

Sustell™ SaaS Terms and Conditions

These Sustell™ SaaS Terms and Conditions are between **DSM Nutritional Products AG**, Wurmisweg 576, CH-4303 Kaiseraugst, Switzerland (“d-f”) and **Customer, each a “Party”, collectively the “Parties”**. d-f has developed Sustell™, an intelligent sustainability platform which utilizes an environmental foot printing calculation tool to enhance environmental sustainability and profitability of animal farming. The Customer wishes to use Sustell in its internal business operations. d-f has agreed to provide, and the Customer has agreed to take and pay for a subscription to Sustell™ subject to the Sustell™ SaaS Form and these Sustell™ SaaS Terms and Conditions (collectively “**Agreement**”).

1. Definitions

Authorized Users: those employees of the Customer who are authorized by the Customer to use the Services.

Business Day: a day other than a Saturday, Sunday or public holiday in Switzerland when banks in Basel-City, Switzerland are open for business.

Change of Control: the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company, and **controls, controlled** and the expression **change of control** shall be interpreted accordingly.

Confidential Information: any information shared between the Parties for the purpose of the provision of the Services and as further detailed in clause 10 which is proprietary or confidential to a Party or, where Customer is an advisor and/or consultant, to the Clients.

Clients: clients of Customer where Customer is an advisor and/or consultant.

Data: the data inputted by the Customer or Authorized Users for the purpose of using the Services or facilitating the Customer's use of the Services, including information on Customer's or, where Customer is an advisor and/or consultant, the Client's feed and animal production system such as and not limited to feed ingredients and formulation, number of animals, location of farms, facilities used and productivity indexes, such as feed conversion rates, mortality, and weight gain, as well as other metric numbers related to animal production and its potential environmental impacts.

Effective Date: as stated in the Sustell™ SaaS Form.

Heightened Cybersecurity Requirements: any laws, regulations, codes, guidance (from regulatory and advisory bodies, whether mandatory or not), international and national standards, and sanctions, which are applicable to either the Customer or an Authorized User relating to security of network and information systems and security breach and incident reporting requirements, which may include the cybersecurity Directive ((EU) 2016/1148), Commission Implementing Regulation ((EU) 2018/151), the Network and Information Systems Regulations 2018 (SI 506/2018), all as amended or updated from time to time.

Initial Subscription Term: the initial term of this Agreement as set out in the Sustell SaaS Form.

Normal Business Hours: 8.00 am to 6.00 pm local Swiss time, each Business Day.

Renewal Period: the period described in clause 13.1.

Representatives: means, in relation to a Party, its employees, officers, contractors, subcontractors, representatives and advisers.

Results: means all results related to information generated by the Service and that are based on the Data, including modifications, improvements, upgrades, derivative works and feedback on the Data.

Services: the internet-accessible subscription services provided by d-f to the Customer under this Agreement (Sustell™).

Services Information: data and information which has resided within or is provided by the Services before the Data is supplied to the Services or Software or regardless of the supply of the Data to the Services or Software, as well as data and information in user guides, online help, release notes, training materials and other documentation provided or made available by d-f to Customer regarding the use or operation of the Services.

Software: the Sustell™ online software application used to provide the Services.

Subscription Fee: the subscription fees payable by the Customer to d-f for the Subscriptions, as set out in the Sustell SaaS Form.

Subscription Term: has the meaning given in clause 13.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).

Subscriptions: the subscriptions purchased by the Customer pursuant to clause 8.1 which entitle Authorized Users to access and use the Services in accordance with this Agreement.

Virus: anything or device (including any software, code, file or program) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any program or data, including the reliability of any program or data (whether by re-arranging, altering or erasing the program or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

Vulnerability: a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability, and the term **Vulnerabilities** shall be interpreted accordingly.

2. Subscriptions

2.1 Subject to Customer purchasing the Subscriptions in accordance with the terms and conditions of this Agreement and the restrictions set out in this clause 2, d-f hereby grants to Customer a non-exclusive, non-transferable, revocable right to permit only the Authorized Users to access and use the Services during the Subscription Term solely for Customer's or, where Customer is an advisor and/or consultant, for the Client's internal business operations. Customer acknowledges that d-f has no obligation and will not deliver to Customer copies of Software.

2.2 Where Customer is an advisor and/or consultant, Customer may purchase Subscriptions for its Clients, in which case d-f grants the Clients a non-exclusive, non-transferable, revocable right to a view-only and/or user access to the Services.

