

Data upload terms

Version 201805

These Data Upload Terms (the “Terms”) apply between you, acting on your own behalf and/or the company, body or other legal entity on behalf of which you act, as applicable, (“You” or “Your”, as applicable) and Dairy Data Warehouse B.V. (“DDW”, and together with You, the “Parties”) in relation to the installation of the Software (as defined in Section 2.1.2 below) on Your System (as defined in Section 2.1.1 below), the extraction of data from Your System (“Data”) and the use of the Data by DDW and Authorised Recipients (as defined in Section 3.1.1).

In addition to these Terms, DDW undertakes to comply with the Herd Data Policy of DDW, as published on www.dairydatawarehouse.com.

1. AGE AND AUTHORITY

- 1.1** If You are an individual You hereby confirm and warrant that You are at least 18 years old and that You are not otherwise barred from entering into a binding contract under applicable laws.
- 1.2** If You are acting on behalf of a company, body or legal entity You hereby confirm and warrant that You are authorized to sign on behalf of that company, body or legal entity and that neither You nor that company, body or legal entity You represent are otherwise barred from entering into a binding contract under applicable laws.

2. SOFTWARE

- 2.1** You hereby grant DDW the right, for the Term (as defined in Section 8.1 below), to;
 - 2.1.1** remotely access Your herd management or other computer or IT-system (“System”);
 - 2.1.2** install software which enables DDW to extract Data from Your System and upload it to the Dairy Data Warehouse platform (the “Software”);
 - 2.1.3** without prior notice to You and whenever considered appropriate by DDW, automatically download and install Software supplements, updates and upgrades (“Upgrades”) on Your System; and
 - 2.1.4** extract Data from Your System and upload it to the Dairy Data Warehouse platform for the use described in these Terms.
- 2.2** You agree to not remove the Software from the System and to maintain the Internet connection required for DDW to access Your System and extract and upload Data in accordance with Section 2.1, and to take reasonable technical and organisational measures to prevent that the System is used for overloading of or the transmission of viruses or other malicious code to the Dairy Data Warehouse platform.
- 2.3** By installing the Software on Your System, in accordance with these Terms DDW hereby grants You a limited, non-exclusive and non-transferable license for the duration of the Term to use the Software on Your System for the sole purpose of enabling DDW’s extraction of Data from Your System and uploading of Data to the Dairy Data Warehouse platform.
- 2.4** These Terms shall govern any and all Upgrades of the Software provided by DDW.
- 2.5** DDW reserves the right to, with or without notice, discontinue updating, upgrading and/or supplementing the Software.
- 2.6** Copyright and other intellectual, industrial and/or proprietary rights to the Software and all copies of the Software and the Dairy Data Warehouse platform are owned by DDW and/or its affiliates, suppliers or licensors. All rights not expressly granted by DDW in these Terms are reserved by DDW.

3. DATA

- 3.1** You grant DDW the right to use Data collected from the System in accordance with these Terms to;
- 3.1.1** on behalf of You process, store and make the Data available (using web service, mobile app, file transfer or other means) to those third parties from time to time appointed and authorised by You in accordance with these Terms ("Authorised Recipients"), to the extent and for as long as no notification has been received by DDW that the access of such Authorised Recipient to Data shall be discontinued as set out in these Terms; and
 - 3.1.2** process, store and otherwise use Data for other DDW business purposes, including but not limited to, data analysis, customizing and improving services, product development, and providing, selling and licensing products and services to third parties, provided that no disclosure of Data which is Personal Data (as defined in Section 4.1) will be made to a third party without Your approval, other than in an anonymized form; and
 - 3.1.3** meet legal and/or regulatory requirements.
- 3.2** You grant each Authorised Recipient the right to use the Data made available by DDW to the Authorised Recipient in accordance with these Terms to: (a) process, store and otherwise use Data for the Authorised Recipient's internal business purposes, including but not limited to, data analysis, customizing and improving services, product development, and providing and selling and licensing products and services to You, provided that no disclosure of Data shall be made to a third party without Your approval; and (b) meet legal and/or regulatory requirements. DDW and its affiliated companies shall in no event be liable for the Authorised Recipient's use of the Data.
- 3.3** You have the right to terminate the access of an Authorised Recipient to the Data by contacting DDW at info@dairydatawarehouse.com. For the avoidance of doubt, the sole effect of such termination of an Authorised Recipient's access to Data is that the Data will no longer be made available to the Authorised Recipient by DDW; it will neither terminate the Terms, terminate the Authorised Recipient's right to use the Data held by the Authorised Recipient, nor terminate DDW's right to otherwise collect and use the Data in accordance with these Terms, including without limitation to use Data in an anonymized form.
- 3.4** By making the Data available to DDW, You warrant and confirm that You are the holder of all rights with respect to the Data or, if applicable, are otherwise lawfully entitled to grant the right to use the Data as set out in these Terms.

