

# Agview Terms & Conditions

*Updated and Effective: November 10, 2020*

## 1. Your Consent to This Agreement

The AgView service is developed by the National Pork Board ("Licensor") and operated on behalf of the Licensor by a third party who maintains the confidential information submitted through the AgView service. Your use of this site and the materials, data and information available therein (collectively, the "Service") is subject to the following terms and conditions (this "Agreement") and all applicable laws. By using this Service and clicking the button or box marked "OK" or "I accept" when prompted during the registration process, you accept, without limitation or qualification, the terms and conditions of this Agreement, which constitute an agreement between you and Licensor. If you disagree with any portion of this Agreement, your sole remedy is to immediately discontinue using the Service. Your access to this site for the limited and exclusive purpose of reviewing this Agreement does not constitute your acceptance unless you make any further use of the Service. The [Privacy Statement](#) is hereby incorporated into this Agreement as if fully set forth herein. For purposes of this Agreement, "You," "you" or "your" refers to the person or entity subscribing to access the Service. By using the Service, you hereby represent and warrant that you have the authority to bind the organization using the Service to this Agreement.

## 2. Service Access

By submitting your information to set up an account for the Service on the Licensor website, you will be granted access to the Service subject to this Agreement. Your access to the Service will begin once you click your acceptance of the terms of this Agreement during the registration process and will continue for such time until this Agreement is terminated (the "Term"). You may terminate this Agreement at any time by providing Licensor with written notice. Licensor may terminate this Agreement: (a) immediately upon any breach of this Agreement by you; or (b) for any reason (or no reason) upon five (5) calendar days' notice to you. Upon termination of this Agreement, your access and use of the Service must cease and you will no longer be permitted to use or access the Service.

## 3. Right to Use This Service

If you are a pork producer as defined by the National Pork Board, veterinarian, or animal health official, Licensor hereby grants to you the non-exclusive, non-transferable right to access and use, during the Term, the Service via the internet, together with the right to access and use the software, hardware and connectivity used by Licensor to host the Service (collectively, the "Hosting Environment") subject to this Agreement.

## 4. Right to Use Materials, Data and Information

As part of your use of the Service under this Agreement, you will be allowed to access, search, view, print, and download certain materials, data and information available therein ("Service Data") for your personal, noncommercial use or for internal use in your business only, provided you keep intact and unmodified all copyright and other proprietary notices and comply with this Agreement.

## 5. Restrictions on Use of Service

**A. Restrictions.** You will not, and will not authorize or encourage any Authorized User (as defined below) or third party to, (i) access, view, use, copy, modify, reproduce, download, store, transmit, display or prepare derivative works of any part of the Service, except as expressly authorized in this

Agreement; (ii) resell, distribute, rent, lease, sublicense, lend, give, market, commercialize, assign, or otherwise transfer rights or usage of all or any part of the Service to any third party, except as expressly authorized in this Agreement; (iii) reverse engineer, translate, disassemble, decompile, or cause or allow discovery of the source code for any part of the Service or attempt to do so; (iv) remove, obscure or alter the copyright, trademark or other proprietary notices affixed to or contained in the Service; (v) use the Service in any manner or in connection with any data that (A) infringes upon or violates any patent, copyright, trade secret, trademark, publicity, privacy or other right of any third party, (B) violates any applicable international, federal, state, provincial or local law, rule, regulation or ordinance; or (C) violates any applicable privacy policy or other privacy promise; or (vi) engage in conduct intended to or likely to damage or disrupt the Service, for example, by knowingly introducing any viruses, worms, or other malicious code to the Service.

