



# JOHN DEERE

## JOHN DEERE JDLink CONNECT UPGRADE CONTRACT

**IMPORTANT -- READ CAREFULLY. THIS IS A LEGAL CONTRACT BETWEEN YOU AND JOHN DEERE AND GOVERNS YOUR USE OF CERTAIN JOHN DEERE TELEMATIC SYSTEMS. IF YOU ARE UNABLE OR UNWILLING TO COMPLY WITH ANY OF THESE TERMS, YOU MUST IMMEDIATELY DISCONTINUE USING THE SYSTEMS AND CONTACT JOHN DEERE OR YOUR DEALER. THIS CONTRACT IS BETWEEN YOU AND JOHN DEERE ONLY. NO THIRD PARTY – INCLUDING BUT NOT LIMITED TO JOHN DEERE DEALERS – HAS THE AUTHORITY TO CHANGE OR SUPPLEMENT THIS CONTRACT.**

**IF YOU WERE ASSIGNED THIS CONTRACT FROM A THIRD PARTY (SUCH AS A JOHN DEERE DEALER), YOU UNDERSTAND AND AGREE THAT NO AGENCY RELATIONSHIP BETWEEN JOHN DEERE AND THAT THIRD PARTY IS IMPLIED OR SUGGESTED BY THE FACT THAT SUCH THIRD PARTY ASSIGNED THIS CONTRACT TO YOU.**

This John Deere JDLink Connect Upgrade Contract (this “**Contract**”) is between you (“**Customer**”) and the entity listed in Table 1, below (“**John Deere**”) for the location in which your headquarters is located if you are entering into this Contract on behalf of a corporate entity or your place of residence if you are entering into this contract as an individual (the “**Contract Jurisdiction**”). Customer warrants that Customer’s Contract Jurisdiction is not Iceland, Kazakhstan, Liechtenstein, Norway, Russia, Switzerland, Ukraine, or a member state of the European Union and agrees that this Contract will not apply to any Customer whose Contract Jurisdiction is Iceland, Kazakhstan, Liechtenstein, Norway, Russia, Switzerland, Ukraine, or a member state of the European Union. Any “Country-Specific Terms” set out below Table 1 in this Contract for the Customer’s Contract Jurisdiction form part of this Contract and this Contract must be read and construed accordingly. If there is any inconsistency between the “Country-Specific Terms” for the Customer’s Contract Jurisdiction and the other provisions in this Contract, then the “Country-Specific Terms” for the Customer’s Contract Jurisdiction prevail to the extent of the inconsistency and this Contract must be read and construed accordingly. This Contract is effective as of the date of execution (the “**Effective Date**”).

JDLink Access + RDA is a John Deere-proprietary telematic service (the “**Telematic Service**”) and distributes the Telematic Service through John Deere dealers and other designated parties (“**Dealers**”). This Contract enables Customer to use wireless data transfer in addition to the services included in JDLink Access + RDA. In addition to wireless data transfer, this addendum may include other agreed features or services (collectively the “**Additional Features**”). To use the Additional Features under this Contract, Customer must activate this Contract on one (and only one) compatible telematic gateway (“**Terminal**”). This Contract sets forth the terms governing Customer’s activation and use of the Additional Features on a single Terminal, including access to and usage of the Web Functions (defined in Section 1.1) during the Subscription Period (defined in Section 5.1). If the Customer wishes to activate the Additional Features on more than one Terminal, the Customer must execute a separate Contract for each Terminal.

### **1. SERVICE.**

**1.1. Service.** The Additional Features are John Deere-proprietary telematic services, and include wireless data transfer and other functionalities as further described in John Deere’s applicable product documentation. The Telematic Service includes a proprietary web-based services (the “**Web Functions**”) resident on one or more servers (each a “**Server**”). The Web Functions allow Customer to use Customer’s computer to view and manage data stored on the Servers that has been obtained from or sent to the System Hardware (defined in Section 2.1) via the Additional Features.

**1.2. Use of Web Functions.** During the Subscription Period, Customer will have access to and use of the Web Functions available in the John Deere Operations Center at [www.myjohndeere.com](http://www.myjohndeere.com) (the “**Telematic Web Interface**”), a website managed by John Deere.

**1.3. Service Activation.** To enable Customer to use the Additional features on a particular Terminal, the Telematic Service for that Terminal must first be activated (“**Activation**”). The Terminal must be active under a JDLink Access + RDA subscription before this Contract may be activated on such Terminal. Activation will ordinarily occur upon issuance by John Deere of a code that will enable the System Hardware to use the Additional Features during the Subscription Period, but in some cases Activation may be accomplished wirelessly or via John Deere’s support website ([www.stellarsupport.deere.com](http://www.stellarsupport.deere.com)). The Activation may also be performed by a Dealer acting at the direction of and on behalf of the Customer. At the time of Activation, the Additional Features will commence for the activated Terminal and will continue in effect until the end of the Subscription Period. Upon expiration of the Subscription Period the Additional Features governed by this Contract will cease, unless Customer elects to purchase an additional John Deere JDLink Connect Upgrade Contract. This Contract does not automatically renew. If any terms and conditions are presented to Customer by John Deere at the time of purchase, activation, or renewal of an additional Subscription Period on or after the Effective Date, including a more recent version of this Contract, Customer must accept such terms to enable such additional Subscription Period. In the event of any conflict between such terms and the terms of this Contract, the terms presented at the time of purchase, activation or renewal of the additional Subscription Period shall prevail.

**1.4. Abuse or Fraudulent Use of the Additional Features.** John Deere may restrict or cancel, at its sole discretion, Customer’s Additional Features under this Contract if there is a reasonable suspicion of Abuse or Fraudulent Use. Customer will not abuse or make fraudulent use of the Services, and agrees (a) not to engage or participate in, or permit, any Abuse or Fraudulent Use of the Additional Features, (b) to promptly report to Dealer (or to John Deere if Customer is a Dealer) any such Abuse or Fraudulent Use of which Customer becomes aware, and (c) to cooperate in any investigation or prosecution relating to any Abuse or Fraudulent Use initiated by John Deere, Dealer, legal representatives of John Deere. Customer is solely liable for charges, costs or damages resulting from Abuse or Fraudulent Use. “Abuse or Fraudulent Use” of the Additional Features includes, but is not limited to:

(i) Accessing, altering, or interfering with the communications of and/or information about another customer of John Deere, any Dealer, or any Underlying Wireless Provider or attempting or assisting another person or entity to do or attempt any of the foregoing;

(ii) Rearranging, tampering with or making an unauthorized connection to any wireless network;

- (iii) Installing any amplifiers, enhancers, repeaters, or other devices that modify the radio signals or frequencies upon which the Additional Features are provided or operating the System Hardware in a manner that violates applicable law or governmental regulation;
- (iv) Using Additional Features in such a manner so as to interfere unreasonably with the use of service by one or more other customers or end users or to interfere unreasonably with John Deere's ability to provide service;
- (v) Using Additional Features to convey obscene, prurient, defamatory, salacious, or unlawful information or copyrighted content that is not the property of Customer or to violate the rights of any third party;
- (vi) Using Additional Features without permission on a stolen or lost device;
- (vii) Unauthorized access to Additional Features;
- (viii) Using the Additional Features to provide voice over IP services, or tethering or tapping into the Additional Features to provide telematic services other than the Additional Features;
- (ix) Using any scheme, false representation or false credit device, with the intent to avoid payment, in whole or in part, for Additional Features;
- (x) Excessive use of the Additional Features (*e.g.*, frequency of data uploads or downloads or pings) beyond what John Deere enables via the Web Functions or other compatible System controls;
- (xi) Unauthorized modification of System Hardware, Terminal, System Hardware settings, or System Software;
- (xii) Using the Additional Features outside the Customer's authorized areas;
- (xiii) Causing the System Hardware to be installed by any person or entity other than a Dealer or other John Deere-certified System Hardware installer qualified by John Deere;
- (xiv) Unauthorized access to, use of, alteration of, or destruction of the Additional Features data files, programs, procedures, or information related to Customer or any other John Deere customer,
- (xv) Use with the intent to reverse engineer or clone the Additional Features, or any attempt to create a substitute or similar service through use of, or access to, the Additional Features (excluding any rights provided to Customer under any applicable copyright or other law);
- (xvi) Use for any unlawful, illegal or fraudulent purpose; or
- (xvii) Tracking the location of any person or device without first obtaining all necessary approvals from such person or owner or person in control or possession of such device to permit the Customer and John Deere to track such location.

