

## MEMORANDUM OF UNDERSTANDING

### Section I — Parties / Beneficiaries / Purpose / Effective Date

A. **Parties.** This Memorandum of Understanding ("MOU") is made between the American Farm Bureau Federation ("AFBF") and the signatory Manufacturer of Agricultural Equipment. All capitalized terms in this MOU have the meanings set forth in Section V below.

B. **Beneficiaries.** The intended beneficiaries of this MOU are Farmers and Independent Repair Facilities located in all fifty (50) United States and Puerto Rico.

C. **Purpose.** The purpose of this MOU is, through a voluntary private sector commitment to outcomes rather than legislative or regulatory measures, to:

1. continue to enhance the ability of Farmers to timely control the lawful operation and upkeep of Agricultural Equipment;
2. assure the timely availability, on Fair and Reasonable terms, of Tools, Specialty Tools, Software and Documentation originating from Manufacturer, and Data from the operation of Agricultural Equipment originating from Manufacturer;
3. assure that no safety controls or protocols on Agricultural Equipment are compromised through the modification of protective measures installed for the benefit of Agricultural Equipment owners, operators and bystanders;
4. assure that the intellectual property of Manufacturer, including copyrighted software, is fully protected from illegal infringement through the modification of Embedded Software; and
5. assure that compliance with federal and state emissions control requirements is not compromised through changes to power ratings or other modification of control measures installed for the purpose of complying with the Clean Air Act and other environmental laws and regulations.

D. **Effective Date.** This MOU shall come into force as of January 8, 2023. Thereafter, Manufacturer and AFBF agree to meet as needed, and at least semi-annually, to assess how the MOU is operating, address operational concerns, suggest updates to this MOU, including updates based on technological advancements, and discuss any other matters relevant to "Right to Repair" or the MOU or adding amendments to this MOU. In the event that Manufacturer or AFBF concludes that, due to changed circumstances, the MOU may no longer be viable, that party shall provide written notice to the other party of its intent to withdraw from the MOU due to the change in circumstances. The parties shall cooperate in good faith to schedule a meeting within thirty (30) days of such written notice to discuss the ongoing viability of the MOU.

## **Section II— Obligations of Manufacturer**

### **A. In General**

1. Manufacturer shall ensure that any Farmer, including any staff or independent technician assisting a Farmer at a Farmer's request, and any Independent Repair Facility that provides assistance to Farmers, has electronic access on Fair and Reasonable terms to Manufacturer's Tools, Specialty Tools, Software and Documentation, including:

- John Deere Customer Service ADVISOR™
- Manuals (Operator, Parts, Service)
- Product service demonstrations, training, seminars or clinics
- On-board diagnostics via diagnostics port or wireless interface
- Other publications with information on service, parts, operation and safety

2. Manufacturer will ensure that Farmers and Independent Repair Facilities will be able to access and obtain, per subscription or sale, Manufacturer's Tools, Specialty Tools, Software, and Documentation, as set forth above, from Manufacturer or from Authorized Repair Facilities on Fair and Reasonable terms.

3. Manufacturer shall ensure that any Farmer, including any staff or independent technician assisting a Farmer at a Farmer's request, and any Independent Repair Facility that provides assistance to Farmers, have electronic access on Fair and Reasonable terms to Customer Service ADVISOR, which is available for Farmers and Independent Repair Facilities to purchase from Authorized Repair Facilities or online directly from Manufacturer in the United States.

- Customer Service ADVISOR will continue to provide access to operator's and technical manuals, allow the look-up of diagnostic codes, provide machine diagnostic connectivity with Electronic Data Link ("EDL"), and perform machine calibrations that require EDL.
- Customer Service ADVISOR will continue to be available for Independent Repair Facilities to purchase online from Manufacturer in the United States.
- Manufacturer shall assure availability of training for any purchaser of Customer Service ADVISOR.

