

IMPORTANT: READ CAREFULLY

These license terms must be accepted before Software use

END USER LICENSE AGREEMENT **FOR THE DEERE AGLOGIC™ SOFTWARE**

This **END USER LICENSE AGREEMENT** ("EULA") is a legally enforceable contract entered into and made enforceable by and between the entity entitled to license certain products and services hereunder ("**Customer**"), and **DEERE & COMPANY**, a Delaware corporation, acting through its subsidiary **JOHN DEERE SHARED SERVICES, INC.**, with a principal place of business at One John Deere Place, Moline, IL 61265 ("**Deere**"), and governs Customer's use of the web-based and PDA-based versions of **DEERE's AgLOGIC™ SOFTWARE**, including computer programs installed on a server owned by Deere or its authorized supplier ("**Web Software**") or on a unit of handheld computer equipment ("**PDA Software**"), respectively, and licensed to Customer by Deere. Web Software and PDA Software are collectively referred to as the "**Software**".

By clicking on the "**I ACCEPT**" icon below, or by activating, accessing, or otherwise using the Software, you represent that you have read and understood this EULA, that you are legally authorized to enter into this EULA on behalf of Customer, and that Customer is bound by and shall perform faithfully all of the obligations of this EULA, including the warranty disclaimers, limitations of liability, and termination provisions contained herein. If Customer does not wish to be bound by the terms of this EULA, you must click the "**I DO NOT ACCEPT**" icon below, and you will be returned to the login screen.

Deere may, at any time in its sole discretion, revise the terms of this EULA, the Software, and any related services. It is Customer's responsibility to check the AgLogic™ website periodically for revisions. By using the Software after Deere posts any revisions, Customer agrees to accept those revisions, whether or not it has reviewed them. If at any time Customer chooses not to accept the revised terms, Customer must cease use of the Software and comply with Section 10.2.

1. CONSIDERATION. The applicable fees Customer pays in connection with the subject matter of this EULA are in consideration of the licenses and other rights granted under this EULA.

2. TERM. Subject to Section 10 (Termination):

2.1 Annual Term. If Customer is licensing a full Software use, this EULA shall commence on the annual service commencement date provided by Deere ("**Start Date**") and shall continue for a period of twelve (12) consecutive months ("**Initial Term**"). Thereafter, this EULA shall automatically renew on an annual basis (each a "**Renewal Term**"). The Initial Term and Renewal Term(s) are collectively referred to as the "**Term**". This EULA is at all times subject to payment in full of all applicable fees prior to the end of the Initial or any Renewal Term.

2.2 Demo Term. If Customer is licensing Software under Deere's short-term demonstration (or "demo") option, this EULA shall commence on the demo service commencement date provided by Deere ("**Start Date**") and shall continue for a period of two (2) consecutive months ("**Demo Term**").

3. GRANT OF RIGHTS.

3.1 License Grant. Subject to Section 10 and to Customer's payment of the applicable fees, Deere hereby grants to Customer and Customer accepts a nonexclusive, nontransferable, nonassignable limited license during the Term or Demo Term solely to access and use, and to receive the services specified in Section 5 (Maintenance and Support), for the Software in object code form, only within the United States of America ("**US**" or "**USA**") and solely by Customer's personnel in the conduct of Customer's own business to process Customer Data (defined in Section 3.5) for its internal business purposes as authorized in this EULA and the applicable provisions of the documentation, which Customer agrees to review carefully prior to using the Software.

3.2 Keys. Customer will be provided with "**Keys**", which are electronic activation codes that, when entered into a unit of handheld computer equipment called a Personal Digital Assistant ("**PDA**"), will make the PDA operational in accordance with this EULA. Customer is responsible for distributing Keys to Customer's personnel who will be using PDAs on Customer's behalf ("**PDA Users**"). Customer is solely responsible for the compliance of all PDA Users to the applicable provisions of this EULA.

