthquake, utility failure, an act of God, or other natural disasters;
- (b) industry-wide strikes or industrial action or strikes or industrial action;
- (c) war, acts of terrorism, riots, acts of insurrection, rebellion or revolution, civil disturbances, compliance with governmental laws or orders;
- (d) partial or total damage to any or all of the premises of the non-performing party; or
- (e) epidemic, pandemic or other public health crisis;

or any other events which are beyond the reasonable control of such party, provided that such party gives prompt written notice of such condition and resumes its performance as soon as possible, and provided that the other party may terminate this Data Agreement if such condition continues for a period of ninety (90) days without demonstration by the non-performing party of the ability to resume performance of its obligations within a reasonable period.

Insolvency Event means:

- (a) in relation to any corporation:
 - (1) the corporation is insolvent as defined by section 95A of the *Corporations Act 2001* (Cth) as disclosed in its accounts or otherwise;
 - (2) its liquidation;
 - (3) a liquidator, provisional liquidator, controller, receiver or external administrator is

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appointed in respect of the corporation or any of its property;

- (4) the corporation ceases or threatens to cease to carry on its business;
 - (5) the corporation being deemed to be, or stating that it is, unable to pay its debts when they fall due;
 - (6) any other ground for liquidation or the appointment of an external administrator, controller or receiver occurs in relation to the corporation;
 - (7) the corporation resolves to enter into liquidation;
 - (8) the corporation is presumed to be insolvent under an applicable law including under section 459C(2) or section 585 of the *Corporations Act 2001* (Cth);
 - (9) an application being made which is not dismissed or withdrawn within 10 Business Days for an order, resolution being passed or proposed, a meeting being convened or any other action being taken to cause or consider anything described in subparagraphs (1) to (8) (inclusive) above;
- (b) in relation to an individual, includes circumstances where that person:
- (1) is an insolvent under administration as defined in section 9 of the *Corporations Act 2001* (Cth);
 - (2) is bankrupt as defined by section 5 of the *Bankruptcy Act 1966* (Cth);
 - (3) commits an act of bankruptcy as defined by section 40 of the *Bankruptcy Act 1966* (Cth); or
 - (4) is the subject of a creditor's petition or debtor's petition under the *Bankruptcy Act 1966* (Cth) and that petition is not withdrawn, struck out or dismissed within 10 Business Days of it being made; and
- (c) in relation to any person, anything analogous to or having a similar effect to anything described above in this definition under the Law of any relevant jurisdiction.

Intellectual Property Rights means all current and future registered and unregistered rights in respect of copyright, circuit layouts, designs, trade marks, know-how, confidential information, patents, inventions, plant breeder's rights and discoveries and all other intellectual property as defined in article 2 of the Convention Establishing the World Intellectual Property Organisation 1967.

John Deere means John Deere Limited and any of its Personnel who assist John Deere Limited in providing the Subscription Account to the Customer.

Law includes any requirement of any statute, rule, regulation, proclamation, order in council, ordinance or by-law whether commonwealth, state, territorial or local.

Loss means any loss (including Consequential Loss), claims, actions, liabilities, damages, expenses, diminution in value or deficiency of any kind whether direct, indirect, consequential or otherwise. A reference to **Losses** has a corresponding meaning.

Personal Information has the meaning attributed to it under Privacy Law.

Personnel means in relation to a party, any Related Body Corporate, related entity, employee, officer, agent, contractor, professional adviser of that party.

Privacy Law means the *Privacy Act 1988* (Cth), as amended from time to time.

RDO Australia Group means RDO Equipment Pty Ltd ABN 58 060 286 759, its Related Bodies Corporate and includes the brands operated by RDO Equipment Pty Ltd and its related bodies corporate, including Vanderfield, Vermeer and RDO.

Related Body Corporate includes any corporation that is deemed to be related to a person by virtue of the provisions of the *Corporations Act 2001* (Cth).

Subscription Account means one or more of the services offered by John Deere via www.myjohndeere.com.

Subscription Fee means the fee payable by the Customer for the Subscription Account.

Term means the duration of the Data Agreement, until it is terminated or expires in accordance with the terms of this Data Agreement.