(To the extent permitted under applicable law, Customer will not be credited or refunded any charges for interruptions resulting from any restriction or cancellation of Additional Features under this Section or any prepayment for Additional Features during the period of such restriction or following such cancellation.

## **2. HARDWARE AND SOFTWARE.**

**2.1 Hardware.** Terminals, together with ancillary equipment such as cables, harnesses, and antenna, will be referred to herein as the "**System Hardware.**" Customer's use of the System Hardware in connection with the Additional Features is subject to all terms of this Contract. Customer will notify John Deere immediately if any portion of the System Hardware becomes lost, stolen, unserviceable due to damage, or has been misused in any way. Customer will include as a condition in any sale, rental, lease or other transfer of the activated System Hardware by Customer to any third party for use with the Additional Features the requirement that such third party assume this Contract as provided in Section 6.6. To the extent that Customer permits a third party to use Customer's System Hardware, Customer acknowledges and agrees that such third party may have access to Customer Content, as further described below.

**2.2 Software.** Additional Features software, modem software, and other software and/or firmware are resident on the System Hardware ("**System Software**"). The System Software contains proprietary code of John Deere or third parties licensed under the terms of this section and may include third party code separately licensed as specified in any documentation (*e.g.*, a CD) accompanying the System Hardware. During the term of this Contract, John Deere grants to Customer a non-exclusive, revocable license to use the System Software solely (i) in conjunction with use of the Additional Features, and (ii) with System Hardware. John Deere further grants Customer the right to transfer Customer's license to use the System Software, which does not include the Additional Features, during the useful life of the System Hardware in conjunction with the transfer of the ownership of the System Hardware. John Deere may condition its agreement to provide the Additional Features to any Assignee upon John Deere's approval of Assignee's creditworthiness, the payment by Assignee of a re-licensing fee and/or the upgrade of System Hardware at Assignee's expense, or such other factors as John Deere may determine in its sole discretion. Customer agrees that John Deere may update the System Software on any of Customer's System Hardware during the term of this Contract as often as is deemed appropriate by John Deere.

## **3. DATA.**

**3.1 Data Collection, Storage, and Use.** This Contract does not grant John Deere any rights to Customer data, information, or other intellectual property that John Deere may receive under this Contract ("**Customer Content**") except for the rights of use described below and in John Deere's Privacy and Data Statements, including the global Enterprise Privacy Statement, any applicable region- or country-specific Privacy Statements and the John Deere Data Services and Subscriptions Data Policy Statement (all available at [www.johndeere.com/legal](http://www.johndeere.com/legal)). Please refer to the John Deere Data Services and Subscriptions Data Policy Statement for country-specific information regarding how John Deere may use Customer Content. Dealers authorized by John Deere or Customer to access and use the Customer Content are "**Authorized Dealers.**" Customer acknowledges that it has been notified of John Deere's Privacy and Data Statements, including

the global Enterprise Privacy Statement, the applicable region- or country-specific Privacy Statements and the John Deere Data Services and Subscriptions Data Policy Statement, and Customer hereby grants John Deere the right to use Customer Content as described in this Contract and as needed to provide Additional Features under this Contract, including, for example, collecting and hosting Customer Content. This permission extends to third parties engaged by John Deere in connection with providing the Additional Features. Without limiting the foregoing, Customer acknowledges and agrees that John Deere may disclose Customer Content to outside parties to (a) comply with any applicable law, regulation or compulsory legal request; (b) protect the safety of any person from death or serious bodily injury; (c) prevent fraud or abuse against John Deere or other parties; (d) to protect John Deere's rights; or (e) defend John Deere and its affiliates or personnel from any legal proceedings. Customer acknowledges and agrees that the Customer Content may be transferred out of the country where it is generated to other destinations, including but not limited to the United States of America. In the event that the Customer Content includes Customer's or third parties' personal information, Customer hereby consents to the collection, use and disclosure of such personal information, including with respect to the transfer of personal information to other jurisdictions, to permit John Deere and Authorized Dealers to access and use the Customer Content as provided in this Contract. CUSTOMER WARRANTS THAT IT HAS PROVIDED ALL NECESSARY NOTIFICATIONS, AND OBTAINED ANY NECESSARY CONSENT FROM ITS EMPLOYEES OR ANY OTHER INTERESTED THIRD PARTIES, INCLUDING WITH RESPECT TO THE TRANSFER OF CUSTOMER CONTENT TO OTHER JURISDICTIONS, TO COMPLY WITH ANY APPLICABLE PRIVACY LAWS OR CONTRACTUAL AGREEMENTS WITH SUCH EMPLOYEES OR THIRD PARTIES AND TO PERMIT JOHN DEERE AND AUTHORIZED DEALERS TO ACCESS AND USE THE CUSTOMER CONTENT AS PROVIDED IN THIS CONTRACT. UNLESS AND UNTIL CUSTOMER REQUESTS REMOVAL OF JOHN DEERE'S ACCESS TO AND USE OF CUSTOMER CONTENT, AS PROVIDED IN SECTION 3.2 BELOW, JOHN DEERE WILL CONTINUE TO HAVE ACCESS TO AND USE OF PAST, CURRENT AND FUTURE CUSTOMER CONTENT DURING AND AFTER THE TERM OF THIS CONTRACT AND THE SUBSCRIPTION PERIOD.

### **3.2. Restriction of Data Access and Usage.**

**3.2.1. John Deere.** While Customer subscribes to Additional Features, Customer may not restrict John Deere's access to and use of Customer Content, excluding the limitations stated in this Contract and in the John Deere Data Services and Subscriptions Data Policy Statement. Customer Content governed by this Contract includes Production Data (defined in the John Deere Data Services and Subscriptions Data Policy Statement). Customer's Production Data will be governed by the terms of use for the Telematic Web Interface. Customer may restrict John Deere's access to Production Data via the Web Functions. Removal of John Deere's access to and use of Production Data will also limit Customer's access to Production Data via the Telematic Web Interface and disable Customer's ability to load additional Production Data to the Telematic Service under this Contract or otherwise. Customer may delete Production Data files via the Web Functions or by contacting a John Deere dealer.

**3.2.2 Data Elections.** If Customer associates multiple activated Terminals together in the Telematic Web Interface or through the Web Functions, Customer will not be able to set different data access permissions for each individual Terminal. Rather, Customer must make the same data access permissions for all such associated Terminals.

**3.2.3. Data Retention.** Unless and until Customer requests removal of John Deere's access to and use of Customer Content, as set forth in Section 3.2.1 above, John Deere will store the Customer Content during the Subscription Period, provided such data storage is in compliance with all applicable federal, state, provincial and local laws and regulations, including, but not limited to, as applicable, laws of non-US jurisdictions where Customer Content is stored. Except as limited under any applicable "Country Specific Terms" set out below Table 1 in this Contract for Customer's Contract Jurisdiction and to the extent permitted under applicable data and privacy regulations, John Deere will have the right, but not the obligation, to store the Customer Content indefinitely, or to delete the Customer Content at any time upon expiration of the above-stated retention periods provided such data storage is in compliance with all applicable federal, state, provincial, and local laws and regulations, including, but not limited to, as applicable, laws of non-US jurisdictions where Customer Content is stored. Customer acknowledges and agrees that Customer Content deleted from the Server(s) cannot be retrieved or re-created. If Customer transfers ownership of any System Hardware to another party, Customer may no longer have access to the Customer Content affiliated with the System Hardware that is collected after the transfer.