**B. Nondisclosure of Confidential Service Data.** The Service Data may include confidential business information and trade secrets of pork producers ("Confidential Service Data"). You understand and agree that the Confidential Service Data is made available to you on a confidential basis, except to the extent that the information: (i) is already known to you prior to your accessing the information through the Service; (ii) is or becomes generally known to the public through no act or omission of you in violation of this Agreement; (iii) has been lawfully received by you from a third party without restriction on its disclosure and without, to your knowledge, a breach by such third party of an obligation of confidentiality; or (iv) has been independently developed by or for you without use of or reference to the Service Data. You will (i) treat as confidential and preserve the confidentiality of all Confidential Service Data available through the Service by using at least the same degree of care as you use to protect your own proprietary information, but no less than a reasonable degree of care; (ii) use the Confidential Service Data solely for your personal, noncommercial or internal business purposes during the Term (the "Purpose"); (iii) not reproduce (or permit others to reproduce) any of such Confidential Service Data unless specifically authorized by Licensor; and (iv) not disclose or make available any of such Confidential Service Data to anyone other than those employees of yours to whom disclosure is necessary for the Purpose, provided that you appropriately notify such employees that the disclosure is made in confidence and will be kept in confidence in accordance with this Agreement and such employees have agreed in writing to maintain the confidentiality thereof. Your disclosure of Confidential Service Data pursuant to a valid judicial or administrative order will not be deemed to be a breach of this Agreement, if you: (1) provide timely written notice of such order to Licensor and reasonably cooperate with any efforts by Licensor to contest or limit the scope of such order; and (2) use diligent reasonable efforts to limit the disclosure of such data and seek a protective order or an equivalent to protect the disclosure of such data. You will immediately notify Licensor upon discovery of any loss or unauthorized disclosure of any Confidential Service Data and use diligent reasonable efforts to retrieve such data.

**C. Third Party Beneficiaries.** You acknowledge and agree that each pork producer who has submitted confidential business information through the Service is a third party beneficiary of this Agreement with respect to the information submitted by that producer, and that upon your acceptance of this Agreement, each such producer will have the right (and will be deemed to have accepted the right) to enforce Section 5.B. of this Agreement against you as the third party beneficiary hereof.

**D. Return or Destruction of Confidential Service Data.** The disclosure of Confidential Service Data to you by Licensor is done in reliance upon your representations and covenants under this Agreement. Upon termination of this Agreement, or upon request of Licensor, you will promptly return to Licensor all material constituting or containing Confidential Service Data. If such return is impossible as to any portion of such data, then you will promptly: (i) identify in writing the reasons for such inability to return it; (ii) completely and permanently destroy it, including all copies thereof; (iii) provide a written certification to Licensor that all Confidential Service Data, including all copies thereof, has been completely and permanently destroyed, and the methods used for such destruction. Upon the earlier of the requested return of the Confidential Service Data or the

termination or expiration of this Agreement, you will not thereafter use, appropriate or reproduce the data, or disclose such data to any third party. To the extent that you are subject to data retention requirement under applicable laws, it is your sole responsibility to comply with any applicable document retention or data retention requirement.

**E. Injunctive Relief.** A breach, actual or threatened, of any term or condition of this Agreement by you will cause immediate and irreparable harm to Licensor for which there is no adequate legal remedy. In the event of any actual or threatened breach of this Agreement by you, Licensor will be entitled to obtain injunctive and all other appropriate relief from a court of competent authority, without being required to: (i) show any actual damage or irreparable harm, (ii) prove the inadequacy of its legal remedies, or (iii) post any bond or other security (and if one is required, a bond in the amount of \$1,000 will be deemed sufficient by you).

## 6. Information Submitted by You

**A. Account Information.** You represent and warrant that: (i) any information provided by you to Licensor to set up your account for the Service is truthful and accurate; and (ii) you will promptly update your account information in the event of any changes (e.g, change in email address).

**B. User Content.** You acknowledge and agree you are solely responsible and liable for any information you, or others at your direction (such as veterinarians), submit or upload to the Service ("User Content"). You represent and warrant that User Content submitted by you is truthful and accurate. You grant Licensor, its successors and assigns, service providers, licensors, and contractors a nonexclusive, fully paid, worldwide, perpetual, irrevocable, royalty-free, transferable license (with the right to sublicense through unlimited levels of sublicensees) to retain and remove your User Content and to take such actions as are necessary under copyright to make your User Content available to you or to third-parties with whom you elect to share your User Content. Without limiting the foregoing, the intent of the Service is to be a repository for User Content and to facilitate sharing of User Content with third-parties of your choosing, and Licensor will not use, repurpose, or commercialize User Content for its own purposes but may create and use aggregated data. Licensor will strive to maintain the confidentiality and trade secrecy of your User Content, subject to the requirements of the federal Freedom of Information Act and state open records laws, to the extent applicable. You further represent and warrant that you have all rights necessary to grant Licensor the rights set forth in this Section 6.B.

