

Dataphyll Terms of Use

Dataphyll provides digital data capture and solutions for the Horticulture industry. Online and web-based tools to grow efficiency and better understand field operations to help make data driven decisions.

The Agreement applies to your use of the System (as defined below). By registering to use, accessing or using the System, you agree to the Agreement and where your access and use is on behalf of another person (e.g. an Organisation, as defined below), you confirm that you are authorised to, and do in fact, agree to the Agreement on that person's behalf and that, by agreeing to the Agreement on that person's behalf, that person is bound by the Agreement.

The System will evolve over time, based on user feedback. The Agreement is not intended to answer every question or address every issue raised by the use of the System. Dataphyll reserves the right to change the Terms at any time, effective upon the posting of modified terms and Dataphyll will make every effort to communicate these changes to You via email or via the System. It is Your obligation to ensure that You have read, understood and agreed to the most recent terms available via Dataphyll Control or its interfaces.

The Terms were last updated on the date in the footer of this document.

1. DEFINITIONS

"Dataphyll"

means Dataphyll Limited, a New Zealand company, company number 5524105.

"Agreement"

means the Terms, the Key Details and the Proposal.

"Confidential Information"

includes all information exchanged between the parties to the Agreement, whether in writing, electronically or orally, but does not include information which is, or becomes, publicly available other than through unauthorised disclosure by the other party. Dataphyll's Confidential Information includes Intellectual Property owned by Dataphyll (or its licensors), including the System. Your Confidential Information includes the Data.

"Data"

means all data, content, and information (including Personal Information) owned, held, used or created by You or on your behalf that is stored using, or inputted into, the System.

"including"

and similar words do not imply any limit.

"Intellectual Property Right"

means any patent, trade mark, service mark, copyright, moral right, right in a design, know-how and any other intellectual or industrial property rights, anywhere in the world whether or not registered. *Intellectual Property* has a consistent meaning, and includes any enhancement, modification or derivative work of the Intellectual Property.

"Invited User"

means an individual or entity to whom the Organisation has granted permission to use the System.

"Key Details"

means the key details obtained by Dataphyll's onboarding process.

"Objectionable"

includes being objectionable, defamatory, obscene, harassing, threatening, harmful, or unlawful in any way.

"Organisation"

means the organisation named in the Proposal.

"Payment Terms"

means the payment terms set out in the Key Details and/or the Proposal, or if there are none, by the 20th of the month following the date of each invoice issued by Dataphyll to You.

"Personal Information"

means information about an identifiable, living person.

"Pricing"

means the pricing set out in the Key Details and/or in the Proposal.

"Proposal"

means the proposal document or quotation issued by Dataphyll (where applicable).

"Subscription Fee"

means the monthly fee (excluding any taxes and duties) payable by You in accordance with the payment terms set out in the Key Details and/or Proposal and invoiced monthly. The supplier name that will appear on your invoice will be Dataphyll Limited.

"Timesheet"

means one worker with work data in a week as further described in the Key Details. A week is defined by the ISO-8601 standard.

"the System"

means the online systems made available (as may be changed or updated from time to time by Dataphyll).

"Website"

means the Internet site at the domain <custcode>.Dataphyll.com or any other site operated by Dataphyll.

"Dataphyll Control"

means the Internet site at the domain <custcode>.Dataphyll.com or any other site operated by Dataphyll.

"You"

means the Organisation, and where the context permits, an Invited User. **"Your"** has a corresponding meaning.

2. USE OF SOFTWARE

Dataphyll grants You the right to access and use the System via the Website with the particular user roles available to You according to Your subscription type. This right is non-exclusive, non-transferable, and limited by and subject to the Agreement.