3.3 Software Use.

a. Customer's use of the Web Software as authorized in this EULA is made exclusively to Customer, and is limited to accessing it using a single logon identifier and password issued to Customer. Once a Key has been activated in a PDA, Customer's use of the Web Software shall include transmitting data between the Web Software and the PDA Software.

b. Customer's use of the PDA Software as authorized in this EULA is made exclusively to Customer, and is limited to transmitting data between the PDA Software and the Web Software.

3.4 Restrictions. This license is granted exclusively to Customer; therefore, Customer shall not provide its logon identifier, password, or Keys to anyone other than its personnel as permitted hereunder, nor permit its personnel to do so. This license is expressly restricted to the total number of PDA Software licenses for which Customer has paid the applicable fees. Customer shall not permit use of the Software in a service bureau or time sharing environment, or otherwise on behalf of or by any third party. Any violation of the license grant or restrictions shall cause this EULA to automatically terminate immediately without notice. Customer shall not sell, assign, sublicense, transfer, pledge, lease, rent, share, distribute, encumber, or otherwise transform, transfer, dispose of, or distribute the Software or any of the rights or obligations

granted or imposed on it under this EULA. However, Deere may assign or transfer this EULA or any right hereunder without Customer's prior consent.

3.5 Customer Data License. Customer hereby grants to Deere a nonexclusive worldwide, royalty-free, perpetual limited license right and license to: **(a)** use and analyze Customer Data to provide Mtce/Supp (defined in [Section 5](#)), and for internal research and development purposes; **(b)** analyze Customer Data with similar data from other sources for identifying trends, patterns, relationships, and statistics ("**Trend Data**"); **(c)** summarize, aggregate, or otherwise consolidate Customer Data with similar data from other sources to develop data aggregates, abstracts, reports, or other descriptions ("**Summary Data**"); and **(d)** to use and distribute to others Customer Data as it appears in Updates, Trend Data, and Summary Data. Anything in this [Section 3.5](#) to the contrary notwithstanding, *Deere shall not present Customer Data to third parties in any form or in any manner that would permit Customer's identity to be explicitly or implicitly revealed unless Deere receives Customer's prior written permission.* "**Customer Data**" shall mean data obtained directly or indirectly from or through Customer that is identified as Customer's data, including Registration Data (defined in [Section 4.1](#)) and is not data in any form provided by Deere ("**Deere Data**").

3.6 Reservation of Rights. No exclusive rights are granted by this EULA. Any right or license not expressly granted to Customer herein is reserved to Deere and, except as expressly set forth herein, no express or implied license or right of any kind or nature whatsoever is granted to Customer regarding any Deere Property or regarding Deere's and its Affiliates' (defined in [Section 6.2](#)) proprietary trademarks, service marks, trade names, logos, and symbols used to denote their products and services, including Deere's trademark "**AgLogic**".

4. CUSTOMER'S OBLIGATIONS.

4.1 Registration Data. Customer warrants that it: **(a)** provided true, accurate, current, and complete information about itself as prompted by the registration login ("**Registration Data**"); and **(b)** shall maintain and promptly update the Registration Data to keep it true, accurate, current, and complete. If Customer provides any Registration Data that is, or if Deere has reasonable grounds to suspect any Registration Data is, untrue, inaccurate, not current, or incomplete, Deere has the right to suspend or terminate Customer's account and refuse Customer any and all current or future use of the Software (or any portion thereof).

4.2 Opt-In/Opt-Out. By accepting this EULA, Customer has given its prior consent to sending and receiving the quantity, frequency, and types of messages, as applicable, delivered by the Software ("**Opt-In**"). Customer acknowledges that if it stops using the Software for any reason ("**Opt-Out**"), Customer must immediately notify Deere, and that any Opt-Out of the Web Software shall automatically terminate this EULA.

4.3 Software Environment. Customer is responsible for providing the "**Software Environment**", which is the computing environment for Software use and operation that meets Deere's then-current minimum requirements, including PDAs, Internet and telecommunication connectivity, a suitable installation site, and all utilities (including cables and electrical outlets) required for Software, PDA, and hardware use and operation.