1.2 Interpretation

In this document:

- (a) words in the singular include the plural and vice versa;
- (b) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (c) a reference to a person is to be construed as a reference to an individual, body corporate, unincorporated association, partnership, joint venture or government body;
- (d) references to any document (including this agreement) include references to the document as amended, consolidated, supplemented, novated or replaced;
- (e) a reference to a statute includes a reference to all enactments amending or consolidating the statute and to an enactment substituted for the statute and any subordinate legislation, including regulations;
- (f) headings are included for convenience only and do not affect interpretation of this agreement; and

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- (g) no provision will be construed adversely to a party solely on the grounds that the party was responsible for the preparation of this agreement or that provision.

2. Term

2.1 Data Agreement Term

The term of this Data Agreement will commence on the Commencement Date, and remains in force until:

- (a) where the Customer purchases access to the Subscription Account, the period that the Customer has purchased access to the Subscription Account (which, for the sake of clarity, shall include any initial subscription as well as subsequent renewals); or
- (b) where the Customer receives complimentary access to the Subscription Account as part of a purchase of John Deere products from **RDO Australia Group**, the period determined by **RDO Australia Group**,

or until terminated in accordance with clause 9 of this Data Agreement.

2.2 Subscription Account after expiry

If part of this Data Agreement fixes a term and, for whatever reason, access to the Subscription Account continues after expiry of the Term, then the terms and conditions of this Data Agreement will continue to apply to the engagement, with such variations as the circumstances of the continuing engagement require.

3. Subscription Account

3.1 Subscription Account

RDO Australia Group agrees to:

- (a) liaise with John Deere to the extent reasonably necessary to assist the Customer to initially access and use the Subscription Account;
- (b) treat any Personal Information of the Customer in accordance with the RDO Australia Group privacy policy; and
- (c) if provided with the Customer's password and username to the Subscription Account, to keep these details in confidence and only access the Customer's Subscription Account as authorised to do so by the Customer or as may otherwise be reasonably required in order to provide the Customer with any additional services requested by the Customer.

3.2 John Deere

The Customer acknowledges that:

- (d) the Subscription Account is hosted and provided by John Deere;
- (e) **RDO Australia Group** does not have any control over the provision of, access to, support of or the reliability of the Subscription Account; these obligations and responsibilities remain solely with John Deere;

- (f) it must contact John Deere directly if there are any issues in relation to the Subscription Account;
- (g) that there is no agency relationship between John Deere and **RDO Australia Group**;
- (h) any Personal Information or machine data provided to John Deere is governed by John Deere's applicable privacy policies and procedures; and
- (i) the Customer is solely responsible for any fees, including but not limited to the Subscription Fees, associated with the Customer accessing the Subscription Account, including but not limited to the costs of purchasing any computer equipment.

3.3 Relationship

The parties' relationship is one of principal and independent contractor, not employer and employee, agency or partnership.

3.4 Additional services

The parties agree that if the Customer wishes to obtain any additional services from **RDO Australia Group** in respect of services similar to the Data Agreement, the terms and any fees for such services will be agreed in writing between the Parties, and unless a separate Data Agreement has been entered into, the terms of this Data Agreement will apply.

4. General obligations

4.1 Customer obligations

- (a) The Customer:
- (1) must comply with any services Data Agreement(s) and subscription contract(s) between John Deere and the Customer in relation to the access and use of the Subscription Account, as may be applicable to the services provided by John Deere;
 - (2) must keep its password in a safe place;
 - (3) must comply with the back-up procedures (if any) as recommended by John Deere and/or **RDO Australia Group** in relation to the Customer Data; and
 - (4) must otherwise comply with any reasonable directions given by **RDO Australia Group**.
- (b) The Customer acknowledges and agrees that:
- (1) where the Customer receives complimentary access to the Subscription Account as part of a purchase of John Deere products from **RDO Australia Group** and does not establish its own Subscription Account credentials, that **RDO Australia Group** may access and manage the Customer Data via the Subscription Account until the Customer establishes its own Subscription Account credentials or this Data Agreement is otherwise terminated in accordance with clause 9;

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- (2) the Customer is wholly responsible for obtaining or retrieving any Customer Data from the Subscription Account prior to the termination or expiration of the Customer's access to the Subscription Account; and
- (3) if **RDO Australia Group** agrees to assist the Customer in retrieving any Customer Data from the Subscription Account, **RDO Australia Group** reserves the right to charge the Customer additional fees to provide this service, in addition to any Subscription Fee payable by the Customer.