**C. Sharing of User Content.** You acknowledge and agree that: (i) the Service allows you to share your User Content with other users of the Service; (ii) Licensor has no responsibility or liability with respect to such shared User Content or any acts or omissions of anyone with whom you elect to share your User Content; and (iii) you are solely responsible for ensuring that sharing your User Content with other users of the Service complies with applicable law, including applicable antitrust laws.

## 7. Access to Service

**A. Authorized Users.** If applicable, you will be entitled to authorize any of your employees (each an "Authorized User") to access and use the Service on your behalf subject to this Agreement. You will be entirely responsible for the acts and omissions of anyone using a User Identity (defined below) associated with your name in Licensor's records as though such acts and omissions were your acts and omissions, whether or not such acts or omissions or the use of the User Identity were authorized by you.

**B. Password Security.** You will be assigned a unique user name and password (each a "User Identity") and appropriate access rights for yourself and all of your Authorized Users. You will ensure that (i) your Authorized Users do not share their User Identities with other individuals; and (ii) your Authorized Users understand the need and take appropriate measures to keep all User Identities secret and confidential. You will promptly notify Licensor of any known or suspected unauthorized use of a User Identity registered to you or any other known or suspected breach of security.

**C. Right to Deny Access.** For the protection of you and your Authorized Users, Licensor reserves the right at its sole discretion (i) to deactivate any User Identity; (ii) to require you to change User Identities; or (iii) to deny, limit or terminate access to the Service or any portion thereof, at any time, as necessary or advisable to protect the security and integrity of the Service. Whenever Licensor is able to do so without compromising the security or integrity of the Service, Licensor will give you reasonable notice before taking such action. If Licensor determines, in its sole discretion, that it is advisable to take immediate action, without prior notice to you, Licensor will notify you as soon as reasonably practicable of its action and, if it can do so without compromising the security of the Service or any investigation, the reason for the action.

**D. Right to Modify Service.** Licensor retains the right, in its sole and absolute discretion, to modify, alter or enhance the operation and functionality of the Service or the Hosting Environment without prior notice to you. You are responsible for maintaining back-up copies of all User Content and Licensor hereby disclaims all liability for loss, destruction, or deletion of your User Content.

## **8. Intellectual Property**

As between Licensor and you, Licensor owns and shall retain all right, title and interest in and to the Service and the Hosting Environment, including all intellectual property and property rights therein. Further, Licensor is the owner of all aggregated data derived from the Service Data, and you hereby assign all rights, including, without limitation, all intellectual property and property rights, in and to such derivative works to Licensor and you will execute all documents reasonably requested by Licensor in connection with such assignment. The Service and the Hosting Environment are protected by federal copyright and other intellectual property laws and contain the valuable trade secrets of Licensor and third parties. You will not acquire any right, title or interest in the Service or the Hosting Environment or any portion or component thereof pursuant to this Agreement, other than the right to access and use the Service as expressly granted in this Agreement, subject to this Agreement.

## **9. Disclaimer of Warranties**

THIS SERVICE AND ITS CONTENT ARE PROVIDED ON AN "AS IS," "AS AVAILABLE" BASIS, WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND. YOUR USE OF OR INABILITY TO USE THIS SERVICE AND ITS CONTENT ARE AT YOUR OWN RISK. TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSOR, ITS AFFILIATES, AND EACH OF THEIR RESPECTIVE LICENSORS AND SERVICE PROVIDERS, DISCLAIM ANY AND ALL REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, WITH RESPECT TO THIS SERVICE AND ITS CONTENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, LICENSOR, ITS AFFILIATES, AND EACH OF THEIR RESPECTIVE LICENSORS AND SERVICE PROVIDERS DISCLAIM ALL REPRESENTATIONS AND WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, (A) OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE; (B) ARISING FROM A COURSE OF DEALING OR COURSE OF PERFORMANCE; (C) RELATING TO THE SECURITY OF THIS SERVICE; (D) THAT THE CONTENT OF THIS SERVICE PROVIDED THROUGH THIS SERVICE, IS ACCURATE, COMPLETE, CURRENT, OR RELIABLE FOR ANY PURPOSE AND (E) THAT THIS SERVICE WILL OPERATE WITHOUT INTERRUPTION OR ERROR. APPLICABLE

LAW MAY NOT ALLOW THE LIMITATION OF CERTAIN WARRANTIES, SO ALL OR PART OF THIS DISCLAIMER OF WARRANTIES MAY NOT APPLY TO YOU.

