

DE Data Terms of Service

DE Data (t/a Digital Egg Ltd)

Address: Alexander House, 60-61 Tenby Street North, Birmingham, B1 3EG

Company No. 4010487

VAT No. 753 9040 28

Email: info@de-data.co.uk

These Terms of Service are governed by and construed in accordance with the laws of England and Wales.

Effective Date: 21-07-2020

These Terms of Service ("TOS") set out the terms and conditions governing the use of DE Data's ("DE Data," "We," "Us" or "Our") Platform, available via DE Data's applicable website ("DE Data Site") or any results in connection with the Platform provided via the DE Data Site ("Results"). By accessing, browsing or using the Platform, You agree to the rules set out in these TOS. The TOS are automatically incorporated by reference into the relevant agreement between You and DE Data, governing Your use of the Platform that You are authorised to use, if any (the "Agreement").

DEFINITIONS

Customer Data means any and all data and information that is entered or loaded into the Platform by, or for, a customer of DE Data. For the avoidance of doubt, all data is amalgamated with appropriate administrative security measures to ensure all data is reasonably secure.

DE Data Technology means certain business intelligence reporting tools and platform technology (including software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs and other tangible or intangible technical materials or information) provided via the Platform and all related Documentation.

GDPR means the European Union's General Data Protection Regulation.

Intellectual Property Rights or **IPR** means copyright, patent rights, design rights, database rights, trademarks and all other rights of a similar nature whether registered or not as may be exercised in any part of the world.

Platform means the Subscription Services and DE Data Technology collectively.

Sensitive Data means collectively (i) personal health information ("PHI"), (ii) "Special Categories of Data" as defined in Article 9 of GDPR and (iii) individual's first name and last name or first initial and last name in combination with any one or more of the following data elements that relate to such individual: (x) Social Security number; (y) driver's license number or state or government issued identification card number; or (z) financial account number, or credit or debit card number, with or without any required security code, access code, personal identification number or password, that would permit access to an individual or businesses financial account.

Subscription Services means the web-based Platform on which the DE Data Technology is hosted.

Users means Your employees, consultants, contractors, or agents who are authorised by You to access and use the Platform, and who have been supplied with user identifications and passwords for such purpose.

ACCEPTABLE USE

You may use the Platform solely in accordance with these TOS. You may not use the Platform in any way that causes, or may cause, damage to the Platform or impairment of the availability or accessibility of the Platform, or any of the areas of, or on, the Platform. You may not use the Platform (a) in any way that is unlawful, illegal, fraudulent or harmful; or (b) in connection with any unlawful, illegal, fraudulent or harmful purpose or activity. Additionally, You promise that You will not encourage or assist any third party to:

modify, alter, tamper with, repair or otherwise create derivative works of the Platform; reverse engineer, disassemble, decompile the Platform or the Subscription Services used to provide or access the Platform, or attempt to discover or recreate the source code used to provide or access the Platform, except and only to the extent that the applicable law expressly permits doing so;

use the Platform in any manner or for any purpose other than as expressly permitted by the Agreement of the TOS, the Privacy Policy, or any other policy, instruction or terms applicable to the Platform;

sell, lend, rent, resell, lease, sublicense or otherwise transfer any of the rights granted to You with respect to the Platform to any third party;

remove, obscure or alter any proprietary rights notice pertaining to the Platform;

use the Platform to: (i) store or transmit inappropriate content, such as content that violates the intellectual property rights or rights to the publicity or privacy of others; (ii) store or transmit any content that contains or is used to initiate a denial of Platform attack, Subscription Services viruses or other harmful or deleterious computer code, files or programs such as Trojan horses, worms, time bombs, cancelbots, or spyware; or (iii) otherwise violate the legal rights of a third party; interfere with or disrupt servers or networks used by DE Data to provide the Platform, or used by other users to access the Platform, or violate any third-party regulations, policies or procedures of such servers or networks, or harass or interfere with another user's full use and enjoyment of any Subscription Services or the Platform;

access or attempt to access DE Data's other accounts, computer systems or networks not covered by these TOS, through password mining or any other means; cause, at DE Data's sole discretion, inordinate burden on the Platform or DE Data's system resources or capacity;

use the Platform, or permit the platform to be used, for the purposes of product benchmarking or other comparative analysis intended for publication without DE Data's prior written consent; or share passwords or other access information or devices or otherwise authorise any third party to access or use the Platform.

SENSITIVE AND PERSONAL DATA

You expressly acknowledge and agree that You shall not submit to, or process via the Platform, and DE Data shall have no liability for any Sensitive Data. DE Data may immediately, upon notice, suspend all or a portion of Your access to the Platform (without any liability to You or Your customer in connection with such suspension), if DE Data has good reason to believe You have breached the restrictions in this Section. You acknowledge and agree that DE Data shall have no liability for any Sensitive Data.