2.3 In relation to the Authorized Users, the Customer undertakes that:

- (a) the maximum number of Authorized Users that it authorizes to access and use the Services shall not exceed the number of Subscriptions;
- (b) it will not allow or suffer any Subscription to be used by more than one individual Authorized User unless it has been reassigned in its entirety to another individual Authorized User, in which case the prior Authorized User shall no longer have any right to access or use the Services;
- (c) each Authorized User shall keep a secure password for their use of the Services, that such password shall be changed no less frequently than once each half year and that each Authorized User shall keep their password confidential;
- (d) it shall maintain a written, up to date list of current Authorized Users and provide such list to d-f within 5 (five) Business Days of d-f's written request at any time or times;

The Customer shall not, and the Customer shall render the Authorized Users not to, access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that is unlawful or harmful, facilitates illegal activity; or is otherwise illegal or causes damage or injury to any person or property and d-f reserves the right, without liability or prejudice to its other rights to the Customer, to immediately disable the Customer's access to any material that breaches the provisions of this clause, or to immediately disable the Customer's access to or use of the Services where the Customer breaches the provisions of this clause.

2.4 Customer shall not, and Customer shall render Authorized Users not to:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the Parties and except to the extent expressly permitted under this Agreement (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software or Services Information in any form or media or by any means or (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or

- (b) access all or any part of the Services in order to build a product or service which competes with the Services; or
- (c) use the Services to provide services to third parties (save for the exemptions detailed in clause 2.5); or
- (d) subject to clause 14.7, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services available to any third party (save for the exemptions detailed in clause 2.5), or
- (e) attempt to obtain, or assist third parties in obtaining, access to the Services or Services Information, other than as provided under this clause 2; or
- (f) introduce or permit the introduction of, any Virus or Vulnerability into d-f's network and information systems;

and d-f reserves the right, without liability or prejudice to its other rights to the Customer, to immediately disable the Customer's access to or use of the Services where the Customer breaches the provisions of this clause.

2.5 Notwithstanding clause 2.4 above, where Customer is an advisor and/or consultant, Customer shall be allowed to (i) use the Services to provide services to Clients, (ii) make available the Results to Clients and (iii) subject to clause 2.2 make available the Services to the Clients.

2.6 The Customer shall use all reasonable endeavors to prevent any unauthorized access to, or use of, the Services, the Software and the Services Information, and, in the event of any such unauthorized access or use, promptly notify d-f.

2.7 The rights provided under this clause 2 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

3. Additional Subscriptions

3.1 If the Customer wishes to purchase additional Subscriptions, the Customer shall notify d-f in writing. d-f shall evaluate such request for additional Subscriptions and respond to the Customer with approval or rejection of the request.

3.2 If d-f approves the Customer's request to purchase additional Subscriptions, the Customer shall, within 30 days of the date of d-f's invoice, pay to d-f the relevant fees for such additional Subscriptions.

4. Services

4.1 d-f shall use commercially reasonable endeavors to make the Services available 24 (twenty-four) hours a day, 7 (seven) days a week, except for planned maintenance and unscheduled maintenance performed outside Normal Business Hours, provided that d-f has used reasonable endeavors to give the Customer at least six (6) Normal Business Hours' notice in advance.

4.2 d-f will, as part of the Services and at no additional cost to the Customer, provide the Customer with d-f's standard customer support services during Normal Business Hours.

5. Data

5.1 Data will be used by d-f in an anonymized format to develop industry and species benchmarks and databases, abstracts, reports or other descriptions to

bring further system functionality to the Customer and aid Customer insights. For this purpose, Customer hereby grants to d-f and its affiliates, its services providers, and subcontractors, a non-exclusive, worldwide, royalty-free, perpetual right and license to copy, store, display, transmit, use and analyze anonymized Data.

5.2 Notwithstanding the foregoing, Customer has the option to prevent access by d-f to compound feed formulations and compound feed Sustell™ results.

5.3 Notwithstanding clause 13.3(c), d-f shall be entitled to use the Data for the purposes of clause 5.1 after expiration or termination of the Subscription Term.

6. d-f's obligations

6.1 d-f undertakes that the Services will be performed substantially in accordance with the Agreement and with reasonable skill and care.

6.2 The undertaking at clause 6.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to d-f's instructions, or modification or alteration of the Services by any party other than d-f or d-f's duly authorized contractors or agents. If the Services do not conform with the foregoing undertaking, d-f will, at its expense, use all reasonable commercial endeavors to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 6.1.

6.3 d-f:

- (a) does not warrant that:
 - (i) the Customer's use of the Services will be uninterrupted or error-free;
 - (ii) that the Services and/or the information obtained by the Customer through the Services will meet the Customer's requirements;
 - (iii) the Software or the Services will be free from Vulnerabilities or Viruses; and
 - (iv) the Software or Services will comply with any Heightened Cybersecurity Requirements.
- (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

6.4 d-f warrants only that it has and will maintain all necessary licenses, consents, and permissions necessary for the performance of its obligations under this Agreement.