4.4 Content.

- a. Customer acknowledges and agrees that Deere exercises no control whatsoever over Customer's Data and is a passive conduit in transmitting and otherwise handling Customer Data. Customer is solely responsible for Customer Data submitted through the Software hereunder. Customer agrees to use reasonable efforts to not use the Software, or permit the Software to be used, to transmit Inappropriate Content.
- b. For purposes of this EULA, "**Inappropriate Content**" will mean any data that: **(i)** is unsolicited, including "junk mail" or "bulk email"; **(ii)** causes the introduction of "viruses", "worms", "Trojan horses", "email bombs", "cancelbots", or other similar computer programming routines into the Software; **(iii)** is unlawful (including obscene, defamatory, or libelous) or offensive as Deere determines in its sole discretion; **(iv)** is misleading or inaccurate; or **(v)** infringes the intellectual property of any other person or entity.

5. MAINTENANCE AND SUPPORT. Beginning on the Start Date, Deere will make available to Customer certain maintenance and support services ("**Mtce/Supp**"), as follows:

5.1 Deere Mtce/Supp. During the Term or Demo Term, Deere shall use commercially reasonable efforts to make available to Customer Mtce/Supp for the Software, currently comprising:

- a. **Maintenance.** All Updates, including Error Corrections. "**Updates**" means periodic improvements or additions to the Software issued by Deere in its sole discretion as part of Maintenance. "**Error Correction**" means a modification or addition to or a workaround for the Software to resolve an Error which Deere can verify and replicate. "**Error**" means any failure of the Software to substantially conform to the documentation. Each Update shall be deemed part of the Software under this EULA. Maintenance does not include Releases, which are any new Software feature or substantial additional functionality which Deere determines in its sole discretion is subject to additional license fees and/or terms.
- b. **Support.** Customer's John Deere dealer is the best source of information and support for the Software, and Customer should first contact the dealer for Software support. Customer may obtain direct access to Deere personnel trained on Software use during Deere's standard support hours, currently 24 hours a day, 7 days a week, with the exception of U.S. Thanksgiving Day, U.S. Christmas Day, and U.S. New Year's Day, unless otherwise stated on www.stellarsupport.com. Support shall comprise telephone, facsimile, and/or electronic assistance for reporting problems and seeking help regarding Customer's Software use. Customer understands that training provided via telephone is not Deere Support and is separately billable.
- c. **Version.** Deere shall provide Mtce/Supp only for the then-current Version. "**Version**" means the Software configuration identified by a number to the right of the last decimal point (e.g., 2.1, 2.32, 11.0.2). Unless otherwise expressly stated, all references to Software mean the then-current Version, which shall contain all Updates issued by Deere hereunder.
- d. **PDA Support.** Customer may contact Deere to request assistance for PDA problem resolution. At Deere's sole discretion, Deere may refer any such request to Customer's PDA vendor.

5.2 Exclusions. Anything in this EULA to the contrary notwithstanding:

- a. Mtce/Supp does not include Releases; and Deere is not responsible for Mtce/Supp or other services for third party software, systems, or equipment. Assistance regarding any of the preceding shall be at Deere's sole discretion and billed at Deere's then-current rates.
- b. Deere shall not be obligated to remedy any Software nonconformity nor shall Deere have any responsibility or liability of any kind arising or resulting from:
 - i. Customer's failure to: **(A)** prepare the Software Environment prior to Software use or to maintain same thereafter, **(B)** report any nonconformity promptly upon discovery thereof, **(C)** provide information and cooperation as reasonably requested by Deere to verify and reproduce the Error; **(D)** correctly and timely install all Error Corrections, Updates, and other Software modifications provided by Deere; or **(E)** provide security authorization or dial-in communications mechanisms if requested by Deere to facilitate Error Corrections.
 - ii. Errors resulting from misuse, abuse, negligence, or improper use of all or any part of the Software; problems to or caused by products or services not provided by Deere; or Internet or telecommunication connection problems.
 - iii. Software modification, alteration, revision, or other change by any party other than Deere or Deere's authorized representatives.
 - iv. Data or data input, output, integrity, storage, and back-up, which shall be deemed under Customer's exclusive control. Any use of or reliance on data or data output is Customer's sole responsibility.