You acknowledge and agree that, subject to any applicable written agreement between the Organisation and any Invited Users, or any other applicable laws:

- 2.1. the Organisation determines who is an Invited User and what level of user role access to the relevant organisation and System that Invited User has;
- 2.2. the Organisation is responsible for all Invited Users use of the System;
- 2.3. the Organisation controls each Invited User's level of access to the relevant organisation and System at all times and can revoke or change an Invited User's access, or level of access, at any time and for any reason, in which case that person or entity will cease to be an Invited User or shall have that different level of access, as the case may be; and
- 2.4. if there is any dispute between an Organisation and an Invited User regarding access to any organisation or System, the Organisation shall decide what access or level of access to the relevant Data or System that Invited User shall have, if any.
- 2.5 Access can be granted via different methods within the system, including but not limited to, setting up a user in Dataphyll Control, authorising a device, setting details such as where product is packed, marketed or distributed.
- 2.6 Picking data must be collected as one person per registered worker in Dataphyll. Where multiple persons are using one registered worker – Dataphyll will determine the true number of workers based on an algorithm. This will flow through to the 'Worker weekly timesheet' subscription charges.

3. TRIAL PERIOD

3.1. Trial period:

Where Dataphyll has allowed You to access and use the System for a trial period, and you do so, then these Terms apply except to the extent varied in this clause 3.

3.2. Limited period:

Dataphyll will provide the System to You for the trial period set out in the Proposal (“**Trial Period**”).

3.3. As is basis:

The System is provided to You during the Trial Period on an as is basis, and, despite any other provision in the Agreement, all conditions, warranties, guarantees and indemnities in relation to the System are excluded by Dataphyll to the fullest extent permitted by law.

3.4. Fees:

No Subscription Fees are payable for Your access and use of the System during the Trial Period. You must purchase access to the paid version of the System if you wish to access and use the System following the end of the Trial Period.

3.5. No obligation:

3.5.1. Nothing in the Agreement imposes any obligation:

3.5.1.1. on You, at the termination or expiry of the Trial Period, to sign up to the paid version of the System or any other service provided by Dataphyll; or

3.5.1.2. on Dataphyll:

3.5.1.2.1. at the termination or expiry of the Trial Period, to provide the paid version of the System or any other service to You; or

3.5.1.2.2. to maintain any feature or part of the System in any paid version of the System or any other service.

4. YOUR OBLIGATIONS

4.1. Payment obligations:

You must pay Dataphyll the Subscription Fee. The Subscription Fees are charged both annually and monthly and are due on or before 20th of the month following the date of the invoice.

Dataphyll will continue invoicing You monthly until the Agreement is terminated in accordance with clause 10.

All Dataphyll invoices will be sent to You, or to a billing contact whose details are provided by You, by email. You are responsible for payment of all taxes and duties in addition to the Subscription Fee.

4.2. General obligations:

You must only use the System and Website for Your own lawful business purposes, in accordance with the Agreement and any notice sent by Dataphyll or condition posted on the Website. You may use the System and Website on behalf of others or in order to provide services to others but if You do so, you must ensure that You are authorised to do so and that all persons for whom or to whom services are provided comply with and accept all terms of the Agreement that apply to You.

4.3. Access conditions:

4.3.1. You must ensure that all usernames and passwords required to access the System are kept secure and confidential. You must immediately notify Dataphyll of any unauthorised use of Your passwords or any other breach of security. You will be responsible for resetting Your password and You must take all other actions that Dataphyll reasonably deems necessary to maintain or enhance the security of Dataphyll's computing systems and networks and Your access to the System.

4.3.2. As a condition of the Agreement, when accessing and using the System, You must:

4.3.2.1. not attempt to undermine the security or integrity of Dataphyll's computing systems or networks or, where the System is hosted by a third party, that third party's computing systems and networks;

4.3.2.2. not use, or misuse, the System in any way which may impair the functionality of the System or Website, or other systems used to deliver the System or impair the ability of any other user to use the System or Website;

4.3.2.3. not attempt to gain unauthorised access to any materials or information other than those to which You have been given express permission to access in accordance with the Agreement;

4.3.2.4. not attempt to gain unauthorised access to the computer system on which the System is hosted;

4.3.2.5. not transmit, or input into the Website, any: (a) files that may damage any other person's computing devices or software or (b) Data that breaches any third party right (including Intellectual Property Rights and privacy rights) or is Objectionable, incorrect or misleading;

4.3.2.6. not attempt to modify, copy, adapt, reproduce, disassemble, decompile or reverse engineer any computer programs used to deliver the System or to operate the Website except as is strictly necessary to use either of them for normal operation;

4.3.2.7. not impersonate another person or misrepresent authorisation to act on behalf of others or Dataphyll; and

4.3.2.8. correctly identify the sender of all electronic communications.