7. Customer's obligations

7.1 The Customer shall:

- (a) provide d-f with all necessary co-operation in relation to this Agreement and all necessary access to such information as may be required by d-f in order to provide the Services, including but not limited to Data, security access information and configuration services;
- (b) without affecting its other obligations under this Agreement, comply with all applicable laws and

regulations with respect to its activities under this Agreement;

- (c) carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the Parties, d-f may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (d) ensure that the Authorized Users use the Services in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorized User's breach of this Agreement;
- (e) obtain and shall maintain all necessary licenses, consents, and permissions necessary for d-f, its contractors and agents to perform their obligations under this Agreement, including without limitation the Services;
- (f) ensure that its network and systems comply with the relevant specifications provided by d-f from time to time; and
- (g) be, to the extent permitted by law and except as otherwise expressly provided in this Agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to d-f's data centers, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

7.2 Without prejudice to clause 5, the Customer or, where Customer is an advisor and/or consultant, the Client shall own all right, title and interest in and to all of the Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Data.

8. Charges and payment

8.1 The Customer shall pay the Subscription Fees to d-f in accordance with this clause 8.

8.2 The Customer shall on the Effective Date provide to d-f valid, up-to-date billing details and d-f shall invoice the Customer:

- (i) on the Effective Date for the Subscription Fee payable in respect of the Initial Subscription Term; and
- (ii) subject to clause 13.1, at least 30 days prior to each anniversary of the Effective Date for the Subscription Fees payable in respect of the next Renewal Period,

and the Customer shall pay each invoice within 30 (thirty) days after the date of such invoice.

8.3 If d-f has not received payment within 45 (forty-five) days after the due date, and without prejudice to any other rights and remedies of d-f:

- (a) d-f may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and d-f shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
- (b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 9 % (nine percent) over the then current base lending rate of the European Central Bank, commencing on

the due date and continuing until fully paid, whether before or after judgment.

- 8.4 All amounts and fees stated or referred to in this Agreement (i) shall be payable in Euro, (ii) are non-cancellable and non-refundable, and (iii) are exclusive of value added tax, which shall be added to d-f's invoice(s) at the appropriate rate (if applicable).

9. Proprietary rights

The Customer acknowledges and agrees that d-f and/or its licensors own and retain all right, title and interest in and to the Services, the Software and the Services Information. The Results and information generated by the Services shall be owned by Customer or, where Customer is an advisor and/or consultant, the Client. Except as expressly stated herein, this Agreement does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), logos, symbols, or any other rights or licenses in respect of the Services, the Software, the Services Information.

10. Confidentiality

- 10.1 During the term of this Agreement and for five (5) years thereafter, either Party agrees neither to disclose to any third party, nor to include in any publication, nor to use for any other purposes other than for the purposes of this Agreement without the prior written consent of the other Party, any information (scientific or business) including, without limitation, data, know-how or materials, disclosed by or on behalf of the other Party in connection with this Agreement. The restrictions in this Section shall not apply to Confidential Information that, as the receiving Party can demonstrate by competent proof, (i) was known to the receiving Party prior to receipt hereunder as demonstrated in written records; or (ii) at the time of disclosure to the receiving Party was generally available to the public, or which after disclosure hereunder becomes generally available to the public through no fault of the receiving Party; or (iii) is hereafter made available to the receiving Party from any third party having a right to do so on a non-confidential basis; (iv) is developed by the receiving Party independently from the Confidential Information received, or (iv) is required by law, regulation, subpoena, government order or judicial order to be disclosed, provided the receiving Party shall promptly notify the disclosing Party upon such request for disclosure and prior to such disclosure permit the disclosing Party to oppose the same by appropriate legal action.

- 10.2 The receiving Party undertakes to disclose Confidential Information only to those of its Affiliates and Affiliates' employees, Representatives who need to know the Confidential Information for the performance of this Agreement and ensures that its Representatives will treat the Confidential Information as if they were a party to this Agreement.

11. Indemnity

The Customer shall defend, indemnify and hold harmless d-f against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services and, provided that:

- (a) the Customer is given prompt notice of any such claim;

- (b) d-f provides reasonable co-operation to the Customer in the defense and settlement of such claim, at the Customer's expense; and
(c) the Customer is given sole authority to defend or settle the claim.

