Contract Considerations for Farm Data

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The emergence of "precision agriculture" offers farmers the opportunity to be more efficient (and more profitable) in their day-to-day operations. Autosteering technology helps farmers reduce planting and tillage overlap. Farm management software collects a wide variety of data produced by sensors and the farmer's existing equipment to produce yield maps, activity records, crop health monitoring, and other useful information in a user-friendly format. Seed companies collect a variety of farm-specific data to provide farmers with hybrid matches and variable planting rates to improve corn yield through various technologies. Big data is the backbone of all these agricultural technology products.

Recently, **we provided a number of issues farmers should consider** when looking to purchase a product or service from an agricultural technology provider. Similar issues arise in a farmer's dealings with other parties, such as landlords, tenants, cooperatives, and custom applicators. The amount of information included within the definition "big data" is broad, and the law does not clearly define who owns this information. Accordingly, parties should address big data issues contractually to eliminate this ambiguity. The American Farm Bureau agrees with this approach in its Privacy and Security Principles for Farm Data document.

Take, for example, a landowner that leases his property to another farmer. The landowner likely wants to know what type of hybrid was selected, the planting pattern, and fertilizer or other nutrients applied to the field. This leads to several other questions: Who owns the collected data? Can both parties use the data? Can the tenant transfer the collected data to someone other than the landlord? How long may a non-owning party keep the data? Should different terms apply to different types of data (weather data, machine data, farm activity data, etc.)?

Certain types of farm data may be more valuable than others. The climate conditions at one farm will not be valuable to a farmer hundreds of miles away. On the other hand, the yield results of a

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particular hybrid after a specific fertilizer application may be extremely valuable. Imagine you hire a custom applicator to spray your field. You will want to confirm the type of application, the amount used, and the application pattern matches what you ordered or matches your agronomist's recommendation. The custom applicator will want to keep the collected data and share it with other farmers for marketing purposes. The only way to address these potentially competing interests is contractually.

The prevalence of big data in agriculture means farmers need to be increasingly mindful of the issues that arise in connection to the production of this data. Who owns the data? Can the data be transferred? Are there restrictions on transfer? If another party is gathering data that you will own, is their equipment accurate? Are you getting good data? If another party owns the data, are you limited in how you can use it? How long is that data available to you before it is destroyed or deleted?

Farm data is quickly becoming one of the most valuable assets a farmer owns. For more information regarding the legal considerations related to big data in the farming industry and to include provisions in your contracts to own your data, please contact Foster Swift's team of experienced agricultural law attorneys.