4.3.2.9. not store any sensitive or personal data within the system that is not directly requested by the application.

4.4. Usage limitations:

Use of the System may be subject to limitations, including but not limited to storage space, monthly transaction volumes and the number of calls You are permitted to make against Dataphyll's application programming interface. Exceeding limitations may result in additional charges.

4.5. Communication conditions:

As a condition of the Agreement, if You use any communication tools available through the Website (such as any forum, chat room or message centre, messaging apps), You agree only to use such communication tools for lawful and legitimate purposes. You must not use any such communication tool for posting or disseminating any material unrelated to the use of the System, including (but not limited to): (a) offers of goods or services for sale, (b) unsolicited

commercial e-mail, (c) files that may damage any other person's computing devices or software, (d) Data that may be Objectionable, or (e) material in violation of any law (including material that is protected by copyright or trade secrets which You do not have the right to use).

When You make any communication on the Website, You represent that You are permitted to make such communication. Dataphyll is under no obligation to ensure that the communications on the Website are legitimate or that they are related only to the use of the System. As with any other web-based forum, You must exercise caution when using the communication tools available on the Website. However, Dataphyll does reserve the right to remove any communication at any time in its sole discretion.

4.6. Indemnity:

You indemnify Dataphyll against: all claims, costs, damage and loss arising from Your breach of any term of the Agreement or any obligation You may have to Dataphyll, including (but not limited to) any costs relating to the recovery of any Subscription Fees that are due but have not been paid by You, including any actual or alleged claim by a third party that any Data infringes the rights of that third party (including Intellectual Property Rights and privacy rights) or that the Data is Objectionable, incorrect or misleading.

5. CONFIDENTIALITY AND PRIVACY

5.1. Confidentiality:

Unless the relevant party has the prior written consent of the other or unless required to do so by law:

5.1.1. Each party will preserve the confidentiality of all Confidential Information of the other obtained in connection with the Agreement. Neither party will, without the prior written consent of the other, disclose or make any Confidential Information available to any person, or use the same for its own benefit, other than as contemplated by the Agreement.

5.1.2. Each party's obligations under this clause will survive termination of the Agreement.

5.1.3. The provisions of clauses 5.1.1 and 5.1.2 shall not apply to any information which:

5.1.3.1. is or becomes public knowledge other than by a breach of this clause;

5.1.3.2. is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

5.1.3.3. was in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party; or

5.1.3.4. is independently developed without access to the Confidential Information.

5.2. Privacy:

Dataphyll maintains a privacy policy that sets out the parties' obligations in respect of Personal Information. You should read that privacy policy here https://dataphyll.com/docs/priv_policy.pdf and You will be taken to have accepted that policy when You accept the Agreement.

6. DATA

6.1. General:

You acknowledge that:

6.1.1. Dataphyll may require access to the Data to exercise its rights and perform its obligations under the Agreement; and

6.1.2. to the extent that this is necessary but subject to clause 6.1, Dataphyll may authorise a member or members of its personnel to access Data for this purpose; and

6.1.3. Dataphyll may at its sole discretion permanently archive or delete data from the system according to limitations or subscription type.

6.2. Consents

You must arrange all consents and approvals that are necessary for Dataphyll to access the Data as described in clause 6.1.

6.3. Analytics

You acknowledge and agree that:

6.3.1. Dataphyll may:

6.3.1.1. use Data [*and information about Your [and Your end users'] use of the System*] to generate anonymised and aggregated statistical and analytical data (“**Analytical Data**”); [*and*]

6.3.1.2. use Analytical Data for its internal research and product development purposes and to conduct statistical analysis and identify trends and insights; [*and*]

6.3.1.3. [*supply Analytical Data to third parties;*]

6.3.2. Dataphyll’s rights under clause 6.3.1 above will survive termination or expiry of the Agreement; and

6.3.3. title to, and all Intellectual Property Rights in, Analytical Data is and remains Dataphyll’s property.