4. Manufacturer shall ensure that a Farmer has electronic access on Fair and Reasonable terms to Manufacturer's Codes and Data and, with Farmer authorization, Codes and Data will be available to a Farmer's selected Independent Repair Facility.

5. This MOU shall not be interpreted or construed to require a Manufacturer to:
  - a) divulge trade secrets, proprietary or confidential information;
  - b) allow owners or Independent Repair Facilities to override safety features or emissions controls or to adjust Agricultural Equipment power levels; or,
  - c) violate any federal, state, or local laws or regulations.

**B. Provision to Farmers on Fair and Reasonable Basis**

1. If Manufacturer provides to Authorized Repair Facilities any Tools, Specialty Tools, Software and Documentation for functions listed in Subsection A.1., separately or as fully or partially integrated Software, Manufacturer shall ensure that these are available to Farmers on a Fair and Reasonable basis, whether the Tools, as part of Software or otherwise, or Specialty Tools are purchased, leased, or subscribed to, and whether or not fulfillment is directly by the Manufacturer or an Authorized Repair Facility.

2. When Manufacturer receives any Codes, or real-time Data with respect to the in-field operation of a Farmer's Agricultural Equipment, Manufacturer shall ensure that such Codes, and Data are also available to the Farmer using the Agricultural Equipment.

3. Subject to the limitations of Section II.A.5. above, Manufacturer shall make available, on Fair and Reasonable terms, Tools, Specialty Tools, Software and Documentation, inclusive of any updates to information or Embedded Software, for purposes of diagnosis, maintenance or repair of such Agricultural Equipment to any Farmer that owns or leases Agricultural Equipment manufactured by or on behalf of the Manufacturer.

4. For Agricultural Equipment that contains an electronic lock, immobilizer or other security-related function, pursuant to commitments in the preamble of this MOU, and subject to the limitations of Section II.A.5. above, the Manufacturer shall make available to the Farmer, on Fair and Reasonable terms, any special Documentation, and Tools needed to disable the lock, immobilizer or function and to re-set it when disabled in the ordinary course of diagnosis, maintenance or repair of the Agricultural Equipment.

5. To the extent practical and Manufacturer deems secure, and subject to the limitations of Section II.A.5, Tools, Specialty Tools, Software and Documentation shall be provided on a remote, immediate basis, whether delivery is made from the Manufacturer or through an Authorized Repair Facility.

6. Manufacturer shall provide Farmers and Independent Repair Facilities with an opportunity, on Fair and Reasonable terms, to acquire any Software integrally with or within a Tool, or subsequently as necessary for operation, maintenance, repair, or upgrade of Agricultural Equipment or a mechanical part.

7. Manufacturer shall not be required to sell Tools, Specialty Tools, Software and Documentation if such are no longer available to the Manufacturer or the Authorized Repair Facility of the Manufacturer.

8. Manufacturer shall not prevent Farmers and Independent Repair Facilities from legally fabricating or otherwise obtaining Tools, Specialty Tools, Software and Documentation from a third party, whether or not such Tools, Specialty Tools, Software and Documentation are currently available from the Manufacturer or an Authorized Repair Facility, for use solely in the ordinary course of their own lawful businesses and not for resale or distribution. In no event will the provisions of this Paragraph II.B.8. be construed to prevent or preclude Manufacturer from pursuing any action to enforce a trademark, copyright or other claim of infringement regarding Manufacturer's intellectual property.

**C. Provision To Independent Repair Facilities on Fair and Reasonable Basis**

1. If an Independent Repair Facility requests Manufacturer to provide any Tools, Specialty Tools, Software and Documentation as provided to Farmers pursuant to Subsections B.1.-B.8., or if a Farmer makes such a request in connection with their own Agricultural Equipment, the Manufacturer shall provide such Tools, Specialty Tools, Software and Documentation on Fair and Reasonable terms with respect to the Independent Repair Facility.