CONFIDENTIAL INFORMATION

Confidential Information

As used herein, "Confidential Information" means non-public information the party disclosing the information designates, at the time of disclosure, as being confidential, or, if disclosed orally or visually, is identified as such prior to disclosure, or which, under the circumstances surrounding the disclosure, the receiving party knows or has reason to know should be treated as confidential without the need to be marked as such. Without limiting the aforementioned, Confidential Information shall include any information regarding a party's financial condition, business opportunities, plans for development of future products, unreleased versions of products, know-how, technology, customer information, and customer data. The Platform shall be deemed DE Data Confidential Information. Notwithstanding the aforementioned, nothing received by a receiving party shall be construed as Confidential Information, which a receiving party can demonstrate: (i) is generally available to the public without breach of these TOS; (ii) is lawfully obtained from a third party without a duty of confidentiality; (iii) is known to the receiving party prior to such disclosure; or (iv) is, at any time, developed by or for the receiving party independent of any such disclosure(s) from the disclosing party and the receiving party can reasonably show such independence. For the avoidance of doubt, metadata derived from Customer Data shall not be deemed Your Confidential Information.

Non-Disclosure

The receiving party shall not disclose the disclosing party's Confidential Information to any third party and may only use the disclosing party's Confidential Information for the intended business purpose related to these TOS, and for the benefit of the disclosing party. Both parties shall protect Confidential Information from disclosure or misuse by using the same degree of care used for their own confidential information, and no less than a reasonable degree of care. Each receiving party agrees to promptly notify the disclosing party upon learning of any unauthorised disclosure of the disclosing party's Confidential Information and shall provide reasonable assistance to the disclosing party to remedy and contain such a breach. In connection therewith, You agree to provide any such notice to DE Data at security@de-data.co.uk. The aforementioned notwithstanding, a receiving party may disclose the other party's Confidential Information if the information is required by law to be disclosed in response to a valid order of a court of competent jurisdiction or authorised government agency, provided that the receiving party provides the disclosing party prompt written notice, if legally permitted to allow the disclosing party a reasonable opportunity to seek a protective order prior to disclosure, at the disclosing party's cost and expense.

REPORT ABUSE

If You become aware of any material on the Platform that contravenes these TOS, please notify DE Data by email to security@de-data.co.uk. You must immediately notify DE Data in writing of any unauthorised use of Platform that comes to Your attention by email to security@de-data.co.uk. In the event of any such unauthorised use by any third party that obtained access through You, You will take all steps necessary to terminate such unauthorised use. You will provide DE Data with such cooperation and assistance related to any such unauthorised use as DE Data may reasonably request.

TOS CHANGES

We reserve the right to revise these TOS from time to time. We will date and post the most current version of the TOS on the DE Data Site. Any changes will be effective upon posting the revised version of the TOS (or such later effective date as may be indicated at the top of the revised TOS). If, at Our sole discretion, We deem a revision to this TOS to be material, We may notify You via the Platform and/or by email to the email address associated with Your account, if applicable. Notice of other changes may be provided via the DE Data Site. Check the date and/or version number of the TOS whenever You visit the DE Data Site to see if these TOS have been updated. Your continued access or use of any portion of the Platform constitutes Your acceptance of such changes. If You do not agree to any of the changes, We are not obligated to keep providing the Platform, and You must stop using the Platform.

CONSENT TO ELECTRONIC COMMUNICATIONS AND SOLICITATION

By registering for the Platform and expressly consenting to these TOS, You understand and expressly agree that We may send You communications or data regarding the Platform, including but not limited to (a) notices about Your use of the Platform, including any notices concerning violations of use, (b) updates, and (c) promotional information and materials regarding Our products and services, via electronic mail. We give You the opportunity to rescind Your consent and opt-out of receiving electronic mail from Us by following the opt-out instructions provided in the message. You agree that all such notices, disclosures and other communications that DE Data provides to You electronically satisfy any legal requirement that such communications be in writing.

We may send Your users, whose contacts you provide us, notices upon information we derive from your data, including but not limited to recommended steps to perform on an account/customer, recommended products or services to be offered and other information that shall help Your users make better sales and sustain customer loyalty. You and Your users are fully responsible for any actions made. DE Data is in no way responsible for any direct or indirect harm or loss incurred from acting based on DE Data analytics.

UPDATES TO THE PLATFORM

DE Data reserves the right, at its sole discretion, to make necessary unscheduled deployments of changes, updates or enhancements to the Platform at any time. We may add or remove functionalities or features and We may suspend or stop a Subscription Service altogether.

PRIVACY

All Customer Data shall be kept confidential and handled in accordance with DE Data's privacy policy found at: <https://www.de-data.co.uk/legal-information>, which is incorporated herein by reference.

