

# DeLaval Software and Online Service

## Terms of Use

These Terms of Use (the “**Terms**”) govern the rights to and use of each DeLaval software (including, without limitation, mobile applications) and DeLaval online service (e.g. “software as a service”) and all documentation and data made available or generated through or in connection with such software or service. Each such software and online service is, together with the documentation and data that is made available or generated through or in connection with the software or service, called a “**Service**” in these Terms.

***By activating, installing or using any Service, you and any individual or entity on whose behalf you are acting (each referred to as “You”), agree to follow and be bound by these Terms. If You do not agree to these Terms, or if You are not authorised to agree, You are not allowed to activate, install, use or otherwise exploit the Service.***

If You do not agree to these Terms, You may cancel the most recent purchase of any licence or subscription to the Service that You have made from DeLaval (as defined below) or DeLaval’s authorised distributor. Your right of cancellation expires 30 calendar days after activation or installation of the version of the Service to which such purchase relates or 60 calendar days after the purchase, whichever comes first. Immediately upon cancellation, You must cease all use of such version and, if applicable, remove all copies, full and partial, of such version from Your system(s) and return all provided physical medias (e.g. USB drives) containing any such copy.

### 1. DATA AND PRIVACY

The Service may extract data from any software, service, system or product that is managed or monitored by the Service and automatically transfer such data to, or make data available for remote collection by, DeLaval International AB, corporate registration number 556012-3928, P.O. Box 39, Gustaf de Lavals väg 15, SE 147 21 Tumba, Sweden (“**DLI**”) or any other entity in the DeLaval Group (as defined below). Other data may also be collected or generated in connection with the Service.

Your privacy is important to DLI. Please read the [DeLaval Software and Online Service Data and Privacy Statement](http://www.delaval.com/legal/) (available for download and printing at <http://www.delaval.com/legal/>), which describes when, how and for what purposes data will be processed (e.g. collected, generated, held, used, reproduced, combined, modified, and disclosed) in connection with the Service. ***By activating, installing or using the Service, You consent to the processing of data (including, without limitation, data about You) described in the DeLaval Software and Online Service Data and Privacy Statement (including, without limitation, transfer of data to and from the European Union) and grant DeLaval Holding AB and each entity directly or indirectly controlled by DeLaval Holding AB (the “DeLaval Group”), e.g. DLI, Lattec I/S and DairyDataWarehouse B.V., a perpetual, royalty free, transferrable, sub-licensable and worldwide licence to process Your User Specific Data (as defined below) as set out in the statement. If any part of the consent is withdrawn, You may not be able to use certain functionality of the Service.***

### 2. CONTRACT FORMATION

By agreeing to these Terms, You enter into an agreement with the entity in the DeLaval Group that is responsible for sales in the country or region in which You are located (“**DeLaval**”); visit <http://www.delaval.com/legal/> to identify the entity that is responsible for Your country or region. The other entities in the DeLaval Group (e.g. DLI) are not parties to these Terms, but are granted certain rights, as set out herein.

### 3. MOBILE APPLICATIONS FOR APPLE IPHONE ETC.

To the extent the Service is a mobile application that has been made available to You for download through the “App Store” service operated by Apple Inc. or any of its affiliates, the “Licensed Application End User License Agreement” published by Apple Inc. (<http://www.apple.com/legal/internet-services/itunes/us/terms.html>) shall govern the rights to and use of the mobile application instead of section 4 through 20 of these Terms. Section 21 (Applicable Law and Disputes) of these Terms shall always govern the applicable law and the dispute procedure.

### 4. LICENCE

Each individual or entity that has lawfully been granted access to a valid licence key to, or copy of, the Service under an agreement between the individual or entity and DeLaval or DeLaval’s authorised distributor (each such individual or entity a “**Licensee**”) is granted the Licence specified below.

Licensee has a limited non-exclusive, non-assignable, non-transferable, non-sublicensable licence to activate/install and use the provided copy(ies) of the Service, but solely for the Service’s intended purpose and solely for Licensee’s internal business operations, and subject to Licensee’s acceptance and compliance with

these Terms and payment of applicable licence and/or subscription fees and other restrictions specified in the applicable documentation, offer, agreement or invoice (the “**Licence**”).