12. Limitation of liability

- 12.1 Except as expressly and specifically provided in this Agreement:

- (a) the Customer assumes sole responsibility for Results obtained from the use of the Services by the Customer, and for conclusions drawn from such use of the Results. d-f shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to d-f by the Customer in connection with the Services, or any actions taken by d-f at the Customer's direction;
(b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement; and
(c) the Services are provided to the Customer on an "as is" basis.

- 12.2 Nothing in this Agreement excludes the liability of d-f (i) for death or personal injury caused by d-f's negligence; or (ii) for fraud or fraudulent misrepresentation.

- 12.3 Subject to clause 12.1 and clause 12.2:

- (a) d-f shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement; and
(b) d-f's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the total Subscription Fees paid for the Subscriptions during the 12 months immediately preceding the date on which the claim arose.

- 12.4 Nothing in this Agreement excludes the liability of the Customer for any breach, infringement or misappropriation of d-f's intellectual property rights.

13. Term and termination

- 13.1 This Agreement shall, unless otherwise terminated as provided in this clause 13, commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, shall be automatically renewed for successive periods equivalent to the Initial Subscription Term (each a **Renewal Period**), unless:

- (a) either Party notifies the other Party of termination, in writing, at least 30 (thirty) days before the end of the Initial Subscription Term or any Renewal Period, in which case this Agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or
(b) otherwise terminated in accordance with the provisions of this Agreement;

and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the **Subscription Term**.

- 13.2 Without affecting any other right or remedy available to it, either Party may terminate this Agreement with immediate effect by giving written notice to the other Party if:

- (a) the other Party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 30 (thirty) days after being notified in writing to make such payment;
- (b) the other Party commits a material breach of any other term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of 90 (ninety) days after being notified in writing to do so;
- (c) the other Party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of applicable insolvency acts;
- (d) the other Party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party;
- (e) the other Party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- (f) there is a Change of Control of the other Party.

- 13.3 On termination of this Agreement for any reason:

- (a) without prejudice to clause 5, all licenses granted under this Agreement shall immediately terminate and the Customer shall immediately cease all use of the Services;
- (b) each Party shall return and make no further use of any equipment, property and other items (and all copies of them) belonging to the other Party;
- (c) upon Customer's request, d-f may destroy or otherwise dispose of any of the Data in its possession; and
- (d) any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination shall not be affected or prejudiced.

14. Miscellaneous

- 14.1 **Force majeure.** Neither Party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. The time for performance of such obligations shall be extended accordingly.

- 14.2 **Data Protection.** Any personal data which is processed under this Agreement shall be treated in accordance with the provisions of the General Data Protection Regulation of the European Union. Parties shall be transparent regarding their respective responsibilities as processor, controller or a combination of both for the processing of such personal data.

- 14.3 **Conflict.** If there is an inconsistency between any of the provisions in the main body of this Agreement and the Schedules, the provisions in the main body of this Agreement shall prevail.

- 14.4 **Waiver.** A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

- 14.5 **Rights and remedies.** Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

- 14.6 **Entire Agreement, Severance and Amendments.** This Agreement constitutes the entire agreement and understanding between the Parties and supersedes all documents or verbal consents or understandings (if any) given or made between the Parties relating to the subject matter hereof. If (a) provision(s) of the Agreement is/are or become(s) ineffective or invalid for whatever reason, the other provisions of this Agreement will not be affected hereby, and the Parties shall replace the ineffective or invalid provision(s) by a provision of similar import which reflects as closely as possible the intent of the original clause. None of the terms hereof, including this clause, may be amended or modified except by an instrument in writing signed by authorized representatives of the Parties hereto. The enclosures and recitals form part of this Agreement and will have effect as if set out in full in the body of this Agreement, and any reference to this Agreement includes the enclosures and recitals.

- 14.7 **Assignment.** This Agreement shall not be assignable without the prior written consent of the other Party, except that d-f shall be entitled to assign the Agreement or any rights and obligations thereof to any of its affiliates or to a company taking over all or substantially all of its businesses.

- 14.8 **No partnership or agency.** Nothing in this Agreement is intended to or shall operate to create a partnership between the Parties, or authorize either Party to act as agent for the other, and neither Party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

- 14.9 **Notices.** Any notices given pursuant to this Agreement shall be deemed to be duly given when in writing and delivered personally, mailed by registered mail or courier service to the Party to whom notice is to be given.

- 14.10 **Governing law and Venue.** The Agreement shall be governed by the laws of Switzerland, without regard to the conflict of laws provisions thereof. The United Nations Convention on Contracts for the International Sale of Goods shall not apply. Any dispute regarding the Agreement which the Parties are unable to amicably resolve shall be exclusively submitted to the competent courts of Basel City, without restricting any rights of appeal.