6. LIMITATIONS OF LIABILITY.

6.1 Allocation of Risk. Customer expressly agrees that this EULA reflects allocation of risks, including warranty disclaimers, liability limitations, and exclusive remedies described in this Section 6. In consideration thereof, Customer agrees to such risk allocations, and that all related costs and expenses are Customer's sole responsibility, incurred at its own risk and with its independent business judgment that such costs and expenses are appropriate.

6.2 Warranty Disclaimers. THE SOFTWARE IS LICENSED "AS IS" WITHOUT ANY WARRANTY OR OTHER SERVICES FROM DEERE, AND CUSTOMER HEREBY AGREES THAT ITS SOLE AND EXCLUSIVE REMEDY UNDER THIS EULA SHALL BE EXPRESSLY LIMITED TO THE MTCE/SUPP PROVIDED IN SECTION 5. DEERE, ON BEHALF OF ITSELF AND ITS DIRECT OR INDIRECT PARENT, SUBSIDIARIES, AFFILIATES, OR OTHER RELATED PARTIES ("AFFILIATES"), AUTHORIZED DEERE & COMPANY DEALERS ("DEALERS"), AND THIRD PARTY SUPPLIERS, EXPRESSLY DISCLAIMS, AND CUSTOMER EXPRESSLY WAIVES, RELEASES, AND RENOUNCES, ALL WARRANTIES, REPRESENTATIONS, AND CONDITIONS, WHETHER WRITTEN OR ORAL, OR EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, TITLE, DATA INTEGRITY, OR QUIET ENJOYMENT; ARISING FROM COURSE OF PERFORMANCE, DEALING, OR TRADE USAGE; OR ANY OTHER WARRANTY ARISING UNDER ANY THEORY OF LAW, WITH RESPECT TO THE SOFTWARE OR ANY COMPONENTS THEREOF, OR OTHER GOODS OR SERVICES PROVIDED BY DEERE, AFFILIATES, OR DEALERS. NO REPRESENTATION OR OTHER AFFIRMATION OF FACT SHALL BE DEEMED TO BE A WARRANTY BY DEERE OR ANY OF ITS AFFILIATES OR THIRD PARTY SUPPLIERS. DEERE DOES NOT WARRANT THAT ALL ERRORS CAN BE CORRECTED, OR THAT SOFTWARE OPERATION SHALL BE UNINTERRUPTED OR ERROR-FREE.

6.3 Liability Limitations. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 5 ABOVE, UNDER NO CIRCUMSTANCES SHALL DEERE, AFFILIATES, DEALERS, OR THIRD PARTY SUPPLIERS, OR ANY OF THEIR OFFICERS, DIRECTORS, SHAREHOLDERS, PERSONNEL, OR REPRESENTATIVES, BE LIABLE TO CUSTOMER OR TO ANY OTHER PARTIES, OR TO ANY OF CUSTOMER'S OFFICERS, DIRECTORS, PERSONNEL, REPRESENTATIVES, PARTNERS, OR OWNERS, FOR ANY DAMAGES WHATSOEVER RESULTING FROM OR IN CONNECTION WITH THIS EULA, INCLUDING ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, RELIANCE, OR SPECIAL DAMAGES OR COSTS (INCLUDING LEGAL COSTS), LOST PROFITS, SAVINGS, OR GOODWILL, CROP LOSS DAMAGES, DAMAGES TO LAND OR OTHER TANGIBLE PROPERTY, LOST PROFITS, BUSINESS, OR GOODWILL, OR DAMAGES OR LOSS DUE TO THE USE, MISUSE, OR INABILITY TO USE THE SOFTWARE OR OTHER PRODUCTS OR SERVICES, REGARDLESS OF THE CAUSE OF ACTION OR THEORY OF LIABILITY, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE, AND WHETHER OR NOT DEERE, AFFILIATES, DEALERS, OR THIRD PARTY SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY THEREOF. IN NO EVENT SHALL DEERE BE LIABLE FOR THE COST OF REPLACEMENT GOODS OR SERVICES.