Unless otherwise specified in the applicable documentation, offer, agreement or invoice, the Licence is limited to use in relation to one site (farm). Furthermore, if the Service has been provided embedded in, or installed into, a device, the Licence is limited to use in conjunction with such device and the Service must not be installed into or copied to any other device (except as explicitly permitted by mandatory law). If the Service is otherwise intended to be locally installed, the Licence is limited to installation and use of the Service on one mobile device, computer or computer server (as applicable), unless otherwise specified in the applicable documentation, offer, agreement or invoice.

Licensor may allow its employees, representatives, contractors and agents to use the Service on its behalf pursuant to the Licence, but remain liable for all acts and omissions of such individuals and entities (whether authorised by Licensor or not) as if that was acts and omissions of Licensor.

The Licence terminates at the end of the licence or subscription period specified in the applicable documentation, offer, agreement or invoice (if applicable) or in the event Licensor's right to use the Service is withdrawn under section 10 (Suspension and Withdrawal). If no licence or subscription period has been specified, each of DeLaval and DLI may terminate the Licence at any time. Upon termination of the Licence, Licensor must immediately cease all use of the version(s) of the Service (excluding User Specific Data) to which the Licence is applicable and, if applicable, destroy all copies, full and partial, of such versions.

## 5. CODE OF CONDUCT

You must not use the Service (excluding User Specific Data) outside the scope of an applicable Licence. Furthermore, You may use the Service only in accordance with these Terms and applicable laws and regulations and must not otherwise exploit the Service. Without limiting the foregoing, it is specifically noted that You must not (except as explicitly permitted by these Terms or by mandatory law): (a) distribute or otherwise make any part of the Service available to any third party; (b) reproduce, create derivative works of, modify, disassemble, decompile or reverse engineer any part of the Service; (c) circumvent any technological measures against unauthorised acts (e.g. measures that restricts access to raw data held by the Service); or (d) use the Service in a way that is abusive or offensive or might damage, disable, overburden or impair the Service or any related or connected software, service, system or product. ***DLI has the right to embed mechanisms in the Service to monitor usage of the Service and to verify compliance with these Terms.***

## 6. REGISTRATION AND CREDENTIALS

For use of all or specific parts of the Service, You may have to register an account. You must ensure that all information submitted in connection with the registration is truthful and accurate and You must maintain the accuracy of such information (e.g. Your email address). The credentials (e.g. licence key, user name and password) assigned or created for use of the Service (if any) must be kept confidential by You and You must not disclose Your credentials to any third party or otherwise allow any third party to access the Service (except as explicitly permitted by these Terms). If You have reason to believe that a third party has gained unauthorised access to Your credentials or to the Service, You must immediately notify DLI.

## 7. OWNERSHIP

Subject to the licence set out in section 1 (Data and Privacy) above, neither DeLaval, DLI nor any other entity in the DeLaval Group claims any ownership to any data that You enter into the Service or that the Service generates specifically for You and Your specific circumstances (“**User Specific Data**”), and these Terms shall not restrict Your right to use such User Specific Data. For the avoidance of doubt, User Specific Data does not include any data that is held by the DeLaval Group independently of Your use of the Service or that is provided as part of, or in connection with, the activation or installation of the Service.

Except for User Specific Data, DLI (or, as applicable, its affiliates or licensors) owns and retains all rights, titles and interests in and to all trademarks, trade names, patents, copyrights, neighbouring rights, confidential information, trade secrets, know-how and other intellectual property and intellectual property rights (whether or not any of them are registered, and including applications for registration of any of them) in or related to the Service. All rights not expressly granted in these Terms are reserved by DLI (or, as applicable, its affiliates or licensors).

## 8. MAINTENANCE

For the avoidance of doubt, except to the extent explicitly agreed in writing, neither DeLaval, DLI nor any other entity in the DeLaval Group has any obligation to provide any support, maintenance or other service in relation to the Service.

## 9. INDEMNIFICATION

You shall indemnify and hold the DeLaval Group harmless against any and all liability, claims, loss, damage, costs and expenses (including reasonable attorney fees) incurred or suffered as a result of any violation of these Terms or any negligence on the part of You, including any claim or demand made by any third party due to or arising out of any access to or use of the Service, violation of these Terms, infringement or violation of any intellectual property right or any other right of any person or entity, by You or any third party using Your Service account or Service credentials.

