

▶ Agricultural, Forestry and Fisheries Law Practice Team Newsletter

Atsumi & Sakai's Agricultural, Forestry and Fisheries Law Practice Team (AFFL Team) consists of four lawyers and one advisor, each of whom has different strengths and provides a wide variety of high quality legal services in the areas of agriculture, forestry, and fisheries ("AFF") ranging from support for overseas transactions and overseas expansion (or closure), drafting and reviewing agreements for complex purchase and sale transactions, licensing and other intellectual property rights, communications with authorities (such as the Fair Trade Commission), and dispute resolution.



Data Contract Guidelines in the Agricultural Sector

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Introduction

The Ministry of Agriculture, Forestry and Fisheries issued the "Data Contract Guidelines in the Agricultural Sector" (the "Guidelines") on December 26, 2018.

The application of the latest technologies, such as information communication technology and artificial intelligence (AI) to utilize agricultural knowledge and experience is increasing in order to achieve higher quality, higher productivity, and international competitiveness in the agricultural sector. In order to promote these developments effectively, it is necessary to have a framework that balances the concerns of agricultural workers and others who provide their agricultural data (below, "original data providers") by protecting their know-how and technology, and the ability of recipients of that data to make effective use of it.

As there is currently no law in Japan that governs data attribution and the rights of data usage, such matters are usually addressed by contract. The Guidelines provide practical guidance in order to properly balance the goals of protection of original data providers and effective data utilization.

Overview of the Guidelines

The Guidelines divide contracts into three types: "data provision", "data creation", and "data sharing", and provide model terms for each type with an explanation of legal issues, etc. For transactions related to the use of data in the agricultural sector, it is generally recommended to use these model contract terms, adjusted to take account of the facts of each transaction.

Data Provision

[Use]

A contract for the provision of data held solely by an original data provider to another party

[Examples]

- Skilled agricultural workers provide their knowledge to agricultural data IT service developers
- An agricultural manager accumulates soil data acquired by its own sensors installed on its farm and sells that data to manufacturers

Data Creation

[Use]

A contract for the use of data created by the parties to it

[Examples]

- By attaching wearable terminals to skilled agricultural workers, they will provide information on "implicit knowledge" about their work and judgments to an agricultural data IT service vendor which will collect and analyze that knowledge when processing "implicit knowledge" into "explicit knowledge."

Data Sharing

[Use]

For sharing data using a platform

[Examples]

- Utilization of data on the platform "Agriculture Data Collaboration Platform" (commonly called WAGRI)

Points of Note on the Model Terms

(1) Identification of Purpose of Use

Skilled agricultural workers are concerned about the dissemination of their cultivation know-how, etc., and are cautious about providing it to third parties. As a first step towards eliminating this anxiety, the model specifies the purpose of use of the data, etc. in plain language that agricultural workers (the original data providers) can easily understand.

(2) Obtain Consent from the Original Data Provider

The data providers in data sharing contracts include agricultural machine manufacturers and ICT vendors, etc. who receive data from original data providers; in order for the agricultural machine manufacturers, etc. and platform business operators to operate effectively and with the trust of the original data providers, it is recommended that the consent of the original data providers be obtained for use of their data by the platform, etc.

(3) Demands for Suspension of Use, etc. by the Original Data Providers

In order to encourage original data providers to provide their data, data provision contracts should stipulate that the original data provider can always demand the deletion, removal or suspension of use of the data they provided, though the rights may be restricted where the data has been paid for and do not extend to data derived from the original data so as to not cause any unexpected damage to the data recipient.

However, unilateral suspension would be inappropriate for data creation contracts as it is usual for the data recipients to make a significant contribution to the creation of the initial data, etc. and it would be unreasonable to permit their use of it to be suspended.

In order to minimize the concerns of original data providers when providing data, and to balance those concerns against the concerns of users who would be deprived of the use the data as a result of the exercise of deletion, etc. rights by original data providers, an eclectic point of view should be taken on the exercise of those rights and only requests to the platform operator be permitted, and deletion, etc. of data already downloaded from a platform and used by the data users, etc. not be permitted.