6.4 Survival; Limitation on Claims. The limitations provided in this Section 6 shall survive and continue in full force and effect despite any failure of consideration, essential purpose, or an exclusive remedy. Any claim arising hereunder or in connection herewith by either party shall be commenced within one (1) year of the date such cause of action accrued.

7. INDEMNIFICATION. Customer shall defend, indemnify, and hold harmless Deere, Affiliates, Dealers, and third party suppliers, and their officers, directors, personnel, agents, and representatives, (each an "**Indemnified Party**") from and against all claims, demands, proceedings, injuries, liabilities, damages, losses, costs, and expenses (including reasonable legal fees and court costs) ("**Losses**") brought by any third party against any Indemnified Party arising from or in connection with Customer's or a PDA User's use of any of the Software, regardless of whether such Losses are caused, wholly or partially, by any negligence, breach of contract, or other fault of an Indemnified Party.

8. OWNERSHIP, PROTECTION, AND SECURITY.

8.1 Definitions.

- a. "**Proprietary Information**" means, collectively and without regard to form, Deere's Confidential Information and Trade Secrets; defined as follows: (i) "Confidential Information" is any non-public confidential or proprietary information of value to its owner other than Trade Secrets, and any data or information defined herein as a Trade Secret but does not qualify as a trade secret under applicable law. (ii) "Trade Secrets" is information that derives actual or potential economic value from not being generally known to, and not being readily ascertainable by proper means by, others who can obtain economic value from its disclosure or use, and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. "Trade Secrets" includes the Software, Mtce/Supp, and derivative works thereof, and "Confidential Information" includes the terms of this EULA and the existence, content, and result of any Dispute Resolution proceedings.

b. "Deere Property" shall mean all legal rights and interests in and to its Proprietary Information, including inventions, patents, copyrights, moral rights, marks, and other intellectual property rights, and derivative works and all copies thereof. Deere Property includes all systems, processes, tools, techniques, methods, and materials used or made by Deere in its performance hereunder or employed or developed by Deere in connection with the Software; information and materials related to Deere's business; and ("**Deere Data**").

8.2 Ownership. Customer acknowledges that Deere Property is proprietary to Deere and is protected under the terms of this EULA and applicable laws, including copyright, contract, and trade secret laws. This EULA only grants Customer a right to use the Software, which is not coupled with an interest and is revocable under the terms of [Section 10](#). Customer shall take no action that jeopardizes Deere Property, shall not assert any right, title, or interest, or other ownership or property rights, in or to any Deere Property, and shall keep the Software free and clear of all claims, liens, and encumbrances whatsoever. Neither this Agreement nor any rights hereunder shall be an asset of Customer in any manner whatsoever; however, this EULA shall be binding upon and inure to the benefit of the parties and their respective permitted successors and assigns.

8.3 Software Security. Customer shall maintain the Software, and the logon identifier and password issued to it, and all Keys in strict confidence, including compliance with reasonable remote access security requirements, and that Customer shall not itself nor permit any other party to: **(a)** disassemble, decompile, decrypt, or reverse engineer, or in any way attempt to discover or reproduce source code for any part of the Software, or attempt to defeat the copyright protection and application-enabling mechanisms therein; **(b)** copy, duplicate, replicate, or otherwise transform or reproduce the Software; **(c)** alter, modify, or prepare derivative works based on the Software or use any Deere property to create a computer program or other material that performs, replicates, or utilizes the same or substantially similar functions as the Software; **(d)** demonstrate or display the Software or its operation to unauthorized parties; **(e)** alter, remove, or suppress any proprietary or confidentiality notices or marks appearing in or on any Deere Property, including all full or partial copies and any related material; or **(e)** disclose, display, publish, transmit, or otherwise make available the Software, in whole or in part, except in confidence to Customer's personnel on a need-to-know basis.

