

## Red Sky Desktop Software

### Freeware License Agreement

By installing the Software, you agree to and acknowledge the matters set out in this agreement.

#### Limited License

Red Sky Agricultural Pty Limited (**Red Sky**) grants you a license to use this software for the purposes of entering, modifying and updating data that you intend to upload to the Red Sky Farm Performance Analysis Service.

You will not:

- sublicense or sell the software;
- include the software in any product, service or package which is sold;
- modify, adapt or translate the Software;
- attempt to bypass or circumvent any security procedures applicable to the software;
- reverse engineer, decompile or disassemble the software, except as permitted by law;
- copy the installed software other than for the purposes of your own backup; or
- take any action that would cause injury to Red Sky's intellectual property rights in the software.

You may provide copies of the zipped/uninstalled software files to third parties.

You acknowledge that Red Sky does not:

- test, rate, evaluate or check for viruses in the Software; or
- offer any technical support for the Software other than a reasonable level of helpdesk support for remote user assistance.

This license will automatically terminate if you breach any of the terms in this agreement.

#### Intellectual Property Rights

Red Sky is the exclusive owner of all intellectual property rights in the software and you acknowledge that no title is transferred to you under this Agreement.

#### Limited warranty

THIS SOFTWARE IS PROVIDED ON AN AS IS BASIS AND RED SKY DISCLAIMS ALL WARRANTIES RELATING TO THE SOFTWARE WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

TO THE EXTENT ALLOWED BY LAW, RED SKY WILL NOT BE LIABLE, WHETHER IN CONTRACT OR TORT, FOR ANY LOSS OR DAMAGE ARISING FROM YOUR USE OF THE SOFTWARE INCLUDING, WITHOUT LIMITATION LIABILITY FOR DIRECT, INDIRECT, SPECIAL AND CONSEQUENTIAL DAMAGES INCLUDING LOSS OF PROFIT, BUSINESS REVENUE, OR GOODWILL, LOSS OF PRODUCTION, LOSSES RESULTING FROM DOWNTIME, LOSSES RESULTING FROM SYSTEM CRASHES, LOSS OF DATA OR EMAILS OR FAILURE TO ACHIEVE ANTICIPATED SAVINGS OR PRODUCTION EFFICIENCIES.

### Governing law

This Agreement shall be governed by and construed in accordance with the laws of Australia. You hereby submit to the non-exclusive jurisdiction of the courts of the Australia for any legal action arising out of this Agreement.

## Red Sky Farm Performance Analysis Services

### Terms of Use

The services and reports that Red Sky Agricultural Pty Limited ("**Red Sky**") provides to you are subject to the following terms of use.

Please read the following terms carefully. By clicking on "I Accept" and using the Red Sky Farm Performance Analysis Services you agree to the terms and conditions set out below.

We recommend that you print out this agreement for your records.

### Definitions

"**Data**" means the individual farm unit data you upload to the Red Sky website.

"**Database**" means the Red Sky database of Data, data provided by other subscribers of the Services and the results of aggregation, analysis and compilation of such data.

"**Report**" means the reports generated by Red Sky (including cash flow projections referred to under "Services").

"**Services**" means the following services, which may be varied in accordance with this agreement:

- The processing of data that includes both financial (annual accounts, cash book or budgeted financial information and land, livestock, plant, machinery and other asset values) and physical (livestock type, livestock production, feed type and feed use) data.
- Reporting on the financial and physical performance of a farm business and production of a range of performance indicators.
- Reporting on projected cash flow of a farm business.
- Production of benchmark data so that users can compare farm performance with other participants in their industry.

### Password security

Registration of a farmer/client requires you to register that farmer/client under a unique identifier and a password.

You are entirely responsible for maintaining the confidentiality of your password and for any and all activities that occur under your password. If you disclose your password to any other person you are responsible for ensuring that person agrees to these terms of use.

You must notify Red Sky immediately of any unauthorised use of your password or any breach of security that may result in the unauthorised use of your password.