4. PERSONAL DATA

- 4.1** It is normally not required to disclose any data about any identified or identifiable individual ("Personal Data") in connection with the use of the Software or provision of Data, except that basic data about You may be needed for the administration or operation of the Software and related services (failure to disclose such data may prevent use of the Software and related services). To the extent any of the data referred to above in these Terms is Personal Data, DDW will process the Personal Data only as compatible with the purposes set out above and will keep the Personal Data in a form which permits identification only for as long as necessary for such purposes. The legal basis for processing of the Personal Data is primarily the consent given by the relevant individual. Where the relevant individual has not given consent, or the consent has been withdrawn, the legal basis is that the processing is necessary for legitimate interests (the purposes specified above) which, based on a balance of interests, has been deemed not to be overridden by the individual's interests or fundamental rights and freedoms. Certain processing of Personal Data may also be necessary for compliance with legal obligations.
- 4.2** DDW will not make Personal Data available to third parties other than in accordance with these Terms, but DDW may, for the purposes set out above, use service providers to process data on DDW's behalf (e.g. for data storage), in which case appropriate safeguards will be implemented to keep the data protected.

- 4.3** DDW primarily holds Personal Data in the European Union, but Personal Data may, for the purposes and with the limitations set out above, be transferred to any location where the Authorised Recipients are located. Where – in any other case than when requested or approved by You, when necessary for conclusion, performance or support of a contract that is made in Your interest or when necessary for establishment, exercise or defence of legal claims – data will be transferred by DDW from the European Union, DDW will apply appropriate safeguards to keep the data protected (e.g. “standard contractual clauses” adopted by the EU Commission). The individual to whom the Personal Data relates may contact DDW to get information about which service providers that are engaged to process the Personal Data, which countries and territories that Personal Data is transferred to and which safeguards that have been implemented.
- 4.4** Subject to restrictions under applicable law, the individual to whom the Personal Data relates has the right to request information about DDW’s processing of such Personal Data, to access such Personal Data (in a structured, commonly used and machine-readable format, with the right to forward such data) and to request DDW to correct, complete, update, lock or delete any such Personal Data that is inaccurate, incomplete, confusing, outdated or unlawful. Such individual also has the right to object, on legitimate grounds, to processing of data relating to him or her (in particular if entitled to do so under applicable data protection legislation) and to withdraw, with prospective effect only, any consent given by him or her regarding processing of such data. If the individual considers that the processing of Personal Data relating to him or her infringes applicable law, the individual may also lodge a complaint with the relevant supervisory authority.
- 4.5** Requests concerning DDW’s processing of Personal Data can be made to info@dairydatawarehouse.com.
- 4.6** The Dutch Data Protection Authority (College Bescherming Persoonsgegevens), being the governing authority in relation to DDW regarding processing of Personal Data, has been notified of the processing of Personal Data.