8.4 Confidentiality. The unauthorized disclosure or use of Deere's Proprietary Information would cause great injury and harm to Deere. Therefore, Customer agrees to take all appropriate action to ensure the confidentiality and security of Deere's Proprietary Information, but in any event no less than the same standard of care it uses to protect its own Proprietary Information of like kind and value. Without limiting the generality of the foregoing, and in addition to Customer's obligations in [Section 8.3](#), Customer agrees that it: **(a)** shall maintain Deere's Proprietary Information in the strictest confidence, including compliance with remote access security requirements; **(b)** shall not disclose, display, publish, transmit, or otherwise make available such Proprietary Information or the benefit thereof, in whole or in part, except in confidence to its own personnel on a need-to-know basis; and **(c)** except as expressly permitted hereunder, shall not copy, duplicate, replicate, transform, or otherwise reproduce such Proprietary Information. The restrictions in this [Section 8](#) shall apply during the Term or Demo Term and shall remain continuously in full force and effect after any expiration or termination of this EULA: **(a)** for Trade Secrets, and any Confidential Information deemed a Trade Secret as long as it remains qualified as a Trade Secret under applicable law; and **(b)** for all other Confidential Information, during a period of five (5) years after the date of initial disclosure.

8.5 Damages. Customer acknowledges that Deere Property has been developed at great expense and effort. Therefore, each provision for the protection of Deere Property is material to this EULA and any threatened or actual breach which jeopardizes the confidential and/or proprietary nature thereof shall constitute immediate, irreparable harm to Deere and shall entitle Deere, in addition to any other remedies it may have at law or in equity (including recovery of damages), to injunctive relief or other similar or appropriate remedy or relief without posting bond as a condition of such relief.

9. GOVERNING LAW; DISPUTE RESOLUTION.

9.1 Governing Law and Forum. This EULA shall be governed by and construed in accordance with the substantive laws in force in the State of Illinois. The respective courts of Rock Island County, Illinois shall have nonexclusive jurisdiction over all disputes relating to this EULA. This EULA shall not be governed by the conflict of law rules of any jurisdiction or by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

9.2 Compliance with Law. Customer warrants that it will use the Software for lawful purposes and will comply with any government law, regulation, or rule applicable hereto, including the laws of the US and foreign trade control laws and regulations; and that it understands that the Software may be subject to export and other foreign trade controls restricting re-sales and/or transfers to other countries and parties, including US Export Administration Regulations and/or the foreign trade control regulations of the US Treasury Department. Customer acknowledging that the Software may not be exported or re-exported to, and are certifying that neither Customer nor any of its personnel, representatives, agents is a national of Cuba, Iran, Iraq, Libya, North Korea, Sudan, or Syria, or any country to which the US embargoes goods, and that Customer is not on the Table of Denial Orders; the Entity List; or the List of Specially Designated Nationals. Any other provision of this EULA to the contrary notwithstanding, Customer agrees that the Software shall not be resold, re-exported, or otherwise transferred. The Software remains subject to applicable US laws.

9.3 Dispute Resolution. Any dispute arising hereunder not resolved by informal negotiations or mediation within thirty (30) days after a party requests it shall be settled by binding arbitration in Rock Island County, Illinois by one (1) arbitrator with at least ten (10) years experience in the computer industry applying the commercial rules of the American Arbitration Association and the substantive laws of the State of Illinois. Nothing in this [Section 9.3](#) shall be construed to bar or otherwise interfere with Deere's right to injunctive and/or other equitable relief as stated herein or as may be permitted under applicable law and in any forum. All aspects of Dispute Resolution hereunder are expressly subject to [Section 8](#).