### **4. INVOICING AND PAYMENT.**

**4.1. Payment.** Customer agrees to pay all applicable fees for the Additional Features. Such fees will be paid via a John Deere-approved payment method selected by Customer and communicated to John Deere. If Customer fails to make any portion of such payment, and for each month in which payment remains outstanding, a late charge of the lesser of (i) 1.5% per month of any outstanding amount or (ii) the maximum amount permitted by law may be charged to Customer. All reasonable costs and expenses, including but not limited to attorneys' fees, court costs and service charges incurred by John Deere in collecting payment will be an expense of and charged to Customer. John Deere may change payment terms at any time. If Customer becomes delinquent in the payment of any sum due, John Deere will not be obligated to continue performance under this Contract. **If Customer purchased or received this Contract from a third party (such as a Dealer), Customer is responsible to pay all fees as set forth above to the extent the third party has not paid, or does not pay, any such fees to John Deere, regardless of whether Customer has paid the third party for the assignment of this Contract.**

**4.2. Taxes.** Except as otherwise provided under any applicable "Country Specific Terms" set out below Table 1 in this Contract for Customer's Contract Jurisdiction, all prices and rates affiliated with the Additional Features or System Hardware do not include use, excise, goods and services, sales (including provincial sales tax or harmonized sales tax) or similar taxes assessed at any time. If any taxes must be deducted from any amounts payable or paid by the Customer hereunder, the Customer will pay such additional amounts as may be necessary to ensure that John Deere receives a net amount equal to the full amount which it would have received had no such deduction or withholding have been required. Excepting those taxes imposed upon John Deere and regulatory license fees, all applicable taxes and/or assessments will be paid by Customer. Customer is responsible for payment of tax whether it is concurrently invoiced to Customer with the original invoiced amount or subsequently invoiced based on John Deere's later review of facts affecting Customer's tax status or determination that the laws of the country, state or province where the Additional Features were delivered requires assessment and collection of tax. In the event that John Deere pays any such taxes on behalf of Customer, Customer will reimburse John Deere in accordance with Section 4.1 above.

### **5. TERM AND TERMINATION.**

**5.1. Term.** This Contract will commence as of the Effective Date and expire as described below, unless the Contract is otherwise terminated earlier in accordance with the terms of this Section 5. The initial term of this Contract (the "**Initial Term**") will commence upon the Effective Date and will continue in effect for a period of two years except as set forth below. If the System Hardware is not activated (as provided in Section 1.3) within the Initial Term, this Contract will expire at the end of the Initial Term. If the System Hardware is activated within the Initial Term, this Contract will continue for the Subscription Period, which will commence upon the date of Activation. The "**Subscription Period**" is the subscription term agreed between John Deere and Customer prior to execution of this Contract, and ends in all cases upon the earlier of the expiration of (i) the agreed subscription term or (ii) any termination of this Contract.

**5.2. Termination.** The occurrence of any of the following will constitute a default and breach of this Contract and will allow John Deere immediately to terminate this Contract upon written notice to Customer, provided that, if a default event described in items (i), (ii), (iii), or (iv) of this Section 5.2 is capable of remedy, then Customer has first been provided with written notice requiring the remedy of the default within 30 calendar days and the default remains uncured at the expiration of that period: (i) any failure by Customer to pay all sums when due, which it is obligated to pay hereunder; (ii) any unauthorized disclosure or use of the Additional Features for an unauthorized purpose by Customer; (iii) any invalid, incomplete, or unenforceable assignment by Customer as determined by John Deere; (iv) any event which would constitute a default or breach by Customer of any agreement, including this Contract) between Customer and John Deere; or (v) the date that any of a winding-up, liquidation, dissolution, bankruptcy, sale of substantially all assets, sale of business or insolvency proceeding has been commenced by the Customer. The Customer may immediately terminate this Contract in the case of any material default under this Contract by John Deere, provided that, if the default is capable of remedy, John Deere has first been provided with written notice requiring the remedy of the default within thirty 30 days and the default remains uncured at the expiration of that period.

**5.3. Termination for Convenience by John Deere.** John Deere may terminate this Contract upon thirty (30) days prior written notice to Customer. Upon any termination of this Contract under this paragraph, John Deere will pay to Customer a prorated portion of any payments paid to John Deere under this Contract. Such reimbursement will be John Deere's sole liability to Customer for any such termination for convenience.

**5.4. Termination for Convenience by Customer.** Customer may terminate this Contract upon thirty (30) days notice to John Deere. Upon any termination of this Contract under this paragraph, Customer will not be entitled to any refund of any fees paid by Customer for the Additional Features or System Hardware and Customer will no longer have access to the Customer Content via the Web Functions.

## **6. OTHER TERMS.**

**6.1. Limitation of Liability and Remedies.** Subject to any applicable "Country Specific Terms" set out below Table 1 in this Contract for Customer's Contract Jurisdiction and to the extent permitted by applicable law: (i) John Deere's entire liability and Customer's sole and exclusive remedies for any damages arising from the performance or nonperformance under this Contract related to the use of the Additional Features will be the remedies set forth herein; and (ii) John Deere will not be liable for any loss or damage arising from Customer's failure to comply with the provisions set forth in this Contract.

CUSTOMER ACKNOWLEDGES THAT THE ADDITIONAL FEATURES ARE SUPPLIED ON A GOOD FAITH EFFORTS BASIS AND THAT SERVICE FAILURES AND INTERRUPTIONS MAY OCCUR AND ARE DIFFICULT TO ASSESS AS TO CAUSE OR RESULTING DAMAGES, AND CUSTOMER UNDERSTANDS THAT IT WILL BEAR ALL RESPONSIBILITY, RISK AND COST ASSOCIATED WITH DEVELOPING AND MAINTAINING ITS BUSINESS. CUSTOMER ACKNOWLEDGES THAT IT IS NOT A THIRD PARTY BENEFICIARY OF ANY AGREEMENT BETWEEN ANY DEALER AND JOHN DEERE. CUSTOMER UNDERSTANDS AND AGREES THAT IN NO EVENT WILL JOHN DEERE OR ANY OF ITS AFFILIATES OR ANY OF THEIR AFFILIATES HAVE ANY LEGAL, EQUITABLE, OR OTHER LIABILITY OF ANY KIND TO CUSTOMER, ANY EMPLOYEE OF CUSTOMER, OR ANY THIRD PARTY USING ADDITIONAL FEATURES THROUGH CUSTOMER IN ANY EVENT, REGARDLESS OF THE FORM OF THE ACTION, WHETHER FOR BREACH OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE, AND INCLUDING WITHOUT LIMITATION ANY LOST PROFITS, LOST SAVINGS OR ANY INCIDENTAL DAMAGES ARISING OUT OF THE USE, INABILITY TO USE, UNAVAILABILITY, DELAY, FAULTINESS OR FAILURE OF JOHN DEERE'S SYSTEMS OR ANY PART THEREOF PROVIDED UNDER THIS CONTRACT, EVEN IF ANY OF THEM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR ANY OTHER DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES AND CUSTOMER HEREBY WAIVES ANY RIGHT TO MAKE ANY CLAIMS FOR SUCH DAMAGES. TO THE EXTENT NOT EXCLUDED BY THE FOREGOING, CUSTOMER'S EXCLUSIVE REMEDY FOR CLAIMS ARISING IN ANY WAY IN CONNECTION WITH THIS CONTRACT, FOR ANY CAUSE WHATSOEVER, INCLUDING BUT NOT LIMITED TO ANY FAILURE OR DISRUPTION OF ADDITIONAL FEATURES PROVIDED HEREUNDER, IS LIMITED TO PAYMENT OF DAMAGES IN AN AMOUNT NOT TO EXCEED ONE HUNDRED U.S. DOLLARS (\$100.00). CUSTOMER UNDERSTANDS THAT JOHN DEERE CANNOT GUARANTEE THE SECURITY OR RELIABILITY OF WIRELESS TRANSMISSIONS, AND JOHN DEERE WILL NOT BE LIABLE FOR ANY LACK OF SECURITY OR RELIABILITY RELATING TO THE USE OF THE ADDITIONAL FEATURES.