Red Sky will not be liable for any loss that you may incur as a result of someone else using your password, either with or without your knowledge. You indemnify, and must

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at all times keep indemnified, Red Sky, Red Sky's Related Companies and their officers and employees (**Indemnified Parties**) against loss, damage and expenses (including legal costs) arising from any claim, demand, action, suit or proceeding that may be made or brought by any person against the Indemnified Parties arising as a consequence of your password being disclosed to or discovered by any other person.

### How Red Sky uses your Data

Red Sky limits its use of the Data to:

- Analysis for the purpose of generating the Reports
- The performance of the Services

### Who will use your Data

Red Sky may provide the Database, **not** your individual Data, to select organisations from time to time.

Red Sky binds these organisations to the same standard of care as we do ourselves so that they cannot provide the Data to anyone else. We enforce this requirement through contractual agreements.

We emphasise that Red Sky will **not** pass on the details of any individual farm units to third parties.

### Your information is secure

Red Sky will use up-to-date techniques and processes that meet current industry standards to ensure that your Data and the Database is kept secure and confidential.

### Input data

You acknowledge and agree that Red Sky is not responsible or liable for the completeness and accuracy of data which is uploaded for analysis and compilation by Red Sky into reports nor is it liable for the consequences of any incomplete or incorrect transmission of data.

### Analysis of data

Red Sky will provide the Services upon receipt of properly formatted and completed data where service subscription fees are up-to-date for that farm unit.

You acknowledge that the specific analysis performed on the data, and the reports provided as a result of that analysis may vary from time to time, as notified to you on Red Sky's website at [www.redskyagri.com](http://www.redskyagri.com)

### Service Subscription Fees

When you synchronise farm data for the first time for a specific farm, you will be asked to pay a service subscription fee for that farm.

The service subscription fees per license are:

<b>Full License</b>	<b>Australia</b>	<b>New Zealand</b>	<b>Other Countries</b>
1-5 per year	AU\$180 + GST	NZ\$195 + GST	US\$135 (no tax)
6-20 per year	AU\$170 + GST	NZ\$185 + GST	US\$125 (no tax)
21+ per year	AU\$160 + GST	NZ\$175 + GST	US\$115 (no tax)
Annual Report	AU\$45 + GST	NZ\$45 + GST	US\$35 (no tax)
Physical Upgrade	AU\$20 + GST	NZ\$20 + GST	US\$15 (no tax)

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**The purchase of Full Red Sky Licenses at the highest price (for 1-5 Licenses per year) is available by credit card payment.** You will need to apply to Red Sky to gain access to the licenses available at the lower prices and to open an account. Red Sky's contact details are:

**Email:** [david@redskyagri.com](mailto:david@redskyagri.com)  
**Phone:** +61 3-5560 5891  
**Fax:** +61 3-5560 5892  
**Address:** 16 Grange Road, Warrnambool, VIC 3280, Australia.

### What you get for your fees

The service subscription fee for Full Red Sky Licenses entitles you to:

- unlimited use of the Services for the relevant farm unit for a defined farm area and for a period of 10 months commencing from your first use of the Service;
- up to 3 alterations of a registered farm unit defined farm area during the 10 month period; and
- a license to use the reports (see below).

The service subscription fee for Annual Report Licenses entitles you to:

- use of the Services excluding the Physical data (other than livestock performance data, which shall be available) for the relevant farm unit for a defined farm area covering a single year's data, the license to be available for a period of 14 days commencing from your first use of the Service;
- a license to use the reports (see below) excluding Cash Flow.

The service subscription fee for Physical Upgrade Licenses entitles you to:

- use of the Services for the relevant farm unit for a defined farm area covering a single year's data, the license to be available for a period of 10 days commencing from your first use of the Service;
- a license to use the reports (see below) excluding Cash Flow.

### Reports

You are licensed to use the reports issued by Red Sky (**Reports**) in respect of the relevant farm unit.