(4) Warranty on the Provided Data, etc.

As changes in the natural environment are more likely to affect data collection in the agricultural sector than in others, it would be appropriate for the original data provider's warranties to be limited, e.g. that the data has been obtained in a lawful and appropriate manner, and that other warranties (such as accuracy, completeness, and continuous provision of data) be limited to cases of intentional or gross negligence.

However, the original data provider's warranties in data sharing contracts should take into account the platform provider's obligations to ensure that the platform can be operated effectively while securing the required number and nature of original data providers.

Platform providers' warranties require special consideration due to the broad scope of platform users. As the impact of platforms is currently not as great as mass media, where a platform is launched and public interest requires its promotion, it would be preferable to make adjustments to the warranty regime so that warranties are not given on the data content and permit a related disclaimer, except in exceptional circumstances.

(5) Usage Rights of Derived Data

In general, when determining the usage rights of derived data (data or a data group generated by processing, analyzing, editing, or integrating, etc. original or intermediate data, etc.), factors such as (1) the extent to which each party has contributed to the creation of the data to be analyzed (cost burden, ownership of equipment, establishment of sensors, etc., method of installation and the monitoring entity for the continuous creation of data), (2) the effort required for processing the data, etc. and the importance of the required expert knowledge, and (3) the risk to the parties from the use of the derived data, etc., are considered in order to grant usage rights in accordance with the level of contribution.

Based on this view, it would be assumed that in many cases the original data providers would not be given the right to use the data derived from the data they provided as their contribution to the creation of the derived data would be very limited. However, if derived data cannot be used by the original data providers, there is a real possibility that they may feel that they have been deprived of a part of their rights to use data which includes their own knowledge. To address this, data provision contracts should give original data providers appropriate rights to use some or all of the data derived from the data they provided.

On the other hand, in data creation contracts, because the contribution of the original data provider to the derived data is relatively small, the data receiver's rights should have greater weight.

In data sharing contracts, the original data provider should be able to use derived data by application to the platform operator.



Conclusion

The Guidelines provide useful guidance to parties handling data in the agricultural sector in balancing the concerns and rights of parties when providing, handling and using data, and careful explanation of their terms to original data providers should reduce any mistrust they may have when providing their data.

Please contact our PR staff to subscribe our newsletter.
E-mail: prcorestaff@aplaw.jp

Author(s) / Contacts



Yasuhiro Usui

Partner
Admitted Japan (2007)

Keio University (LL.B., 2004)
University of Pennsylvania (LL.M., 2015)
Atsumi & Sakai (2007-)
Seconded to a seed and pesticide manufacturer (2016-2017)
Seconded to Cool Japan Fund Inc. (2017-2018)
E-mail: yasuhiro.usui@aplaw.jp



Hisashi Miyatsuka

Partner
Admitted Japan (1996)

Kyoto University (LL.B., 1994)
Nishimura & Asahi (2007-2017)
Atsumi & Sakai (2017-)
E-mail: hisashi.miyatsuka@aplaw.jp



Go Fujimoto [First Author]

Partner
Admitted Japan (2003), New York (2011),
and California (2011, inactive)

The University of Tokyo (LL.B., 1995)
University of Pennsylvania Law School (LL.M., 2010)
Sheng Wo Law Firm (2012-2013)
Dacheng Law Offices, Shanghai Office (2013-2014)
Nishimura & Asahi (2014-2017)
Atsumi & Sakai (2017-)
E-mail: go.fujimoto@aplaw.jp



Fumiko Oikawa

Partner
Admitted Japan (2003) and New York (2017)

Gakushuin University (LL.B., 1997; LL.M., 2000)
University of Michigan Law School (LL.M., 2013)
Atsumi & Sakai (2003-)
Mayer Brown LLP (New York) (2013-2014)
E-mail: fumiko.oikawa@aplaw.jp

General Inquiries:

Yasuhiro Usui (Agricultural, Forestry and Fisheries Practice Team, Atsumi & Sakai)
Tel: 03-5501-2111 | E-mail: cpg_affl@aplaw.jp



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