10. TERMINATION.

10.1 Termination of EULA. This EULA shall terminate immediately upon Customer's failure to pay the applicable fees and any other required fees prior to the end of any Term, or Customer's discontinuance of production use of the Web Software for any reason other than

Web Software malfunction. For any demo option Software, this EULA shall terminate with respect to such demo option Software immediately upon expiration of the Demo Term. Otherwise, this EULA may be terminated only:

- a. By either party for: **(i)** convenience as of the end of any Term by giving thirty (30) days prior written notice; or **(ii)** material breach of this EULA by the other party which remains uncured more than thirty (30) days after receipt of written notice of such breach.
- b. By Deere: **(i)** immediately for any breach of Section 7; **(ii)** upon notice of termination provided to Customer if Customer violates any material term of this EULA pertaining to its use of the Software or Deere's rights, including the provisions of Sections 3.3, 3.4, 4, 7, and 9.2; **(iii)** immediately if any substantial change in Customer's organization results in management, ownership, or control by a Deere competitor, or by an entity with a division or subsidiary that is a Deere competitor, or if Customer manages, owns, or controls a Deere competitor; or **(iv)** immediately if Customer becomes insolvent, make an assignment for the benefit of creditors, suffers or permits an appointment of a receiver for its business or assets, becomes subject to proceedings under any domestic or foreign bankruptcy or insolvency law, or is liquidated.

10.2 Effect of Termination.

- a. **PDA Software.** Immediately upon termination, Customer shall cease all use of the terminated PDA Software and destroy all related materials, retaining no copies. Termination of one or more PDA Software licenses shall not in and of itself terminate this EULA.
- b. **Web Software.** Immediately upon termination, Customer shall cease all use of the Software and destroy all related materials, retaining no copies. Customer may, however, retain information contained in business records it prepared in connection herewith, and Customer acknowledges that such information shall remain subject to all provisions of this EULA.
- c. **Survival.** Customer acknowledges and agrees that such provisions hereof which, by their context and content, are intended to survive termination or expiration shall so survive, including Sections 3.4, 3.5, 4, 6 – 9, 10.2, 11, and 12.

11. NOTICES. Notices and other communications to Deere required hereunder shall be made in writing and shall be deemed effectively given upon receipt when sent by overnight courier or certified mail (or equivalent) to the following address or, if faxed, on the date of Customer's receipt of confirmation of transmission:

John Deere Intelligent Solutions Group
ATTN: Accounting Department
4140 114th Street
Urbandale, IA 50322
FAX: 515-331-4641

12. GENERAL PROVISIONS.

12.1 Applicable Terms; Headings. Any term designated by an initial capital letter shall have the meaning ascribed to it, and "include/es/ing" shall mean "include/es/ing without limitation". Section headings are for convenience only and do not define or limit the scope of any provision hereof.

12.2 Consent. Consent or other approval required hereunder shall not be unreasonably withheld or delayed; however, it shall not be considered unreasonable for Deere to withhold its consent if it could serve to jeopardize the confidentiality and/or property interests in and to Deere property.

12.3 Entire Agreement. This EULA constitutes the entire agreement and understanding between the parties relating to the subject matter hereof; is intended as the parties' final, complete, and exclusive statement of the terms hereof, superseding all prior or contemporaneous agreements, representations, promises, and understandings, whether written or oral.

12.4 Force Majeure. Except for confidentiality and payment obligations, neither party shall be liable for any delay or failure in performing hereunder if caused by any factor beyond its reasonable control, and performance shall be deferred until such cause of delay is removed, provided that the delayed party shall promptly notify the other party of such occurrence.

12.5 Relationship. Customer and Deere are independent contractors in all relationships and actions contemplated by this EULA, which shall not be construed to create any employment relationship, partnership, joint venture, or agency relationship, or to authorize either party to enter into any commitment binding on the other party except as expressly stated herein, or to authorize either party to enter into any commitment binding on the other party except as expressly stated herein.

12.6 Severability and Waiver. If any term of this EULA is declared legally invalid or unenforceable, the remaining terms shall remain in full force and effect, and this EULA shall be deemed amended to replace, to the extent legally permitted, the rights and obligations contained in the invalid or unenforceable term. The invalidity or unenforceability of any term shall not constitute a failure of consideration hereunder. The failure or delay of either party to enforce any term hereof or to exercise any right or remedy granted hereunder shall not be deemed a waiver by that party of any prior, contemporaneous, or future enforcement of such terms or exercise of such rights or remedies. **END.**

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