**6.2. Disclaimer of Warranties.** SUBJECT TO ANY APPLICABLE "COUNTRY SPECIFIC TERMS" SET OUT BELOW TABLE 1 IN THIS CONTRACT FOR CUSTOMER'S CONTRACT JURISDICTION AND TO THE EXTENT PERMITTED BY APPLICABLE LAW: THE ADDITIONAL FEATURES AND TELEMATIC SOFTWARE ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. NONE OF JOHN DEERE OR ANY OF ITS AFFILIATES, OR ANY OF THEIR AFFILIATES HAS MADE, OR WILL BE DEEMED TO HAVE MADE, ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER WITH RESPECT TO JOHN DEERE'S SYSTEMS OR THE ADDITIONAL FEATURES. EACH OF JOHN DEERE AND ITS AFFILIATES EXPRESSLY DISCLAIMS, AND CUSTOMER EXPRESSLY WAIVES, RELEASES AND RENOUNCES ALL WARRANTIES ARISING IN LAW OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO: (A) ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, (B) ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE; (C) ANY WARRANTIES AS TO THE ACCURACY, AVAILABILITY OR CONTENT OF JOHN DEERE'S SYSTEM, THE ADDITIONAL FEATURES OR ANY OTHER SERVICES PROVIDED BY JOHN DEERE OR ANY OF ITS AFFILIATES; (D) ANY WARRANTY OF NON-INFRINGEMENT; AND (E) ANY WARRANTY UNDER ANY THEORY OF LAW, INCLUDING ANY TORT, NEGLIGENCE, STRICT LIABILITY, CONTRACT OR OTHER LEGAL OR EQUITABLE THEORY. NO REPRESENTATION OR OTHER AFFIRMATION OF FACT, INCLUDING, BUT NOT LIMITED TO, STATEMENTS REGARDING CAPACITY OR SUITABILITY FOR USE, THAT IS NOT CONTAINED IN THIS CONTRACT WILL BE DEEMED TO BE A WARRANTY BY JOHN DEERE OR ANY OF ITS AFFILIATES.

**6.3. Customer Indemnification.** Subject to any applicable "Country Specific Terms" set out below Table 1 in this Contract for Customer's Contract Jurisdiction and to the extent permitted by applicable law: Customer will indemnify, defend and hold John Deere and its Affiliates (including their respective officers, employees, and agents) (each, a "Deere Indemnified Party") harmless against any and all losses, claims, damages or expenses (including attorneys' fees) arising out of or related to: (i) any personal injury to or death of any person or persons, any loss or damage of any property, any financial loss, or any interruption of services which are caused or claimed to have been caused directly or indirectly from Customer's (including its employees or independent contractors) negligent use or intentional misuse of the System; (ii) use of any mounting bracket or other equipment not provided or approved for use with the System by John Deere; (iii) any use of the System by Customer for an unauthorized purpose; (iv) data content or other information transmitted by Customer, its employees or its independent contractors over the System; (v) any Abuse or Fraudulent Use by Customer or anyone accessing the Additional Features through Customer or Customer's Terminal; or (v) any material breach by Customer of any of the terms and conditions of this Contract. Customer hereby agrees to fully defend, hold harmless, and indemnify each Deere Indemnified Party from and against all liability, loss, damage, claims, actions, judgments or expenses arising out of or relating to Customer's use of, failure to use, or inability to use the System or the wireless services provided by any underlying wireless provider, as well as from any third party intellectual property infringement claims arising out of or relating in any way with respect to Customer's use of the System, except to the extent any such liabilities, losses, damages, claims, actions, judgments or expenses are caused by the Deere Indemnified Party's gross negligence or willful misconduct.

- 6.4. Independent Contractors, No Agency Relationship.** Customer and John Deere agree that each is an independent party to this Contract. Nothing in this Contract is intended to create, nor does it create, any employment or agency relationship between the parties. Customer further acknowledges and agrees that Dealers are independent third parties that do not represent John Deere, nor are they authorized to act on behalf of John Deere or bind John Deere to any obligation.
- 6.5. Choice of Law, Venue, and Language.** This Contract will be governed by and construed according to the laws identified as the Governing Law for the Contract Jurisdiction in Table 1, without reference to its conflict of laws provisions. All disputes arising under this Contract will be heard only by a court of competent jurisdiction in the Venue for the Contract Jurisdiction in Table 1, and Customer submits to the jurisdiction of such courts for the purpose of litigating such disputes. The rights and obligations of the parties under this Contract will not be governed by the United Nations Convention on Contracts for the International Sale of Goods ("CISG") and the parties hereto expressly exclude the applicability of the CISG to this Contract. In the event this Contract is translated in any language other than the English language, then in the event of a conflict between the English language version and the translated version, the English language version will prevail in all respects.
- 6.6. Assignment.** Customer may transfer or assign this Contract to a third party end user ("**Assignee**") only as follows:
- 6.6.1** First, prior to any assignment, Customer must provide the Assignee with a copy of this Contract, or direct the Assignee to an online copy of this Contract, and allow the Assignee sufficient time to review these terms and to consult with counsel if the Assignee desires. Before this Contract may be assigned to Assignee, Assignee must first obtain a John Deere web profile, which Assignee may request at [www.myjohndeere.com](http://www.myjohndeere.com) or with the assistance of a Dealer.
- 6.6.2** Second, Customer must obtain an affirmative acknowledgement from the Assignee that the Assignee understands these terms and is willing to be bound by them in place of the Customer.
- 6.6.3** Third, upon receipt of the Assignee's acknowledgement that it understands and agrees to be bound by these terms, Customer must notify John Deere that it intends to assign this Contract to the Assignee. In this notice, the Customer must identify the Assignee and represent and warrant to John Deere that the Assignee has affirmatively acknowledged that it understands and agrees to be bound by these terms in place of Customer. Notices under this paragraph must be delivered to John Deere through a Dealer, who may charge Customer, Assignee, or both a fee for providing this service.
- 6.6.4** Customer may then assign this Contract to the Assignee in return for the Assignee's promise to be bound as the "Customer" under this Contract and for any other consideration agreed by Customer and Assignee. Upon receipt of the Customer's notice of assignment (described in Paragraph 6.6.3 above), John Deere will, subject to Paragraph 6.6.6 below, electronically notify the Assignee that this Contract has been assigned to Assignee and that use of the Additional Features is governed by these terms and conditions. Prior to any assignment of this Contract, Customer should review Section 3 of this Contract, and any applicable "Country-Specific Terms" set out below Table 1 in this Contract, and consider whether to change any of Customer's elections relating to data access and use.
- 6.6.5** If applicable, the Customer and Assignee agree that John Deere may and will assign this Contract to the entity listed in Table 1 below for the Assignee's Contract Jurisdiction. Any such assignment by John Deere will be effective immediately upon any assignment of this Contract by Customer.
- 6.6.6** John Deere may consent to or reject the assignment in its sole discretion; any purported assignment without John Deere's consent shall be null and void. John Deere's electronic notice to Assignee (described in Paragraph 6.6.4 above) will constitute John Deere's consent to assignment of this Contract to Assignee. John Deere may additionally require the Assignee to execute a certification confirming the Assignee's assumption in a form requested by John Deere prior to, upon or at any time after such assignment. Notwithstanding such assignment, Customer understands and agrees that Customer will remain jointly and severally liable with the Assignee (and any subsequent Assignee) for all Customer's payment obligations hereunder, and Customer further understands and agrees that Customer is solely responsible for any damages or losses resulting from an incomplete, invalid, partial, unenforceable, or other imperfect assignment by Customer of this Contract.
- 6.7. Severability; Waiver.** If any provision of this Contract is prohibited or determined to be unenforceable in any jurisdiction, in whole or in part, that provision is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. The validity or enforceability of that provision in any other jurisdiction and the validity or enforceability of the remaining provisions will not in any way be affected or impaired. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Contract invalid or unenforceable in any respect. The waiver by any party of a breach of any of the provisions of this Contract will not operate as a waiver of any subsequent breach.
- 6.8. Survivability.** Sections 3, 5, and 6 of this Contract, including all sub-sections, will survive any expiration or termination of this Contract.
- 6.9. Notices.** All notices must be in writing and will be deemed given: (i) when delivered personally; (ii) when delivered by facsimile if confirmation of receipt is obtained; (iii) five (5) days after having been mailed registered or certified mail, return receipt requested, postage prepaid; and (iv) one (1) day after having been mailed by overnight mail with a reliable express mail courier. Notices to John Deere will be addressed or delivered to the Contracting Entity for the Contract Jurisdiction in Table 1. Notices to Customer may be delivered to the email address provided by Customer to John Deere.
- 6.10. Force Majeure.** Except for the payment of money, neither party will be liable to the other for failure or delay in the performance of a required obligation if such failure or delay is caused by acts 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 Contract 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.
- 6.11. Import and Export Compliance.** Customer acknowledges that all System Hardware, System Software, proprietary data, know-how, or other data or information (herein referred to as "**Products**") obtained from John Deere may be subject to the import and/or export control laws of one or more countries and, accordingly, their import, export, re-export, and transfer may be restricted or prohibited. Customer agrees not to directly or indirectly import, export, re-export, transfer, or cause to be imported, exported, re-exported, or transferred, any such Products to any destination, entity, or persons prohibited or restricted under any law or regulation, unless it will have first obtained prior written consent of John Deere and any applicable governmental entity, either in writing or as