**Section III — AFBF Commitment to Manufacturer**

A. AFBF agrees to encourage state Farm Bureau organizations to recognize the commitments made in this MOU and refrain from introducing, promoting, or supporting federal or state "Right to Repair" legislation that imposes obligations beyond the commitments in this MOU. In the event any state or federal legislation or regulation relating to issues covered by this MOU and/or "Right to Repair" is enacted, each of AFBF and Manufacturer reserve the right, upon fifteen (15) days written notice, to withdraw from this MOU.

**Section IV - Cooperation between AFBF and Manufacturer**

A. AFBF and Manufacturer agree to work together to develop a process for educating Farmers and Independent Repair Facilities on the Tools, Specialty Tools, Software and Documentation and the resources available to Farmers and Independent Repair Facilities to repair and maintain Agricultural Equipment.

B. In the event of a disagreement over the interpretation, terms or application of this MOU between a beneficiary (Farmer or Independent Repair Facility) of this MOU and Manufacturer or an Authorized Dealer, the parties agree to the following sequence of events: (1) Good faith consultation between or among the parties to the disagreement; (2) If resolution is not achieved between a beneficiary and an Authorized Dealer, inclusion of Manufacturer in the consultation; and, (3) If the disagreement pertains to the general interpretation or application of a core provision, inclusion of AFBF in the consultation.

## Section V — Definitions

A. **Agricultural Equipment** means any product, originating from the Manufacturer when sold or leased for use in farming, or other forms of agriculture, that depends for its functioning, in whole or in part, on digital electronics embedded in or attached to it. Agricultural Equipment includes, but is not limited to, a tractor, combine, harvesting equipment, tillage, planting, irrigation or cultivating implement, baler, or other off-road vehicles primarily designed for use in an agricultural operation, but does not include motor vehicles designed and sold primarily for passenger or property transportation on public roadways.

B. **Authorized Repair Facility** means (1) an individual or business that has an arrangement for a definite or indefinite period with a Manufacturer pursuant to which the Manufacturer grants to the individual or business a permission, license, or franchise to use a trade name, service mark, or related characteristic for the purposes of offering diagnosis, repair or maintenance services of Agricultural Equipment under the name of or on behalf of the Manufacturer; or (2) an individual or business otherwise utilized by the Manufacturer to provide such repair or maintenance services.

C. **Code** means, subject to the limitations of Section II.A.5, (1) human or machine-readable information related to a performance issue arising from operation of a Farmer's Agricultural Equipment or (2) information necessary to be transmitted to a Farmer's Agricultural Equipment in order to maintain, repair, or activate the Agricultural Equipment or any part thereof.

D. **Data** means transmitted or compiled information arising from the operation of a Farmer's Agricultural Equipment or its parts.

E. **Documentation** means, subject to the limitations of Section II.A.5., any manual, diagram, reporting output, service code description, schematic or other guidance or information used in effecting the services of diagnosis, maintenance, repair, or upgrade of Agricultural Equipment.

F. **Embedded Software** means any programmable instructions provided on firmware (a software program or set of instructions programmed on Agricultural Equipment, or on a part of such Agricultural Equipment, to allow the Agricultural Equipment or part to communicate within itself or with other computer hardware) delivered with or loaded to the Agricultural Equipment, with respect to Agricultural Equipment operation, including all relevant patches and fixes made by the Manufacturer, including but not limited to items described as "basic internal operating system," "internal operating system," "machine code," "assembly code," "root code," and "microcode".

G. **"Fair and Reasonable"** means equitable terms for access to or receipt of any item pertaining to Agricultural Equipment, including any Tools, Specialty Tools, Software and Documentation, in light of relevant factors, including and subject to the limitations of Section II.A., the Manufacturer's suggested retail price and the distribution model of any respective item.

H. **Farmer** means an individual or business engaged in agriculture as a means of livelihood or commerce, including but not limited to the production of crops, livestock, or aquaculture (excluding recreational fishing) and who owns or leases Agricultural Equipment.