PROPRIETARY RIGHTS; INTELLECTUAL PROPERTY; FEEDBACK

All contents of the Platform are the exclusive property of DE Data and/or the proprietary property of its suppliers, affiliates or licensors. Any use of proprietary DE Data software or open source software from DE Data's Sites, is subject to the terms of the applicable end-user or open source license agreement. DE Data reserves all rights to its trademarks, Platform marks and logos (collectively the "DE Data Marks"). DE Data does not object to the use of the DE Data Marks (other than logos) to refer specifically to the products of DE Data. However, a purely referential use or nominative fair use of the DE Data Marks must be in plain text. No title is granted, express or implied, nor shall title be deemed assigned, to You hereunder to any of DE Data's IPR, or any IPR of DE Data's partners and licensors; DE Data retains all rights in and to DE Data's intellectual property, and in and to the DE Data Technology, and all modifications, enhancements, and other works derivative of the DE Data Technology. You shall not, at any time, during the Trial Term or following termination of this Agreement, contest or aid others in contesting or doing anything which impairs the validity of any of DE Data's IPR, including but not limited to the DE Data Technology, modifications, enhancements and other derivative works of the DE Data Technology, or copyrights, trade secrets or Confidential Information. You or Your Users shall own and retain ownership of all right, title, and interest in and to the Customer Data, expressly excluding all metadata derived therefrom, and parties hereby expressly agree that any such metadata shall be the exclusive property of DE Data. You shall ensure that DE Data has the right to access and use Your Users' account information and any data they upload to the Platform for the purposes of delivering the Platform, responding to any technical problems, troubleshooting and testing. You may choose to, but are not required to,

provide DE Data with verbal and/or written suggestions, comments or other feedback related to existing or prospective Platform and/or Ancillary Services, including, without limitation, design input, and troubleshooting or other assistance provided in response to support requests (collectively, "Feedback"). You hereby assign to DE Data all right, title and interest in and to such Feedback. All Feedback is provided "AS IS." You make no warranties whatsoever about any Feedback.

INDEMNITY

You agree to indemnify and hold DE Data, its affiliates, subsidiaries, officers, agents, partners, employees, and licensors harmless from any claim or demand, including reasonable attorney's fees, made by any third party due to or arising out of Your data, Customer Data, content or Your usage of the Platform, Your breach of these TOS, any additional legal terms, or Privacy Policy, Your unauthorised use of any DE Data Intellectual Property, or Your alleged violation of any other rights of a third party.

GOVERNING LAW; LIMITATION OF LIABILITY

These Terms of Service are governed by and construed in accordance with the laws of England and Wales. EXCEPT FOR BREACH OF INTELLECTUAL PROPERTY RIGHTS, BREACH OF THE RIGHTS OR CONDITIONS THEREFORE GRANTED HEREIN AND INDEMNIFICATION OBLIGATIONS, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, LOST REVENUES, LOST PROFITS, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY). TO THE FULLEST EXTENT ALLOWED BY LAW, IN NO EVENT SHALL DE DATA HAVE ANY LIABILITY ASSOCIATED WITH THEIR SERVICES. To the extent that DE Data may not, as a matter of applicable law, disclaim any implied warranty or limit its liabilities, the scope and duration of such warranty and the extent of DE Data's liability shall be the minimum permitted under such applicable law. In case of any differences between Customer's country law and the laws of England and Wales, the laws of England and Wales shall prevail.

SUSPENSION AND TERMINATION OF YOUR USE OF THE PLATFORM

We reserve the right to temporarily suspend or terminate Your access to the Platform at any time at Our sole discretion, in the event that You violate these TOS, with or without notice, without incurring liability of any kind and without cause for maintenance purposes. For example, We may suspend or terminate Your access to or use of the Platform for: (a) the actual or suspected violation of the Agreement or these TOS; (b) the use of the Platform in a manner that may cause DE Data to have legal liability or disrupt others' use of the Platform;

(c) the suspicion or detection of any malicious code, virus or other harmful code by You or in Your account; (d) scheduled downtime and recurring downtime; (e) use of excessive storage capacity or bandwidth; or (f) unplanned technical problems and outages. If, in DE Data's determination, the suspension might be indefinite and/or DE Data has elected to terminate Your access to the Platform, DE Data will use commercially reasonable efforts to notify You through the Platform. You acknowledge that if Your access to the Platform is suspended or terminated, You may no longer have access to the Results, if any, and/or the Platform. DE Data reserves the right, at its sole discretion, to deactivate, change and/or require You to change Your user account that You may obtain through the Platform for any reason. DE Data may exercise such right at any time, with or without prior notice. DE Data will not assume or have any liability for any action or inaction with respect to Your use of the Platform other than as authorised in these TOS.

GENERAL BUSINESS TERMS

These TOS, including all incorporated documentation, contains the complete and exclusive statement of the agreement between the parties with respect to the subject matter herein. The terms and conditions of these TOS shall prevail over any purchase order submitted by You. Neither party may assign this Agreement in whole or in part in connection with the sale, merger or other corporate combination involving all or substantially all of the assets of the assigning party to a third party provided that the assigning party provides written notice to the other party, and the assignee expressly assumes in writing all of the assigning party's obligations and liabilities hereunder. This Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and permitted assignees. Except for the obligation to make payments, performance under this Agreement shall be postponed automatically to the extent that either party is prevented from meeting its obligations by causes beyond its reasonable control, including labour and government authorities.

PRICING

All prices exclude VAT charged at the current UK rate.