provided by applicable regulation, as the same may be amended from time to time. Customer agrees that no Products received from John Deere will be directly employed in missile technology, nuclear, chemical or biological weapons and that Products will not be transferred in any manner to any party for any such end use. **Customer will use the Products only in a country that is listed as an available country on [www.jdlink.com](http://www.jdlink.com).**

**6.12. John Deere Affiliates.** Any right or benefit of John Deere under the terms of this Contract will also apply to any corporation, partnership, or other entity that, either directly or indirectly, controls, is controlled by, or is under common control with John Deere, where control is defined as having more than a fifty percent (50%) controlling interest (“**Affiliate**”).

**6.13. Entire Contract.** This Contract contains the entire understanding, agreement and representations of the parties with respect to the subject matter hereof and unless otherwise agreed in writing between the parties, this Contract supersedes all prior writings, discussions and understandings concerning the subject matter. Any additional or different terms or conditions proposed by Customer or contained in any purchase order are rejected and will be of no force and effect unless expressly agreed to in writing by John Deere. In order to be binding, any amendment or modification of any of the provisions of this Contract must be in writing and signed by a duly authorized representative of each party.

**Table 1**

<b>Contract Jurisdiction</b>	<b>Contracting Entity</b>	<b>Governing Law</b>	<b>Venue</b>
United States of America, Puerto Rico	John Deere Shared Services, Inc. One John Deere Place Moline, IL 61265 U.S.A	State of Illinois, USA	Rock Island County, Illinois, USA
Canada	John Deere Canada ULC 295 Hunter Road P.O. Box 1000 Grimsby, ON L3M 4H5	Province of Ontario, Canada	Province of Ontario, Canada
Australia or New Zealand	John Deere Limited (Australia) Attn: Complete Goods Manager 166-170 Magnesium Drive Crestmead, Queensland, 4132	Queensland, Australia	Queensland, Australia

## **COUNTRY-SPECIFIC TERMS**

### **AUSTRALIA**

Section 2.2 of the Contract does not apply and is replaced with the following Section 2.2:

**2.2 Software.** Service software, modem software, and other software and/or firmware are resident on the System Hardware ("**System Software**"). The System Software contains proprietary code of John Deere or third parties licensed under the terms of this section and may include third party code separately licensed as specified in any documentation (e.g. a CD) accompanying the System Hardware. During the Term of this Contract, John Deere grants to Customer a non-exclusive, revocable license to use the System Software solely (i) in conjunction with use of the System, (ii) with System Hardware, and (iii) at all times in accordance with and subject to the Customer's rights under the *Copyright Act 1968* (Cth). John Deere further grants Customer the right to transfer Customer's license to use the System Software, which does not include the Additional Features, during the useful life of the System Hardware in conjunction with the transfer of the ownership of the System Hardware. John Deere may condition its agreement to provide the Additional Features to any Assignee upon John Deere's approval of Assignee's creditworthiness, the payment by Assignee of a re-licensing fee and/or the upgrade of System Hardware at Assignee's expense, or such other factors as John Deere may determine in its sole discretion. Customer agrees that John Deere may update the System Software on any of Customer's System Hardware during the Term of this Contract as often as is deemed appropriate by John Deere.

The following Section 3.1A forms part of the Contract and must be read as if it follows Section 3.1 of the Contract:

**3.1A Data retention in Australia.** If the Customer is located in Australia, John Deere will store the Customer Content for such time until it no longer needs the Customer Content for any purpose for which it may be used or disclosed by John Deere in accordance with the Australian privacy laws.

The following Sections 3.3 and 3.4 form part of the Contract and must be read as if they follow Section 3.2 of the Contract:

**3.3 Information regarding the Privacy Act 1988 (Cth).**

- (i) The Customer consents to John Deere collecting and using Personal Information (as that term is defined in the *Privacy Act 1988 (Cth)* as amended from time to time) of or relating to the Customer and relevant Customer personnel for the purpose of:
- (A) providing the Additional Features, products and services associated with Activation, the System Hardware, the System Software, access to the Telematic Web Interface and other John Deere products and services in connection with the performance of this Contract to the Customer;
  - (B) communicating with the Customer and providing the Customer with information, products or services the Customer has requested;
  - (C) promoting and marketing John Deere products or services to the Customer; and
  - (D) for other purposes set out in the John Deere global Enterprise Privacy Statement (which includes the John Deere Limited Australia/New Zealand Privacy Statement) ("**Privacy Statements**"), and the John Deere Data Services and Subscriptions Policy available at [www.deere.com](http://www.deere.com) and otherwise in accordance with the *Privacy Act 1988 (Cth)*,

and John Deere may disclose such Personal Information to its related entities or any other third parties that provide products and services to John Deere to achieve any such purpose, as set out in this Contract and the Privacy Statements. Pursuant to the consents given in Section 3.3 of this Contract, where such parties are located overseas, the Customer may have rights to enforce such parties' compliance with applicable data protection laws, but the Customer may not have recourse against those parties under the *Privacy Act 1988 (Cth)* in relation to how those parties treat the Customer's Personal Information.

- (ii) The Privacy Statements contain information about how the Customer may access and seek correction of Personal Information and complain about a breach of privacy, and how John Deere will deal with that complaint. To contact John Deere in relation to privacy, the Customer can:
- (A) write to John Deere at John Deere Limited - Head Office, 166-170 Magnesium Drive, Crestmead, Queensland 4132, Australia; or
  - (B) call 1800 800 981 (free call from within Australia), +61 7 3802 3222 (from outside Australia), or 0800 303 100 (free call from within New Zealand).
- (iii) Without limiting Section 3.1 of this Contract, the Customer must ensure that any relevant Customer personnel who deal with John Deere in relation to John Deere's provision of goods and services to the Customer, or any other person whose Personal Information is made available to John Deere as a result of the performance of this Contract, are aware of and have agreed to the terms of this Section 3, the Privacy Statements, the John Deere Data Services and Subscription Policy and the disclosure and use of their Personal Information in accordance with the terms of this Contract.