## 10. SUSPENSION AND WITHDRAWAL

DLI may at any time suspend Your right to use the Service (excluding User Specific Data) if DeLaval has not been paid applicable licence or subscription fees for Your use of the Service or if, in DLI's reasonable opinion: (a) You have violated these Terms; or (b) Your use of the Service pose a threat to the security or functionality of the Service or any related or connected software, service, system or product. You will be notified of the suspension. Furthermore, if the cause of the suspension is reasonably capable of being cured, DLI will use reasonable efforts to re-establish Your right to use the Service promptly after DLI determines, in its reasonable discretion, that the cause of the suspension has been cured. DLI may permanently withdraw Your right to use the Service (excluding User Specific Data) if the cause of the suspension is not reasonably capable of being cured or the suspension is not cured within 30 days after DLI's initial notice thereof.

Furthermore, if any part of the Service is hosted or otherwise managed by or on behalf of any entity in the DeLaval Group (e.g. as an online service), that part of the Service may be suspended or withdrawn at any time unless Licensee has paid a specific fee for use of that part of the Service during a specific and limited period (e.g. annual) and the period has not expired.

## 11. SERVICE LEVEL AGREEMENT

The Service may, if and to the extent specified at <http://www.delaval.com/legal/> or otherwise explicitly agreed in writing, be subject to a service level agreement or similar arrangement ("SLA"). In addition to the limitations under the SLA, the SLA shall apply only to the parts of the Service that are hosted or otherwise managed by or on behalf of any entity in the DeLaval Group and shall not apply to the extent fulfilment is prevented by force majeure or any other circumstance beyond DeLaval's reasonable control. Furthermore, if the SLA entitles Licensee to any liquidated damages or penalties, such damages or penalties shall be Licensee's sole and exclusive remedy for the breach that the damages or penalties relate to.

## 12. LIMITED WARRANTY

For the benefit of Licensee, DeLaval warrants that the last provided version of the Service in all material aspects is capable of providing the features and functions generally described in the Service documentation issued by the DeLaval Group at the release of the relevant version of the Service, subject to section 10 (Suspension and Withdrawal) and 15 (Updates and Changes) and provided that the relevant Licence remains valid and the relevant Service is properly activated/installed in accordance with the documentation. The warranty expires: (a) to the extent the Service has been provided embedded in, or installed into, a device or is otherwise intended to be locally installed, 90 calendar days after the date that the relevant version of the Service is made available to Licensee on a physical medium, via electronic download or otherwise; and (b) otherwise, 90 calendar days after the date of the first occurrence of the breach. If a breach of the warranty is notified by Licensee in writing before the expiry of the warranty, DeLaval (or its authorised distributor) will attempt to remedy the breach. If DeLaval does not or is not able to remedy the breach within a reasonable time, Licensee is entitled, as sole and exclusive remedy, to terminate the Licence and receive a prorated refund of any unused part of the licence or subscription fee payment most recently made by Licensee for the specific version of the Service to which the warranty claim relates; such refund will be made by the entity that originally had the right to receive payment of such fees. The refund is subject to the removal of all copies, full and partial, of the relevant version of the Service from Licensee's system(s) and the return of all provided physical medias (e.g. USB drives) containing any such copy. Neither DeLaval nor any of its authorised distributors have any liability for the Service except for what is specified in this section (Limited Warranty) and, if applicable, section 11 (Service Level Agreement) and otherwise explicitly agreed in writing.

## 13. LIMITATIONS OF LIABILITY

Except as explicitly provided for in section 11 (Service Level Agreement) and 12 (Limited Warranty), and to the maximum extent permitted by applicable law, the Service is provided "as is" and "as available" without any warranty (express, implied or otherwise) as to the accessibility, quality, suitability, security or accuracy of the Service and with all warranties and conditions of merchantability, fitness for a particular purpose, title or non-infringement being expressly disclaimed. This disclaimer is applicable to any damage, loss or injury resulting from negligence or omission of any entity in the DeLaval Group, from computer virus or other similar item, from telecommunications errors, or from unauthorized access to or use of Your information through theft or any other

means. Neither DeLaval, DLI nor any other entity in the DeLaval Group is liable for any criminal, tortious, or negligent act or omission of any third party that may affect the Service.

Neither DeLaval, DLI nor any other entity in the DeLaval Group is liable under contract, tort, strict liability, negligence or other legal theory for any damage or loss (whether direct, indirect, incidental, special, punitive, consequential or other damage or loss), including lost profits and loss of data, or for any cost or expense, arising from or relating to these Terms or the use or inability to use all or part of the Service, even if advised of the possibility of such damage, loss, cost or expense. Any such potential liability is hereby disclaimed by You to the maximum extent possible under applicable law.