5. TECHNICAL AND ORGANIZATIONAL SECURITY MEASURES

- 5.1** DDW has implemented appropriate technical and organizational measures to protect Your Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, in particular where the processing involves the transmission of Your Personal Data over a network, and against all other unlawful forms of processing. Having regard to the state of the art and the cost of their implementation, such measures shall ensure a level of security appropriate to the risks represented by the processing and the nature of the data to be protected.
- 5.2** DDW has the right to disconnect Your System from the Dairy Data Warehouse platform temporarily or permanently, without any notification to You, in the event of overloading of the Dairy Data Warehouse platform or if viruses or other malicious code are transmitted to the Dairy Data Warehouse platform from Your System or by the connection to Your System.

6. COMPENSATION

The Data is made available by You free of charge. Under no circumstances shall You be entitled to any kind of compensation from DDW or any of its affiliated companies or any of its customers or partners for Data made available by You.

7. LIABILITY

- 7.1** DDW shall in no event be liable for loss, damages or cost arising out of or in connection with use of the Data, unless caused by the wilful misconduct or gross negligence on the part of DDW. The same applies to a liability of companies affiliated to DDW.
- 7.2** To the maximum extent permitted by applicable law, neither DDW nor its affiliated companies, suppliers, licensors or subcontractors shall be liable to You or to any third party for any loss, damages or costs either direct, indirect, incidental, consequential or otherwise arising out of the installation, use and/or removal of the Software, or any parts of it, even if DDW has been advised of the possibility of such loss, damages or costs.

8. TERM AND TERMINATION

- 8.1** These Terms shall start to apply when accepted by You and shall remain in force until terminated by either Party in accordance with this Section (the “Term”), provided that any surviving rights and obligations set forth in these Terms shall not be affected by such termination.
- 8.2** You have the right to terminate the agreement between You and DDW governed by these Terms by contacting DDW at info@dairydatawarehouse.com.
- 8.3** DDW has the right to terminate the agreement between You and DDW governed by these Terms by disconnecting You from the Dairy Data Warehouse platform, without any notification to You.

9. EFFECTS OF TERMINATION

- 9.1** Upon termination as set out in Section 8 (“Termination”), DDW will discontinue uploading of Data from Your Systems within 48 hours.
- 9.2** For the avoidance of doubt, after Termination DDW is authorised to retain and use Data, including Personal Data, in accordance with Sections 3.1.2 and 3.1.3. Any request by You to have Your Personal Data deleted or anonymized, shall be sent by You to DDW at info@dairydatawarehouse.com.
- 9.3** After Termination DDW may remove the Software from Your Systems at its discretion.

10. SURVIVAL

Notwithstanding anything else herein, all provisions in these Terms which by their nature extend beyond the Term shall remain in effect after Termination, including, but not limited to, Sections 3.1.2, 3.1.3 and 12.1.

11. SEVERABILITY

Should any provision of the agreement between You and DDW governed by these Terms be deemed to be void, invalid, unenforceable or illegal, all other provisions shall continue in full force and effect and DDW and You shall agree to new provisions in substitution for such invalid provisions. Such new provisions shall as regards their contents and effect, be as close as possible to the original text as written, but adjusted in such a way that the rights or obligations intended can indeed be derived from them.

12. ASSIGNMENT

- 12.1** DDW has the right to assign all or parts of its rights and/or obligations under these Terms to its affiliated companies and/or any other third parties without Your approval.
- 12.2** You may not assign Your rights or obligations under these Terms.

13. APPLICABLE LAW AND COMPETENT COURT

- 13.1** The Terms and any non-contractual obligations arising out of or in connection with it shall be governed by and construed and interpreted under the laws of the Netherlands, excluding its conflict of law rules, unless otherwise required by mandatory law of a member state of the European Union or any other jurisdiction.
- 13.2** Any dispute, controversy or claim arising out of or in connection with the Terms or any non-contractual obligation arising out of or in connection herewith, or the breach, termination or invalidity thereof, shall be exclusively brought before the courts of the Netherlands, using the District Court (“Rechtbank”) of The Hague as the first instance.