**3.4 Consent to disclose personal information to overseas recipients.** By entering into this Contract, the Customer consents to the disclosure of Personal Information described in this Section 3 overseas and to its use by third parties, including John Deere's related entities and service providers, in the United States of America, Canada, New Zealand, Australia, Germany, India or Singapore, and such other countries in which those parties or their, or John Deere's, computer systems may be located from time to time, without John Deere being responsible for such use (or for any breach). If the Customer does not consent to the use or disclosure of such Personal Information by John Deere in accordance with the terms of this Contract and the Privacy Statements, the Customer must immediately discontinue using the Additional Features, including the Web Functions, and contact John Deere or the Customer's Dealer. The Customer (i) acknowledges and agrees that it has been informed by John Deere that the provision of such consent by the Customer means that Australian Privacy Principle 8.1 does not apply to the disclosure of personal information by John Deere to any overseas recipient in accordance with this Contract, and (ii) for the avoidance of doubt and notwithstanding the consent given under Section 3 of this Contract, expressly consents to any such disclosure after having been so informed.

Section 4 of the Contract does not apply and is replaced with the following Section 4:

#### 4. INVOICING AND PAYMENT

**4.1 Payment.** Customer agrees to pay all applicable fees. Such fees will be paid via a John Deere-approved payment method selected by Customer and communicated to John Deere. If Customer fails to make any portion of such payment, and for each month in which payment remains outstanding, a late charge of the lesser of (i) 10.5% per annum of any outstanding amount or (ii) the maximum amount permitted by law may be charged to Customer. All reasonable costs and expenses, including but not limited to legal fees, court costs and service charges incurred by John Deere in collecting payment will be an expense of and charged to Customer. John Deere may change payment terms at any time. If Customer becomes delinquent in the payment of any sum due, John Deere will not be obligated to continue performance under this Contract. **If Customer purchased or received this Contract from a third party (such as a Dealer), Customer is responsible to pay Additional Features fees as set forth above to the extent the third party has not paid, or does not pay, any such fees to John Deere, regardless of whether Customer has paid the third party for the assignment of this Contract.**

#### 4.2 GST

- 4.2.1 Recovery of GST.** If GST is payable, or notionally payable, on a supply made under or in connection with this Contract, the party providing the consideration for that supply must pay as additional consideration an amount equal to the amount of GST payable, or notionally payable, on that supply (the "GST Amount"). Subject to the prior receipt of a tax invoice, the GST Amount is payable at the same time that the other consideration for the supply is provided. If a tax invoice is not received prior to the provision of that other consideration, the GST Amount is payable within 10 days of the receipt of a tax invoice. This Section 4.2 does not apply to the extent that the consideration for the supply is expressly stated to be GST inclusive or the supply is subject to reverse charge.
- 4.2.2 Liability net of GST.** Where any indemnity, reimbursement or similar payment under this Contract is based on any cost, expense or other liability, it shall be reduced by any input tax credit entitlement, or notional input tax credit entitlement, in relation to the relevant cost, expense or other liability.
- 4.2.3 Adjustment events.** If an adjustment event occurs in relation to a supply made under or in connection with this Contract, the GST Amount will be recalculated to reflect that adjustment and an appropriate payment will be made between the parties.
- 4.2.4 Survival.** This Section 4.2 will not merge upon completion and will continue to apply after expiration or termination of this Contract.
- 4.2.5 Definitions.** Unless the context requires otherwise, words and phrases used in this Section 4.2 that have a specific meaning in the GST law (as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)) shall have the same meaning in this Section 4.2.

Section 6.1 of the Contract does not apply and is replaced with the following Section 6.1:

**6.1 Limitation of Liability and Remedies.** To the extent permitted by applicable law: (i) John Deere's entire liability and Customer's sole and exclusive remedies for any damages arising from the performance or nonperformance under this Contract related to the use of the Service will be the remedies set forth herein; and (ii) John Deere will not be liable for any loss or damage arising from Customer's failure to comply with the provision set forth in this Contract.

CUSTOMER ACKNOWLEDGES THAT THE ADDITIONAL FEATURES ARE SUPPLIED ON A GOOD FAITH EFFORTS BASIS AND THAT SERVICE FAILURES AND INTERRUPTIONS MAY OCCUR AND ARE DIFFICULT TO ASSESS AS TO CAUSE OR RESULTING DAMAGES, AND CUSTOMER UNDERSTANDS THAT IT WILL BEAR ALL RESPONSIBILITY, RISK AND COST ASSOCIATED WITH DEVELOPING AND MAINTAINING ITS BUSINESS. CUSTOMER ACKNOWLEDGES THAT IT IS NOT A THIRD PARTY BENEFICIARY OF ANY AGREEMENT BETWEEN ANY DEALER AND JOHN DEERE OR BETWEEN JOHN DEERE. CUSTOMER UNDERSTANDS AND AGREES THAT, SUBJECT TO SECTION 6.2A, IN NO EVENT WILL JOHN DEERE OR ANY OF ITS AFFILIATES HAVE ANY LEGAL, EQUITABLE, OR OTHER LIABILITY OF ANY KIND TO CUSTOMER, ANY EMPLOYEE OF CUSTOMER, OR ANY THIRD PARTY USING ADDITIONAL FEATURES THROUGH CUSTOMER IN ANY EVENT, REGARDLESS OF THE FORM OF THE ACTION, WHETHER FOR BREACH OF CONTRACT (INCLUDING FOR LIABILITY UNDER ANY INDEMNITY), STATUTORY ACTION, WARRANTY, EQUITY, NEGLIGENCE, IN TORT OR OTHERWISE AT LAW AND INCLUDING WITHOUT LIMITATION ANY LOST PROFITS, LOST SAVINGS OR ANY INCIDENTAL DAMAGES ARISING OUT OF THE USE, INABILITY TO USE, UNAVAILABILITY, DELAY, FAULTINESS OR FAILURE OF JOHN DEERE'S SYSTEMS OR ANY PART THEREOF PROVIDED UNDER THIS CONTRACT, EVEN IF ANY OF THEM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR ANY OTHER INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES AND CUSTOMER HEREBY WAIVES ANY RIGHT TO MAKE ANY CLAIMS FOR SUCH DAMAGES. SUBJECT TO SECTION 6.2A, TO THE EXTENT NOT EXCLUDED BY THE FOREGOING, CUSTOMER'S EXCLUSIVE REMEDY FOR CLAIMS ARISING IN ANY WAY IN CONNECTION WITH THIS CONTRACT, FOR ANY CAUSE WHATSOEVER, INCLUDING BUT NOT LIMITED TO ANY FAILURE OR DISRUPTION OF ADDITIONAL FEATURES PROVIDED HEREUNDER AND WHETHER FOR BREACH OF CONTRACT (INCLUDING FOR LIABILITY UNDER ANY INDEMNITY), STATUTORY ACTION, WARRANTY, EQUITY, NEGLIGENCE, IN TORT OR OTHERWISE AT LAW, IS LIMITED TO PAYMENT OF DAMAGES IN AN AMOUNT NOT TO EXCEED ONE HUNDRED U.S. DOLLARS (\$100.00). SUBJECT TO SECTION 6.2A, CUSTOMER UNDERSTANDS THAT JOHN DEERE CANNOT GUARANTEE THE SECURITY OR RELIABILITY OF WIRELESS TRANSMISSIONS, AND JOHN DEERE WILL NOT BE LIABLE FOR ANY LACK OF SECURITY OR RELIABILITY RELATING TO THE USE OF THE ADDITIONAL FEATURES.