6.4. Agent

You acknowledge and agree that to the extent Data contains Personal Information, in collecting, holding and processing that information through the System, Dataphyll is acting as Your agent for the purposes of the Privacy Act 1993 and any other applicable privacy law. You must obtain all necessary consents from the relevant individual to enable Dataphyll to collect, use, hold and process that information in accordance with the Agreement.

6.5. Backup of Data:

Dataphyll policies and procedures to prevent data loss, includes a daily system data back-up regime, but does not make any guarantees that there will be no loss of Data. Dataphyll expressly excludes liability for any loss of Data no matter how caused.

There is no facility within the System for You to backup or restore your Data inputted into the System, but Dataphyll staff are able to make arrangements for restoration of Your Data. In the event of needing to individually recover and restore file(s) a service charge will be applicable.

6.6. Your use of System and Data

You are authorised to use the System and the Website and to access the information and Data that You input into Dataphyll Apps, including any information or Data input by any person You have authorised to use the System. You are also authorised to access the processed information and Data that is made available to You through Your use of the Apps and the System (whether that information and Data is Your own or that of anyone else).

7. INTELLECTUAL PROPERTY

7.1. General:

Title to and all Intellectual Property Rights in the System, the Apps, the Websites and any documentation relating to the System remains the property of Dataphyll (or its licensors). You must not contest or dispute that ownership, or the validity of those Intellectual Property Rights.

7.2. Ownership of Data:

Title to, and all Intellectual Property Rights in, the Data (as between the parties) remain Your property. However, Your access to the Data is contingent on full payment of the Subscription Fee when due. You grant Dataphyll a worldwide, non-exclusive, fully paid up, transferable, irrevocable licence to use, copy, transmit, store, and back-up Your information and Data for the purposes of enabling You to access and use the System and for any other purpose related to the exercise of Dataphyll's rights and performance of its obligations in accordance with the Agreement.

8. WARRANTIES AND ACKNOWLEDGEMENTS

8.1. Authority:

You warrant that where You have registered to use the System on behalf of another person, You have the authority to agree to the Agreement on behalf of that person and agree that by registering to use the System You bind the person on whose behalf You act to the performance of any and all obligations that You become subject to by virtue of the Agreement, without limiting Your own personal obligations under the Agreement.

8.2. Acknowledgement:

You acknowledge that:

8.2.1. Dataphyll has no responsibility to any person other than You and nothing in the Agreement confers, or purports to confer, a benefit on any person other than You. If You use the System or access the Website on behalf of or for the benefit of anyone other than Yourself (whether a body corporate or otherwise) you agree that:

8.2.1.1. You are responsible for ensuring that You have the right to do so;

8.2.1.2. You are responsible for authorising any person who is given access to information or Data, and You agree that Dataphyll has no obligation to provide any person access to such information or Data without Your authorisation and may refer any requests for information to You to address; and

8.2.1.3. You indemnify Dataphyll against any claims or loss relating to:

8.2.1.3.1. Dataphyll's refusal to provide any person access to Your information or Data in accordance with the Agreement,

- 8.2.1.3.2. Dataphyll's making available information or Data to any person with Your authorisation.
- 8.2.2. The provision of, access to, and use of, the System is on an "as is" basis and at Your own risk.
- 8.2.3. Dataphyll does not warrant that the use of the System will be uninterrupted or error free. Among other things, the operation and availability of the systems used for accessing the System, including public telephone services, computer networks and the Internet, can be unpredictable and may from time to time interfere with or prevent access to the System. Dataphyll is not in any way responsible for any such interference or prevention of Your access or use of the System.
- 8.2.4. It is Your sole responsibility to determine that the System meets the needs of Your business and is suitable for the purposes for which it is used.
- 8.2.5. You remain solely responsible for complying with all applicable tax and other laws. It is Your responsibility to check that storage of and access to your Data via the Software and the Website will comply with laws applicable to you (including any laws requiring you to retain records).
- 8.2.6. Dataphyll bears no responsibility for the accuracy of Data You input into the System. You are solely responsible to ensure the accuracy of that Data.
- 8.2.7. You are responsible for all settings and configuration of the system, including but not limited to system tare weights.
- 8.2.8. You must not use scales provided by Dataphyll for any consumer or trade weighing. You must use scales for estimating crop production only.