5. Intellectual Property Rights

- (a) No rights of ownership to any Intellectual Property Rights owned by either party are transferred under this Data Agreement.
- (b) The Customer grants to **RDO Australia Group** a non-exclusive, non-transferable licence to use its Intellectual Property Rights in the Customer Data during the Term.

6. Liability

6.1 Exclusion of liability

- (a) To the extent permitted by Law, in no event will **RDO Australia Group** be liable to the Customer for Consequential Loss even if **RDO Australia Group** has been made aware of the possibility of such Consequential Loss prior to entering into this Data Agreement.
- (b) Unless otherwise specified, neither party is liable to third parties regarding, or arising out of or in connection with, this Data Agreement.

6.2 Implied terms

- (a) To the full extent permitted by Law, any term which would otherwise be implied into this Data Agreement is excluded.
- (b) In the event any Law implies or imposes terms into this Data Agreement which cannot be lawfully excluded, such terms will apply, save that the liability of **RDO Australia Group** for breach of any such term will be limited in accordance with subclause 6.3, to the extent permitted by Law.

6.3 Limitation of liability

- (a) Re-performance
To the extent permitted by Law and to the extent that **RDO Australia Group** is found liable in connection with this Data Agreement, its liability shall be limited (at the option of **RDO Australia Group**) to any one or more of the following:
 - (1) re-supplying services to which the liability relates or the supply of equivalent services; or
 - (2) reimbursing the Customer (subject to subclause 6.3(b)) for paying someone else to supply the services which the liability relates.

(b) Liability cap

To the extent permitted by Law, if **RDO Australia Group** is liable under this Data Agreement, then irrespective of anything else in this Data Agreement, **RDO Australia Group's** maximum cumulative liability in the aggregate (to the fullest extent permitted by Law) shall in no event exceed the sum of the Subscription Fee paid by the Customer to **RDO Australia Group**.

7. Indemnity

The Customer indemnifies, and will keep indemnified, **RDO Australia Group** against any:

- (a) claims against **RDO Australia Group**; or
- (b) Loss suffered by **RDO Australia Group**, arising from:
 - (c) the negligent acts or omissions of the Customer or its Personnel; or
 - (d) any breach of this Data Agreement by the Customer.

8. Privacy Law

8.1 Privacy Law compliance generally

RDO Australia Group agrees to comply with all Privacy Laws in relation to any and all Personal Information that it collects from the Customer in connection with this Data Agreement.

8.2 Customer's consent to transfer of Personal Information

- (a) The Customer consents, acknowledges and agrees that:
 - (1) from time to time, **RDO Australia Group** may provide third parties with Customer Data to facilitate the provision of the Subscription Account;
 - (2) any Personal Information provided to **RDO Australia Group** or John Deere may be transferred to, and stored at, a destination outside Australia, which currently includes but is not limited to Germany, New Zealand, and the United States of America, in order for John Deere to provide the Customer with access to and the use of the Subscription Account;
 - (3) Personal Information may also be processed by Personnel or by other third parties operating outside Australia, including but not limited to John Deere; and
 - (4) by entering into this Data Agreement and submitting Personal Information to **RDO Australia Group**, the Customer expressly agrees and consents to the disclosure, transfer, storing or processing of any Customer Personal Information outside of Australia in the manner permitted by clauses 8(a)(2) and 8(a)(3).

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- (b) In providing this consent, the Customer understands and acknowledges that countries outside Australia do not always have the same privacy protection obligations as Australia in relation to Personal Information.
- (c) The Customer is aware that as it has consented to the disclosure of its Personal Information outside of Australia, **RDO Australia Group** is not required to ensure that overseas recipients will comply with the Australian Privacy Principles. The Customer understands that **RDO Australia Group** is not in a position to ensure such compliance.
- (d) The Customer acknowledges that **RDO Australia Group** is not responsible for the handling, use, storage, processing or disclosure of the Customer Data received by John Deere via the Subscription Account.