Section 6.2 of the Contract does not apply and is replaced with the following Sections 6.2 and 6.2A:

**6.2 Disclaimer of Warranties.** EXCEPT FOR YOUR RIGHTS UNDER SCHEDULE 2 OF THE *COMPETITION AND CONSUMER ACT 2010 (CTH)* (THE "AUSTRALIAN CONSUMER LAW") AND TO SECTION 6.2A, THE ADDITIONAL FEATURES AND TELEMATIC SOFTWARE ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. SUBJECT TO SECTION 6.2A, NONE OF JOHN DEERE OR ANY OF ITS AFFILIATES, OR ANY OF THEIR AFFILIATES HAS MADE, OR WILL BE DEEMED TO HAVE MADE, ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER WITH RESPECT TO JOHN DEERE'S SYSTEMS OR THE ADDITIONAL FEATURES. EXCEPT FOR YOUR RIGHTS UNDER THE AUSTRALIAN CONSUMER LAW AND SUBJECT TO SECTION 6.2A,



EACH OF JOHN DEERE AND ITS AFFILIATES EXPRESSLY DISCLAIMS, AND CUSTOMER EXPRESSLY WAIVES, RELEASES AND RENOUNCES ALL WARRANTIES ARISING IN LAW OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO: (A) ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, (B) ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE; (C) ANY WARRANTIES AS TO THE ACCURACY, AVAILABILITY OR CONTENT OF JOHN DEERE'S SYSTEM, THE ADDITIONAL FEATURES OR ANY OTHER SERVICES PROVIDED BY JOHN DEERE OR ANY OF ITS AFFILIATES; (D) ANY WARRANTY OF NON-INFRINGEMENT; AND (E) ANY WARRANTY UNDER ANY THEORY OF LAW, INCLUDING ANY TORT, NEGLIGENCE, STRICT LIABILITY, CONTRACT OR OTHER LEGAL OR EQUITABLE THEORY. NO REPRESENTATION OR OTHER AFFIRMATION OF FACT, INCLUDING, BUT NOT LIMITED TO, STATEMENTS REGARDING CAPACITY OR SUITABILITY FOR USE, THAT IS NOT CONTAINED IN THIS CONTRACT WILL BE DEEMED TO BE A WARRANTY BY JOHN DEERE OR ANY OF ITS AFFILIATES.

**6.2A Consumer Guarantees.** Despite the limitations on liability and remedies contained in Section 6.1 of this Contract and the disclaimer of warranties contained in Section 6.2 of this Contract, nothing in this Contract excludes, restricts or modifies any consumer guarantee, right or remedy conferred on the Customer by the Australian Consumer Law or any other applicable law that cannot be excluded, restricted, or modified by agreement. To the fullest extent permitted by law, the liability of John Deere for a breach of a non-excludable guarantee referred to in Sections 6.1 and 6.2 of this Contract is limited, at John Deere's option, to:

- (i) in the case of goods:
  - (1) the replacement of the goods or the supply of equivalent goods;
  - (2) the repair of the goods;
  - (3) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
  - (4) the payment of the cost of having the goods repaired; or
  
- (ii) in the case of services:
  - (1) the supplying of the services again; or
  - (2) the payment of the cost of having the services supplied again.

**Section 6.3 of the Contract does not apply and is replaced with the following Section 6.3:**

**6.3 Customer Indemnification.** To the extent permitted by applicable law, Customer will indemnify, defend and hold John Deere and its Affiliates (including their respective officers, employees, and agents) (each, a "**Deere Indemnified Party**") harmless against any and all losses, claims, damages or expenses (including attorneys' fees) arising out of or related to: (i) any personal injury to or death of any person or persons, any loss or damage of any property, any financial loss, or any interruption of services which are caused or claimed to have been caused directly or indirectly from Customer's (including its employees or independent contractors) negligent use or intentional misuse of the System; (ii) use of any mounting bracket or other equipment not provided or approved for use with the System by John Deere; (iii) any use of the System by Customer for an unauthorized purpose; (iv) data content or other information transmitted by Customer, its employees or its independent contractors over the System; (v) any Abuse or Fraudulent Use by Customer or anyone accessing the Additional Features through Customer or Customer's Terminal; or (v) any material breach by Customer of any of the terms and conditions of this Contract. Customer hereby agrees to fully defend, hold harmless, and indemnify each Deere Indemnified Party from and against all liability, loss, damage, claims, actions, judgments or expenses arising out of or relating to Customer's use of, failure to use, or inability to use the System or the wireless services provided by any underlying wireless provider, as well as from any third party intellectual property infringement claims arising out of or relating in any way with respect to Customer's use of the System, except to the extent any such liabilities, losses, damages, claims, actions, judgments or expenses are caused by the Deere Indemnified Party's reckless acts or omissions or willful misconduct.

**Section 6.7 of the Contract does not apply and is replaced with the following Section 6.7:**

**6.7 Severability; Waiver.** If any provision of this Contract is prohibited or determined to be unenforceable in any jurisdiction, in whole or in part, that provision must, in relation to that jurisdiction: (a) be read down to the minimum extent necessary to achieve its validity, if applicable; and (b) be severed from this Contract in any other case. The validity or enforceability of that provision in any other jurisdiction and the validity or enforceability of the remaining provisions will not in any way be affected or impaired. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Contract invalid or unenforceable in any respect. The waiver by any party of a breach of any of the provisions of this Contract will not operate as a waiver of any subsequent breach.

**The following Section 6.14 forms part of the Contract and must be read as if it follows Section 6.13 of the Contract:**

**6.14 Third party consents to surveillance and tracking.** To the extent that the Customer permits a third party, including the Customer's employees, directors, officers and other personnel ("**Third Party**") to use Customer's System Hardware, the Customer warrants to John Deere that the Customer has provided any necessary notifications and obtained the necessary consents and approvals from that Third Party for John Deere to continue to determine and monitor the geographical location of the Customer's System Hardware and otherwise collect the Customer Content from the Customer's System Hardware while that Third Party is using that System Hardware.

**NEW ZEALAND**

**The following Section 1.5A forms part of the Contract and must be read as if it follows Section 1.5 of the Contract:**

**1.5A Email and SMS Messages.** The Customer consents to receiving emails and SMS messages sent by John Deere or any of its Affiliates. The Customer agrees that any emails or SMS messages sent to the Customer by John Deere or any of its Affiliates are not required to contain the functional unsubscribe facilities set out in section 11(1) of the Unsolicited Electronic Messages Act 2007.

**The following Section 3.1A forms part of the Contract and must be read as if it follows Section 3.1 of the Contract:**

**3.1A Data retention in New Zealand.** If the Customer is located in New Zealand, John Deere will store the Customer Content for such time until it no longer needs the Customer Content for any purpose for which it may be used or disclosed by John Deere in accordance with the New Zealand privacy laws.

**The following Section 3.3 forms part of the Contract and must be read as if it followed Section 3.2 of the Contract:**

**3.3 Information regarding the *Privacy Act 1993*:**

(i) The Customer consents to John Deere collecting and using Personal Information (as that term is defined in the *Privacy Act 1993* as amended from time to time) of or relating to the Customer and relevant Customer personnel for the purpose of:

- (A) providing the Additional Features, products and services associated with Activation, the System Hardware, the System Software, access to the Telematic Web Interface and other John Deere products and services in connection with the performance of this Contract to the Customer;
- (B) communicating with the Customer and providing the Customer with information, products or services the Customer has requested;
- (C) promoting and marketing John Deere products or services to the Customer; and
- (D) for other purposes set out in the John Deere global Enterprise Privacy Statement (which includes the John Deere Limited Australia/New Zealand Privacy Statement) ("**Privacy Statements**"), and the John Deere Data Services and Subscriptions Policy available at [www.deere.com](http://www.deere.com) and otherwise in accordance with the *Privacy Act 1993*,

and John Deere may disclose such Personal Information to its related entities or any other third parties that provide products and services to John Deere to achieve any of the purposes set out in this Contract and the Privacy Statements. Pursuant to the consents given in Section 3.3 of this Contract, where John Deere transfers personal information about you overseas or discloses personal information about you to third parties located outside of New Zealand, in addition to any rights you may have in the country in which the information is held, you may have recourse against John Deere or those parties under the New Zealand Privacy Act in relation to: the storage and security of your personal information; the accuracy of the personal information; the duration for which the personal information may be stored for; and the use and disclosure of the personal information.