8.3. No warranties:

Dataphyll gives no warranty about the System. Without limiting the foregoing, Dataphyll does not warrant that the System will meet Your requirements or that it will be suitable for any particular purpose. To avoid doubt, all implied conditions or warranties are excluded in so far as is permitted by law, including (without limitation) warranties of merchantability, fitness for purpose, title and non-infringement.

Further, Dataphyll bears no responsibility for the accuracy of Data You input into the System or the accuracy or safe transmission of any payroll information to any third party application.

8.4. Consumer guarantees:

You warrant and represent that You are acquiring the right to access and use the System for the purposes of a business and that, to the maximum extent permitted by law, any statutory consumer guarantees or legislation intended to protect non-business consumers in any jurisdiction does not apply to the supply of the System, the Website or the Agreement. The parties agree that it is fair and reasonable that the parties are bound by this clause 8.4.

9. LIMITATION OF LIABILITY

- 9.1. To the maximum extent permitted by law, Dataphyll excludes all liability and responsibility to You (or any other person) in contract, tort (including negligence), or otherwise, for any loss (including loss of information, Data, profits and savings) or damage resulting, directly or indirectly, from any use of, or reliance on, the System or Website.
- 9.2. If You suffer loss or damage as a result of Dataphyll's negligence, error or failure to comply with the Agreement to the extent clause 9.1 does not operate to exclude that loss, any claim by You against Dataphyll arising from Dataphyll's negligence, error or failure will be limited in aggregate to the Subscription Fees paid by You in the 12 months period prior to the first event giving rise to liability.
- 9.3. Without limiting clause 9.1, neither party is liable to the other under or in connection with the Agreement or the System for any:
- 9.3.1. loss of profit, revenue, savings, business, use, data (including Data), and/or goodwill; or
 - 9.3.2 consequential, indirect, incidental or special damage or loss of any kind.
- 9.3. If You are not satisfied with the System, Your sole and exclusive remedy is to terminate the Agreement in accordance with Clause 10.
- 9.4. Neither party will be responsible, liable, or held to be in breach of the Agreement for any failure to perform its obligations under the Agreement or otherwise, to the extent that the failure is caused by the other party failing to comply with its obligations under the Agreement, or by the negligence or misconduct of the other party or its personnel.
- 9.5. Each party must take reasonable steps to mitigate any loss or damage, cost or expense it may suffer or incur arising out of anything done or not done by the other party under or in connection with the Agreement or the System.

10. TERMINATION

10.1. Trial policy

When You first sign up for access to the System You can evaluate the System under the defined trial usage conditions, with no obligation to continue to use the System. If You choose to continue using the System thereafter, You will be billed from the 1st month of the subscription period as set out in the Key Details and/or the Proposal.

10.2. No-fault termination:

The Agreement will continue for the period covered by the Subscription Fee paid or payable under clause 4.1. At the end of each billing period the Agreement will automatically continue for another period of the same duration as that period, provided You continue to pay the prescribed Subscription Fee when due.