8.3 Data Breaches

- (a) **RDO Australia Group** agrees to:
 - (1) comply with all applicable Laws regarding the notification of individuals in the event of an unauthorised release of Personal Information;
 - (2) protect Personal Information from:
 - (A) misuse, interference and loss; and
 - (B) unauthorised access, modification or disclosure.
- (b) **RDO Australia Group** commits to take each of the following actions if it becomes aware, or there are reasonable grounds to suspect, that a Data Incident has occurred:
 - (1) take any steps, and bear any costs, of containing and resolving the Data Incident and preventing any further serious harm to affected individuals (for the avoidance of doubt, this obligation is ongoing);
 - (2) within 3 Business Days, notify the Customer in writing stating the:
 - (A) nature and details of the Data Incident;
 - (B) specific Personal Information affected;
 - (C) actions taken by **RDO Australia Group**; and
 - (D) recommended next steps for each of the parties and the affected individuals.
- (c) Except to the extent caused or contributed to by the negligent act or omission, wilful misconduct or breach of this agreement by the Customer, **RDO Australia Group** indemnifies the Customer against any losses incurred by the Customer arising out of or in connection with any breach by **RDO Australia Group** of their obligations in this clause 8.3.

9. Suspension and Termination

9.1 Suspension

- (a) **RDO Australia Group** may suspend this Data Agreement if John Deere has suspended the Subscription Account on the occurrence of a Force Majeure Event.
- (b) **RDO Australia Group** will not be liable for any failure or delay in performance under this Data Agreement if such failure or delay is due, in whole or in part to the occurrence of a Force Majeure Event.

9.2 Termination of the Data Agreement

- (a) A party may terminate this Data Agreement immediately by written notice:
 - (1) if the other party is in breach of this Data Agreement and that other party has failed to remedy that breach within thirty (30) days of a written notice to it from the first-mentioned party, specifying the breach and requiring it to be remedied;
 - (2) if the other party is in breach of this Data Agreement and that breach is not capable of remedy; or
 - (3) subject to Law, an Insolvency Event occurs in respect of the other party.
- (b) **RDO Australia Group** may terminate this Data Agreement immediately by written notice to the Customer if John Deere has terminated the Customer's access to the Subscription Account, for any reason.
- (c) The Customer may terminate this Data Agreement upon thirty (30) days' notice to **RDO Australia Group** only if the Customer has terminated its agreement with John Deere for access to the Subscription Account. The Customer will not be entitled to any refund of any fees paid or payable by the Customer for access to the Subscription Account.

9.3 No prejudice of rights

Termination shall not prejudice or affect any right or action which shall have accrued or shall thereafter accrue to either party.

9.4 Survival

The following clauses survive termination of this Data Agreement: clause 5 (Intellectual Property Rights); clause 6 (Liability); clause 7 (Indemnity); clause 8 (Privacy); clause 10 (Consequences of Termination) and this clause 9.4.

10. Consequences of Termination

Upon termination or expiration of this Data Agreement:

- (a) all money due by the Customer to **RDO Australia Group** must be paid in full;
- (b) access to the Subscription Account will terminate;

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- (c) the Customer must return (within 10 Business Days) to **RDO Australia Group** or (if requested by **RDO Australia Group**) destroy, all materials incorporating any Intellectual Property Rights belonging to **RDO Australia Group**, in its possession or control; and
- (d) the provisions of clause 4(b) apply regarding any Customer Data held in the Subscription Account.

11. Governing law and jurisdiction

This Data Agreement is governed by and construed in accordance with the laws of Queensland. The Parties submit to the jurisdiction of the Queensland Courts in respect of any proceedings arising out of or in connection with this Data Agreement. The rights and obligations of the Parties under this Data Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods (**CISG**) and the Parties expressly exclude the applicability of the CISG to this Data Agreement.