(ii) The Privacy Statements contain information about how the Customer may access and seek correction of Personal Information and complain about a breach of privacy, and how John Deere will deal with that complaint. To contact John Deere in relation to privacy, the Customer can:

- (A) write to John Deere at John Deere Limited - Head Office, 166-170 Magnesium Drive, Crestmead, Queensland 4132, Australia; or
- (B) call 1800 800 981 (free call from within Australia), +61 7 3802 3222 (from outside Australia), or 0800 303 100 (free call from within New Zealand).

(iii) Without limiting Section 3.1 of this Contract, the Customer must ensure that any relevant Customer personnel who deal with John Deere in relation to John Deere's provision of goods and services to the Customer, or any other person whose Personal Information is made available to John Deere as a result of the performance of this Contract, are aware of and have agreed to the terms of this Section 3, the Privacy Statements, the John Deere Data Services and Subscription Policy and the disclosure and use of their Personal Information in accordance with the terms of this Contract.

**Section 4.1 of the Contract does not apply and is replaced with the following Sections 4.1:**

**4.1 Payment.** Customer agrees to pay all applicable fees. Such fees will be paid via a John Deere-approved payment method selected by Customer and communicated to John Deere. If Customer fails to make any portion of such payment, and for each month in which payment remains outstanding, a late charge of the lesser of (i) 10.5% per annum of any outstanding amount or (ii) the maximum amount permitted by law may be charged to Customer. All reasonable costs and expenses, including but not limited to legal fees court costs and service charges incurred by John Deere in collecting payment will be an expense of and charged to Customer. John Deere may change payment terms at any time. If Customer becomes delinquent in the payment of any sum due, John Deere will not be obligated to continue performance under this Contract. **If Customer purchased or received this Contract from a third party (such as a Dealer), Customer is responsible to pay Additional Features fees as set forth above to the extent the third party has not paid, or does not pay, any such fees to John Deere, regardless of whether Customer has paid the third party for the assignment of this Contract.**

The following Section 4.2A forms part of the Contract and must be read as if it follows Section 4.2 of the Contract:

**4.2A Tax.** For the avoidance of doubt, all prices and rates affiliated with the Additional Features or System Hardware are plus GST (if any).

The second paragraph of section 6.1 does not apply and is replaced with the following:

CUSTOMER ACKNOWLEDGES THAT THE ADDITIONAL FEATURES ARE SUPPLIED ON A GOOD FAITH EFFORTS BASIS AND THAT SERVICE FAILURES AND INTERRUPTIONS MAY OCCUR AND ARE DIFFICULT TO ASSESS AS TO CAUSE OR RESULTING DAMAGES, AND CUSTOMER UNDERSTANDS THAT IT WILL BEAR ALL RESPONSIBILITY, RISK AND COST ASSOCIATED WITH DEVELOPING AND MAINTAINING ITS BUSINESS. CUSTOMER ACKNOWLEDGES THAT IT IS NOT A THIRD PARTY BENEFICIARY OF ANY AGREEMENT BETWEEN ANY DEALER AND JOHN DEERE. CUSTOMER UNDERSTANDS AND AGREES THAT IN NO EVENT WILL JOHN DEERE OR ANY OF ITS AFFILIATES HAVE ANY LEGAL, EQUITABLE, OR OTHER LIABILITY OF ANY KIND TO CUSTOMER, ANY EMPLOYEE OF CUSTOMER, OR ANY THIRD PARTY USING ADDITIONAL FEATURES THROUGH CUSTOMER IN ANY EVENT, REGARDLESS OF THE FORM OF THE ACTION, WHETHER FOR BREACH OF CONTRACT (INCLUDING FOR LIABILITY UNDER ANY INDEMNITY), STATUTORY ACTION, WARRANTY, EQUITY, NEGLIGENCE, IN TORT OR OTHERWISE AT LAW AND INCLUDING WITHOUT LIMITATION ANY LOST PROFITS, LOST SAVINGS OR ANY INCIDENTAL DAMAGES ARISING OUT OF THE USE, INABILITY TO USE, UNAVAILABILITY, DELAY, FAULTINESS OR FAILURE OF JOHN DEERE'S SYSTEMS OR ANY PART THEREOF PROVIDED UNDER THIS CONTRACT, EVEN IF ANY OF THEM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR ANY OTHER INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES AND CUSTOMER HEREBY WAIVES ANY RIGHT TO MAKE ANY CLAIMS FOR SUCH DAMAGES. TO THE EXTENT NOT EXCLUDED BY THE FOREGOING, CUSTOMER'S EXCLUSIVE REMEDY FOR CLAIMS ARISING IN ANY WAY IN CONNECTION WITH THIS CONTRACT, FOR ANY CAUSE WHATSOEVER, INCLUDING BUT NOT LIMITED TO ANY FAILURE OR DISRUPTION OF ADDITIONAL FEATURES PROVIDED HEREUNDER AND WHETHER FOR BREACH OF CONTRACT (INCLUDING FOR LIABILITY UNDER ANY INDEMNITY), STATUTORY ACTION, WARRANTY, EQUITY, NEGLIGENCE, IN TORT OR OTHERWISE AT LAW, IS LIMITED TO PAYMENT OF DAMAGES IN AN AMOUNT NOT TO EXCEED ONE HUNDRED U.S. DOLLARS (\$100.00). CUSTOMER UNDERSTANDS THAT JOHN DEERE CANNOT GUARANTEE THE SECURITY OR RELIABILITY OF WIRELESS TRANSMISSIONS, AND JOHN DEERE WILL NOT BE LIABLE FOR ANY LACK OF SECURITY OR RELIABILITY RELATING TO THE USE OF THE ADDITIONAL FEATURES.

Section 6.3 does not apply and is replaced with the following:

**6.3. Customer Indemnification.** Subject to any applicable "Country Specific Terms" set out below Table 1 in this Contract for Customer's Contract Jurisdiction and to the extent permitted by applicable law, Customer will indemnify, defend and hold John Deere and its Affiliates (including their respective officers, employees, and agents) (each, a "Deere Indemnified Party") harmless against any and all losses, claims, damages or expenses (including attorneys' fees) arising out of or related to: (i) any personal injury to or death of any person or persons, any loss or damage of any property, any financial loss, or any interruption of services which are caused or claimed to have been caused directly or indirectly from Customer's (including its employees or independent contractors) negligent use or intentional misuse of the System; (ii) use of any mounting bracket or other equipment not provided or approved for use with the System by John Deere; (iii) any use of the System by Customer for an unauthorized purpose; (iv) data content or other information transmitted by Customer, its employees or its independent contractors over the System; (v) any Abuse or Fraudulent Use by Customer or anyone accessing the Additional Features through Customer or Customer's Terminal; or (v) any material breach by Customer of any of the terms and conditions of this Contract. Customer hereby agrees to fully defend, hold harmless, and indemnify each Deere Indemnified Party from and against all liability, loss, damage, claims, actions, judgments or expenses arising out of or relating to Customer's use of, failure to use, or inability to use the System or the wireless services provided by any underlying wireless provider, as well as from any third party intellectual property infringement claims arising out of or relating in any way with respect to Customer's use of the System, except to the extent any such liabilities, losses, damages, claims, actions, judgments or expenses are caused by the Deere Indemnified Party's reckless acts or omissions or willful misconduct.

Section 6.7 of the Contract does not apply and is replaced with the following Section 6.7:

**6.7. Severability; Waiver.** If any provision of this Contract is prohibited or determined to be unenforceable in any jurisdiction, in whole or in part, that provision must, in relation to that jurisdiction: (a) be read down to the minimum extent necessary to achieve its validity, if applicable; and (b) be severed from this Contract in any other case. The validity or enforceability of that provision in any other jurisdiction and the validity or enforceability of the remaining provisions will not in any way be affected or impaired. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Contract invalid or unenforceable in any respect. The waiver by any party of a breach of any of the provisions of this Contract will not operate as a waiver of any subsequent breach.