

## **SOFTWARE TERMS AND CONDITIONS**

These Software Terms and Conditions, as amended from time to time, govern all use of the Dairy Margin Tracker™ software and internet-based tools, including new and updated software and internet tools that may become available through future innovation. (“Software”). By signing in (inputting user name and password) via the website <https://www.dairymargintracker.com/> (“Website”) the user of the software product (“Licensee”) agrees to these Software Terms and Conditions and verifies that Licensee and its representatives have reviewed these Software Terms and Conditions in full before proceeding with use of the Software and Website.

### **1. OWNERSHIP**

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### **2. GRANT OF LICENSE**

Subject to this Agreement, Licensor grants to Licensee a revocable, non-exclusive, non-transferable license to use the Website and all Software products available via the Website, including the software provided under the trade name “Tracker Tool,” “Dairy Margin Tracker Feed Tool” or any amendments or future iterations of the same (“Software Product”) for the purpose of optimizing its dairy farm operations worldwide. This product is for use worldwide; however, all licensees agree that the license given pursuant to this Agreement is governed by United States law, State of Michigan. Licensee may use the Software for its own business purposes as set forth in this Agreement, and may not copy, duplicate, modify, translate, or reverse engineer the Software, and may not transfer or otherwise share the Software with any third party without prior written permission from Licensor.

### **3. LICENSE SUBSCRIPTION FEE**

Upon execution of this Agreement and actual delivery of the Software, Licensee hereby agrees to pay Licensor a monthly subscription fee in the agreed upon amount, payment being due and payable within the first ten (10) calendar days of each monthly billing cycle. Any default in payment, not cured within twenty (20) days may lose access to software at Licensor’s discretion.

### **4. CONSENT TO USE OF DATA IN NON-AGGREGATED, ANONYMOUS FORMAT**

Licensee hereby acknowledges and agrees that Licensor may access, use, and store any data created by Licensee’s use of the Website and Software Product, including usage data, for any purpose, including but not limited to tracking of industry trends, development of new products, refinement of services and existing products, advertising and marketing, and other business purposes, provided that Licensor’s use of data will not include sales of any personal identifying information about Licensee or its users of the Website and Software and data will be utilized only in non-aggregated, anonymous form. Further, in consideration of Licensor’s providing the Website and Software to Licensee pursuant to this Agreement, Licensee transfers and assigns to Licensor all right, title, and interest in and to all Data provided by Licensee through its use of the Website and Software and agrees that Licensor may use, disclose, market, license, or sell said Data for any purpose without restriction, and without further consent from Licensee. In the event Licensor is made aware of an opportunity to utilize data that is not in anonymized and non-aggregated form for business purposes not set forth herein, including but not limited to opportunities that may benefit Licensee, Licensor will obtain prior approval from Licensee.

### **5. WARRANTY DISCLAIMER; LIMITATION ON LIABILITY**

Licensee acknowledges that the Website and Software is provided on an as-is and as-available basis without any

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## **6. NO INDEMNITY**

Licensee agrees that Licensor is under no duty to defend or indemnify Licensee against any third-party action in regard to Licensee's use of the Website or Software. Licensee shall ensure that all employees, agents and users of Licensee's Software license shall comply with these terms and conditions.

## **7. TERM**

This Agreement is perpetual and shall continue until terminated. Licensor may terminate the Agreement on 30 days' notice. Licensee may terminate the Agreement at any time as follows: while logged into the software system, Licensee may go to "support" and send an email with Licensee's complete farm name, name of the primary contact person, and telephone number. Licensor shall have five business days to review and implement the termination. After termination, Licensee shall be solely responsible for ensuring that all necessary steps are taken by stop the supply or reports or information to Licensor. Upon termination, the Agreement shall then terminate as of and the Agreement shall then terminate as of the next monthly billing cycle.

## **8. DUTIES UPON TERMINATION OF AGREEMENT**

Upon termination of this Agreement, Licensee agrees to discontinue use of the Software, and return the original copy and any other copies of the Software kept in any form whatsoever, to Licensor. Further, Licensor shall provide Licensee with a final accounting within thirty (30) days of termination of this Agreement, and Licensee shall have an additional thirty (30) days from receipt of the final accounting to pay all amount past due and payable.

## **9. NOTICES**

All notices related to this Agreement sent by Licensee shall be provided via email, delivery receipt requested, with a copy via certified mail as follows: To Dairy Margin Tracker, Attn: Kelly Bean, [kelly@dairymargintracker.com](mailto:kelly@dairymargintracker.com), 1405 E. Battle Road, Rosebush, MI 48878. Any Notice provided by Licensor to Licensee under this Agreement will be provided to Licensee at the farm name and contact information provided in connection with Licensee's registration to use the Software and Website.

## **10. SUCCESSORS**

This Agreement is binding on any and all successors in interest, heirs, and valid assigns of either party.

## **11. SEVERABILITY**

In the event any provision of this Agreement is determined to be invalid or unenforceable, the remainder of this Agreement shall remain in force as if such provision were not a part.

## **12. GOVERNING LAW; DISPUTES**

This Agreement is governed by Michigan law. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in Isabella County, Michigan (unless otherwise agreed by the parties) before one arbitrator. The arbitration shall be administered by JAMS pursuant to JAMS' Streamlined Arbitration Rules and Procedures. Judgment on the Award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. The prevailing party shall be entitled to its actual attorney fees and costs incurred.

## **13. PROHIBITION ON ASSIGNMENT**

Licensee may not assign, sublicense, or otherwise transfer any rights under this Agreement without the prior written consent of Licensor. Licensor may assign or transfer this Agreement to any Affiliate or to any successor by merger or upon a sale of all or substantially all of such party's assets to which this Agreement relates. In the event of an assignment, this Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns.

## **14. AMENDMENT**

Licensor reserves the right to amend these Software Terms and Conditions at any time without prior notice to Licensee. Licensee agrees to routinely check the Website terms and conditions for updates or amendments to the Terms and Conditions. This includes and is not limited to changes to the License Subscription Fee. Licensee agrees that any amendment(s) to the Terms and Conditions shall be deemed accepted upon receipt, as long as Licensee continues to use the Software, and said amendment(s) shall be effective as of the start of the monthly billing cycle that follows receipt of the amendment(s).

## **15. ENTIRE AGREEMENT**

This Agreement sets forth the entire understanding between the parties with respect to the subject matter hereof, and merges and supersedes all prior agreements, discussions and understandings, express or implied, concerning such matters.