#### **10. Limitations on Liability**

If you are dissatisfied with this Service, any content on this Service, or with this Agreement, your sole and exclusive remedy is to discontinue accessing and using this Service and its content. IN NO EVENT WILL LICENSOR OR ITS AFFILIATES, OR EACH OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, LICENSORS OR SERVICE PROVIDERS, BE LIABLE TO YOU OR TO ANY THIRD PARTY CLAIMING THROUGH YOU FOR ANY LOSSES OR DAMAGES ARISING OUT OF OR IN CONNECTION WITH YOUR USE OF OR INABILITY TO USE THIS SERVICE OR ANY CONTENT ON THIS SERVICE. THIS IS A COMPREHENSIVE LIMITATION OF LIABILITY THAT APPLIES TO ALL LOSSES AND DAMAGES OF ANY KIND (WHETHER DIRECT, INDIRECT, GENERAL, SPECIAL, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, LOSS OF DATA, INCOME OR PROFITS), WHETHER THE CLAIM IS BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR ANY OTHER LEGAL THEORY, EVEN IF AN AUTHORIZED REPRESENTATIVE OF LICENSOR OR ITS AFFILIATES HAS BEEN ADVISED OF OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES, AND WITHOUT REGARD TO THE EFFECTIVENESS OF OTHER REMEDIES.

Without limiting the generality of the foregoing, Licensor assumes no responsibility and will not be liable for the accuracy, completeness, timeliness, reliability, relevance or usefulness of any of the materials contained on this Service. Licensor also assumes no responsibility and will not be liable for any damages to, or viruses that may infect, your computer equipment or other property as a result of your access to, use of, or browsing in this Service or downloading of any materials from this Service. APPLICABLE LAW MAY NOT ALLOW ALL OF THE LIMITATION OF LIABILITY SET FORTH ABOVE, SO ALL OR PART OF THIS LIMITATION OF LIABILITY MAY NOT APPLY TO YOU.

#### **11. Indemnification**

You will indemnify and hold harmless Licensor, its affiliates, and each of their respective licensors and service providers from and against any and all claims, losses, damages, expenses, suits, judgments and costs (including reasonable attorneys' fees and expenses) resulting from your acts, omissions, or representations in any way related to User Content, your access to and use of this Service or your breach of this Agreement.

#### **12. Entire Agreement**

This Agreement contains the entire understanding and agreement between you and Licensor with respect to this Service and supersedes all previous communications, negotiations and agreements, whether oral, written or electronic, between you and Licensor with respect to this Service and your use of this Service.

#### **13. Governing Law; Jurisdiction; Venue**

This Agreement will be construed solely in accordance within the internal laws of the State of Iowa, without giving effect to principles of conflicts of laws. Any actions, proceedings or suits concerning or relating to this Agreement or this Service may only be brought in a court of competent jurisdiction in Polk County, Iowa, and each party hereby consents to the jurisdiction and venue of such court and waives any objections thereto.

#### **14. Severability/Waiver**

If any provision of this Agreement is determined to be unlawful, void or for any reason unenforceable, then that provision will be changed and interpreted so as to best accomplish the objective of the original provision to the fullest extent provided by law and such provision will not affect the validity and enforceability of any remaining provisions. All waivers must be in writing and signed by the party to be bound.

#### **15. Revisions to this Agreement**

Each time you use the Service, you should visit and review this Agreement. Licensor reserves the right to revise, modify or amend this Agreement at any time. Any such changes to the Agreement will be posted on this page, and we will update the "Updated and Effective" date above to reflect the date of the changes. Your continued use of the Service after publication of any change in this Agreement indicates your consent to be bound by such revision, modification, or amendment.