10.3. Breach:

10.3.1. If:

- 10.3.1.1. You breach any term of the Agreement (including, without limitation, by non-payment of any Subscription Fees) and do not remedy the breach within 14 days after receiving notice of the breach if the breach is capable of being remedied;
 - 10.3.1.2. You breach any term of the Agreement and the breach is not capable of being remedied (which includes (without limitation) any breach of clause 4.4 or any payment of Subscription Fees that are more than 14 days overdue); or
 - 10.3.1.3. Your organisation becomes insolvent or Your organisation goes into liquidation or has a receiver or manager appointed of any of its assets or if You become insolvent, or make any arrangement with Your creditors, or become subject to any similar insolvency event in any jurisdiction,
- 10.3.2. Dataphyll may take any or all of the following actions, at its sole discretion:
- 10.3.2.1. Terminate the Agreement and Your use of the System and the Website;
 - 10.3.2.2. Suspend for any definite or indefinite period of time, Your use of the System and the Website;
 - 10.3.2.3. Suspend or terminate access to all or any Data;
 - 10.3.2.4. Take either of the actions in sub-clauses 10.3.2.1, 2 and 3 in respect of any or all other persons whom You have authorised to have access to Your information or Data.
 - 10.3.2.5. For the avoidance of doubt, if payment of any invoice for Subscription Fees due in relation to any of Your payment obligations (per 4.1 above) is not made in full by the relevant due date, Dataphyll may: suspend or terminate Your use of the System, the authority for all or any of Your Organisations to use the System, or Your rights of access to all or any Data.
 - 10.3.2.6. Termination of the Agreement is without prejudice to any rights and obligations of the parties accrued up to and including the date of termination. On termination of the Agreement You will:
 - 10.3.2.7. remain liable for any accrued charges and amounts which become due for payment before or after termination; and
 - 10.3.2.8. immediately cease to use the System and the Website.

10.4 Expiry or termination:

Clauses, 4.6, 5, 6, 7, 8, 9 and 11 survive the expiry or termination of the Agreement.

11. HELP DESK

11.1. Support:

In the case of support You must make all reasonable efforts to investigate and diagnose problems before contacting Dataphyll. If You need help, please check the support provided

online by Dataphyll on the Website, a prearranged method for support or failing that email Dataphyll at support@dataphyll.com

11.2. System availability:

Whilst Dataphyll intends that the System should be available 24 hours a day, seven days a week, it is possible that on occasions the System or Website may be unavailable to permit maintenance or other development activity to take place.

If for any reason Dataphyll has to interrupt the System for longer periods than Dataphyll would normally expect, Dataphyll will use reasonable endeavours to publish in advance details of such activity on the Website.

12. GENERAL

a. Entire agreement:

The Agreement, together with the Dataphyll Privacy Policy and the terms of any other notices or instructions given to You under these the Agreement, supersede and extinguish all prior agreements, representations (whether oral or written), and understandings and constitute the entire agreement between You and Dataphyll relating to the System and the other matters dealt with in the Agreement.

b. Waiver:

If either party waives any breach of the Agreement, this will not constitute a waiver of any other breach. No waiver will be effective unless made in writing.

c. Delays:

Neither party will be liable for any delay or failure in performance of its obligations under the Agreement if the delay or failure is due to any cause outside its reasonable control. This clause does not apply to any obligation to pay money.

d. No Assignment:

You may not assign or transfer any rights to any other person without Dataphyll's prior written consent.

e. Governing law and jurisdiction:

New Zealand law governs the Agreement and You submit to the non-exclusive jurisdiction of the courts of New Zealand for all disputes arising out of or in connection with the Agreement. In the event that either party wishes to take action to prevent a breach of the Agreement in any other jurisdiction, then that party may elect to use the courts, and laws, of that other jurisdiction, to obtain court orders in that other jurisdiction, preventing breach of the Agreement, or awarding damages or other remedies arising from a breach of the Agreement, in that jurisdiction.

f. Severability:

If any part or provision of the Agreement is invalid, unenforceable or in conflict with the law, that part or provision is replaced with a provision which, as far as possible, accomplishes the original purpose of that part or provision. The remainder of the Agreement will be binding on the parties.

g. Notices:

Any notice given under the Agreement by either party to the other must be in writing by email and will be deemed to have been given on transmission. Notices to Dataphyll must be sent to support@dataphyll.com or to any other email address notified by email to You by Dataphyll. Notices to You will be sent to the email address which You provided when setting up Your access to the System.

h. Rights of Third Parties:

A person who is not a party to the Agreement has no right to benefit under or to enforce any term of the Agreement.