No claim or action, regardless of form, arising out of or relating to these Terms, the Service or the use or inability to use all or part of the Service, may be brought by You more than one year after the cause of the claim or action arose.

The limitations of liability set out above in this section do not apply to the extent the relevant loss or damage is caused intentionally (wilful misconduct) or with reckless disregard for the consequences of its acts (gross negligence). Furthermore, nothing in these Terms shall limit or exclude any liability for fraud or fraudulent misrepresentation, for death or personal injury caused by negligence or for any other liability that may not be so limited or excluded under applicable law.

#### **14. THIRD PARTY SOFTWARE AND SERVICES**

The Service may contain or embed third party software and services that are licensed under separate terms and conditions, as further specified in the Service or in the Service's specification, documentation or readme or notice files. In addition to these Terms, You must comply with such separate terms and conditions to be allowed to use the Service.

The Service may link to third party web sites or services. Neither DeLaval, DLI nor any other entity in the DeLaval Group is responsible for such web sites or services or for any goods or services offered through or in connection with such web sites or services.

#### **15. UPDATES AND CHANGES**

DeLaval or DLI may occasionally, at its discretion, make available upgrades and updates that replace or supplement the Service. With Your approval (e.g. by settings in the Service), such upgrades and updates may be remotely installed on Your system without prior notification. Furthermore, if any part of the Service is hosted or otherwise managed by or on behalf of any entity in the DeLaval Group (e.g. as an online service), that part of the Service may always be upgraded or updated without prior notification, except that Licensee will be notified of material changes if Licensee has paid a specific fee for use of that part of the Service during a specific and limited period (e.g. annual) and the period has not expired.

These Terms shall govern all past and future versions of the Service, unless such version is accompanied by separate terms, in which case such terms will apply.

DeLaval may occasionally, at its discretion, make changes to these Terms. You will be notified, as set out below, that Terms have changed and Your continued use of the Service after such notification constitutes Your acceptance of the changes, which shall enter into force on the date of such continued use.

#### **16. NOTICES**

Notices to DeLaval or DLI relating to these Terms may be sent by letter to the address set out in the preamble in an envelope marked "DeLaval Software and Online Service Terms of Use" with attention "Legal Affairs". Notices to You may be announced in the Service or sent by mail or email to Your registered postal address or to any postal address or email address which You have notified or used in relation to the Service or in communication with the DeLaval Group or any of its authorised distributors.

#### **17. COMPLETE TERMS**

These Terms set out the full scope of obligations and liabilities of the DeLaval Group in relation to the Service and any and all obligations and liabilities provided by law and possible to exclude are hereby excluded. Representations, promises and conditions related to the Service but not explicitly set forth in these Terms are not binding on the DeLaval Group.

#### **18. SEVERABILITY**

If any provision of these Terms is found to be invalid or unenforceable, the remaining provisions shall remain effective and such provision shall be replaced with another provision consistent with the purpose and intent of these Terms.

## **19. ASSIGNMENT**

You may not assign or otherwise transfer any right or obligation under these Terms without prior written consent of DeLaval. DeLaval may assign and transfer its rights and obligations under these Terms to any other entity in the DeLaval Group. The rights granted to DeLaval, DLI and other entities of the DeLaval Group shall be freely assignable.

## **20. TRANSLATIONS**

The English language version of these Terms is the only binding version, regardless if translations to other languages are made available. If there is any conflict or inconsistency between the English language version and any translation, the English language version shall thus prevail. The English language version is available for download and printing at <http://www.delaval.com/legal/>.

## **21. APPLICABLE LAW AND DISPUTES**

These Terms (including this clause) and any contractual or non-contractual obligations arising out of or in connection herewith (including the Licence) are governed by and shall be construed and interpreted in accordance with the laws of Sweden, excluding its conflict of law rules. Any dispute, controversy or claim arising out of or in connection with these Terms or any contractual or non-contractual obligation arising out of or in connection herewith, or the breach, termination or invalidity thereof, shall be finally settled by arbitration in accordance with the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce. The seat of the arbitration shall be Stockholm, Sweden. The language to be used in the arbitral proceedings shall be English, unless otherwise agreed between the parties. The arbitral proceedings and the information and documentation disclosed in connection with the arbitration shall be kept confidential by all parties involved. Notwithstanding the above, the DeLaval Group is always entitled to petition courts and authorities in any competent jurisdiction to enforce the DeLaval Group's intellectual property rights and/or secure claims of any payments due, as well as to seek injunctive relief and other interim measures.