I. **Independent Repair Facility** means an individual or business that is not affiliated with an Authorized Repair Facility or a Manufacturer with respect to Agricultural Equipment but is (1) engaged in diagnosing, maintaining, or repairing Agricultural Equipment generally and (2) is willing and capable of repairing Agricultural Equipment if provided access to Tools, Specialty Tools, Software and Documentation regarding the Agricultural Equipment, whether or not that individual or business is a Farmer.

J. **Manufacturer** means Deere & Company ("John Deere"). However, AFBF commits to offering comparable terms as set forth in this MOU to any entity engaged in the business of selling, leasing or otherwise supplying new Agricultural Equipment manufactured by or on behalf of itself to any individual or business.

K. **Specialty Tool** means a mechanical implement originating from the Manufacturer which is necessary for facilitation of mechanical or electronic maintenance, repair, or upgrade of a Manufacturer's Agricultural Equipment that is not generally available other than from the Manufacturer's Authorized Repair Facilities.

L. **Software** means Customer Service ADVISOR.

M. **Tools** means Software, any hardware implement (specialty or otherwise) or other apparatus originating from the Manufacturer used for Data readout, diagnosis, maintenance or repair of Agricultural Equipment, including Software or other mechanisms that calibrate functionality or perform any other function required to operate, maintain, upgrade, activate, or bring the Agricultural Equipment back to fully functional condition.

Signed on this 8<sup>th</sup> day of January, 2023:

**Deere & Company**

**American Farm Bureau Federation**

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David Gilmore  
Senior Vice President,  
Sales and Marketing

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Zippy Duvall  
President

Honorable Committee Members

I have read HB23-1011 and am in favor of it. I farm. I am also an attorney with a JD and LLM, am expert in commercial agreements, and trade secrets and proprietary matters.

Farmers cannot be dependent on the unenforceable aspirational agreements between others, and which can be canceled at will, for the protection to fix machinery, machinery which they bought and paid for.

Farmers need permanent statutory protection, such as is provided in this bill.

John Deere and other Ag machinery manufacturers have fought for years to prevent farmers from repairing the equipment they purchase. Recently John Deere and the American Farm Bureau Federation entered into a terminable Memorandum of Understanding calculated to prevent the Farm Bureau from lobbying for effective Right To Repair legislation at a state and federal levels.

I have read that document and it is a piece of junk. I would ask that you ignore its very existence because the Farm Bureau is not my agent, nor am I a member. They do not speak for me and thousands of other farmers.

Farmers and all purchasers of heavy equipment need protection. In particular, we need statutory language that prevents manufacturers from claiming an exemption from Right To Repair in the following areas:

1. Trade Secrets. Manufacturers will try to refuse to provide code and technical information needed to repair equipment under the guise of trade secrets, confidential or proprietary information. It is usual for parties to a contract to provide that the other will not divulge trade secrets and confidential information. But the party claiming something is a trade secret or protected must first identify the information with some precision and tell the other that what is provided is claimed to be a trade secret or protected. Just saying something is a trade secret or protected does not make it so.

2. Adjustments to Codes. Do not permit manufacturers to carve out an exception to the right to repair based on the manufacturers claim that to do so would allow the farmer to override factory settings for emissions, safety, or power. As equipment ages and mechanical parts wear, farmers will need to adjust settings to maintain performance, safety and emissions. Please do not let the manufacturers force farmers to take machinery to the company shop under the guise of emissions and power settings. Machinery settings will need adjusting from time to time and farmers should be able to modify code in their own shop to do so. Think of the tune up for carbureted gas engines. It is necessary to replace plugs and points, set the timing, and adjust the float level periodically to restore performance. The same is true for modern diesel equipment, except that it can be done with software code adjustments rather than with a wrench.

Respectfully Submitted,

Herbert Sampson