You must ensure that any:

- publication, distribution or advertisement of the Reports; or
- disclosure or communication of the contents or any part of the contents of any Reports to any person

is accompanied by a notice acknowledging that the Reports were produced by Red Sky who is the owner of all intellectual property rights in the Reports.

### Use of Reports by Third parties

You must ensure that, any permitted disclosure or use of the Reports by third parties is subject to terms to the effect that:

- (a) the third party is only permitted to use the Reports in accordance with the license set out above; and
- (b) Red Sky's liability to such third party for any loss or damage suffered as a result of the use of the Reports is limited to the extent set out in this agreement.

If you fail to comply with the above clause, you agree to indemnify and hold Red Sky harmless from and against any claims, suits, actions or proceedings ("**claims**") brought and judgments awarded against Red Sky by any such parties to the extent

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that such claims are based upon any loss or damage suffered by such persons as a result of any use or disclosure of the Reports.

### **Limitations and exclusions of liability**

To the extent permitted by law, Red Sky is not liable for any indirect, incidental, special or consequential loss or damage, loss of use, revenues, profits, goodwill, bargain, loss or corruption of data or loss of opportunities, anticipated savings whether arising from or in relation to breach of contract, negligence or any other tort, in equity or otherwise and whether or not a party was aware or ought reasonably to have been aware of the possibility of such loss or damage.

Subject to the foregoing, the maximum aggregate liability of Red Sky for damages to you or any other party, whether for breach of this agreement or in negligence or tort or for any other common law or statutory cause of action or for any other cause whatsoever arising out of or in relation to this agreement, is limited to the total fees paid by you to Red Sky over the 12 month period preceding the date of the breach or other cause.

### **TPA exception**

Red Sky's liability for any breach of a condition or warranty implied by the Trade Practices Act 1974 (**Act**) that cannot be excluded (other than a condition or warranty implied by section 69 of the Act) is limited to, supplying the services again or paying the cost of supplying the services again.

### **Limited warranty**

THE SERVICES ARE PROVIDED ON AN AS IS BASIS AND RED SKY DISCLAIMS ALL WARRANTIES RELATING TO THE SERVICES WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

TO THE EXTENT ALLOWED BY LAW, RED SKY WILL NOT BE LIABLE, WHETHER IN CONTRACT OR TORT, FOR ANY LOSS OR DAMAGE ARISING FROM YOUR USE OF THE SERVICES INCLUDING, WITHOUT LIMITATION LIABILITY FOR DIRECT, INDIRECT, SPECIAL AND CONSEQUENTIAL DAMAGES INCLUDING LOSS OF PROFIT, BUSINESS REVENUE, OR GOODWILL, LOSS OF PRODUCTION OR FAILURE TO ACHIEVE ANTICIPATED SAVINGS OR PRODUCTION EFFICIENCIES.

Some jurisdictions do not allow the exclusion of certain implied warranties or conditions, so the above exclusions may not apply to you. This agreement does not exclude any implied warranties or conditions that may not be excluded under applicable law. This agreement gives you specific legal rights and is in addition to any other legal rights you may have under the laws of your jurisdiction.

### **Term**

This agreement commences the moment you click on the "I Accept" button and shall continue until automatically terminated for breach or replaced by superseding terms which shall be notified to you on the Red Sky website.

### **Governing law**

This agreement is governed by the laws of Victoria.

Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria.

### **Entire agreement**

This agreement is the entire agreement between the parties relating to the Services and the Reports and replaces all earlier negotiations, representations, warranties, understandings and agreements, whether oral or written, between the parties relating to the Services and the Reports. All other conditions, warranties and representations, whether express or implied by law, trade custom or otherwise are expressly excluded.

### **Severability**

If any part of this agreement is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining parts of this agreement.

### **Variations**

Red Sky may vary the terms of this agreement from time to time by notice on [www.redskyagri.com](http://www.redskyagri.com)