

Data Agreement (My JohnDeere Subscription)		HR-017/02 Vanderfield Pty Ltd Vanderfield Northwest Pty Ltd
Date Adopted		
Date Reviewed	November 2014	
Departments	All departments	
Next review date	5 August 2017	

Background

- A. **Vanderfield** is a dealer of John Deere Limited and sells residential and agriculture John Deere products.
- B. **Vanderfield** has the authority of John Deere Limited to sell access to the Subscription Account to purchasers of John Deere products.
- C. The Customer agrees to purchase access to the Subscription Account from **Vanderfield**
- D. **Vanderfield** wishes to provide the Customer access to the Subscription Account.
- E. This Data Agreement sets out general terms which will govern the engagement between Vanderfield and the Customer in respect of a Subscription Account.

The parties agree::

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 Australia.

Commencement Date means the date that the Customer purchases the Subscription Account.

Consequential Loss means any of the following (a) loss of revenue; (b) loss of profits; (c) loss of opportunity to make profits; (d) loss of data; (e) damage for crop loss; (f) damage to land; (g) loss of use of equipment; (h) loss of business; (i) loss of business opportunity; (j) loss of use or amenity; (k) loss of anticipated savings; (l) special, exemplary or punitive damages; (m) and 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.

Customer Data means the information or data which is provided by the Customer to either John Deere or **Vanderfield** 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.

GST means GST as that term is defined in the GST Law, and any interest, penalties, fines or expenses relating to such GST.

GST Law means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and/or associated Commonwealth legislation, regulations and publicly-available rulings.

Insolvency Event means:

- (a) in relation to any corporation:
 - (1) its liquidation;
 - (2) an external administrator is appointed in respect of the corporation or any of its property;
 - (3) the corporation ceases or threatens to cease to carry on its business;
 - (4) the corporation being deemed to be, or stating that it is, unable to pay its debts when they fall due;
 - (5) any other ground for liquidation or the appointment of an external administrator occurs in relation to the corporation;

- (6) the corporation resolves to enter into liquidation;

- (7) 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 (7) (inclusive) above;

- (b) in relation to an individual, that person becoming an insolvent under administration as defined in section 9 of the *Corporations Act 2001* (Cth); 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.

Force Majeure Event means, except for the payment of money, the failure or delay in the performance of a required obligation if such failure or delay is caused by an act of God, natural disasters, strikes, war, acts of terrorism, civil disturbances, compliance with governmental laws or orders, 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.

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.

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.

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

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.

2. Term

2.1 Data Agreement Term

The term of this Data Agreement will commence on the Commencement Date, and remains in force for 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 until terminated in accordance with clause 9.

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

Vanderfield 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 the Customer Data's and any Personal Information provided to **Vanderfield** in confidence; 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:

- (a) the Subscription Account is hosted and provided by John Deere;
- (b) **Vanderfield** 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;

- (c) it must contact John Deere directly if there are any issues in relation to the Subscription Account;
- (d) that there is no agency relationship between John Deere and **Vanderfield**;
- (e) any Personal Information or machine data provided to John Deere is governed by John Deere's applicable privacy policies and procedures; and
- (f) 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 **Vanderfield in respect of services similar to the Subscription 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 **Vanderfield** in relation to the Customer Data; and
 - (4) must otherwise comply with any reasonable directions given by **Vanderfield**
- (b) The Customer acknowledges and agrees that:
 - (1) 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
 - (2) if **Vanderfield** agrees to assist the Customer in retrieving any Customer Data from the Subscription Account, **Vanderfield** 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 of owned by either party is transferred under this Data Agreement.
- (b) The Customer grants to **Vanderfield** 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 **Vanderfield** be liable to the Customer for Consequential Loss even if **Vanderfield** 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 **Vanderfield** for breach of any such term will be limited in accordance with subclause 6.3(a).

6.3 Limitation of liability

- (a) Re-performance

To the extent **Vanderfield** is found liable in connection with this Data Agreement, its liability shall be limited (at the option of **Vanderfield**) 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

If **Vanderfield** is liable under this Data Agreement, then irrespective of anything else in this Data Agreement, **Vanderfield's** 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 **Vanderfield**.

7. Indemnity

The Customer indemnifies, and will keep indemnified, **Vanderfield** against any:

- (a) Claims against **Vanderfield**; or

- (b) Loss suffered by **Vanderfield**,

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

Vanderfield 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) any Personal Information provided to **Vanderfield** or John Deere may be transferred to, and stored at, a destination outside Australia, including but not limited to the United States of America, in order for John Deere to provide the Customer with access to and the use of the Subscription Account;
 - (2) Personal Information may also be processed by Personnel or by other third parties operating outside Australia, including but not limited to John Deere; and
 - (3) by entering into this Data Agreement and submitting Personal Information to **Vanderfield**, 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 paragraphs 8.2(a)(1) and 8.2(a)(2).
- (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.

8.3 Privacy protection obligations

- (a) Privacy Law requires **Vanderfield** to take such steps as are reasonable in the circumstances to ensure that any recipients of Personal Information outside of Australia do not breach the privacy principles contained within Privacy Law.
- (b) By obtaining the Customer's consent, under Privacy Law, **Vanderfield** is not required to take such steps as may be reasonable in the circumstances.
- (c) Notwithstanding subclause 8.3(b), **Vanderfield** acknowledges the importance of protecting Personal Information and has taken reasonable steps to ensure that any Personal Information is

used by third parties securely and in accordance with the terms of this Data Agreement and **Vanderfield's** Privacy Policy.

- (d) The Customer acknowledges that **Vanderfield** is not responsible for the handling, use, storage, processing or disclosure of the Customer Data received by John Deere via the Subscription Account.

9. Suspension and Termination

9.1 Suspension

Vanderfield may suspend this Data Agreement if John Deere has suspended the Subscription Account on the occurrence of a Force Majeure Event.

9.2 Termination of the Data Agreement

- (a) Either 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) an Insolvency Event occurs in respect of the other Party.
- (b) **Vanderfield** 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 **Vanderfield** only if the Customer has terminated its Data 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 **Vanderfield** must be paid in full;
- (b) access to the Subscription Account will terminate;

- (c) the Customer must return (within 10 Business Days) to **Vanderfield** or (if requested by **Vanderfield**) destroy, all materials incorporating any Intellectual Property Rights belonging to **Vanderfield**, in its possession or control; and

- (d) the provisions of clause 4.1(b) applies 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 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.