

LEANPATH® ONLINE – TERMS OF USE

Version 360-1000 | Effective October 1, 2013

Welcome to the LeanPath® Online Terms of Use. It is important that you read these terms as a condition of opening your account with LeanPath and accessing the Services, as they supplement all Order Confirmations and control your subscription.

These LeanPath® Online Terms of Use serve as the agreement ("Agreement") between LeanPath, Inc. ("LeanPath") and Customer which governs Customer's orders ("Orders") and use of the food waste measurement and analysis services ("Services," as defined below) provided by LeanPath or its resellers via the LeanPath Online service platform and associated Tracker 2.0 software. This Agreement is a legally binding contract between LeanPath and Customer. The terms "you," "your" and "Customer" mean Customer, as an entity acting through authorized individuals, or individual users. Read this Agreement carefully before logging in and accessing the Services, as it governs your use of the Services. You may not use the Services except under the terms of this Agreement. By accessing the Services and/or signing an Order Confirmation, you agree to be bound by this Agreement. You represent to us that you are lawfully able to enter into contracts (e.g., you are not a minor). If you are entering into this Agreement for an entity, such as the company you work for, you represent to us that you have legal authority to bind that entity.

LeanPath will create your initial account by assigning you a login username and password. You acknowledge and agree that LeanPath will maintain administrative access to your account and account resources to ensure that you receive quality Services, to assist with technical issues, to provide coaching or training services, and to audit your compliance with your Orders and this Agreement. You are responsible for all activities that occur under your account, regardless of whether the activities are undertaken by you, your employees or a third party (including your contractors or agents) and, except to the extent caused by our breach of this Agreement, LeanPath and its affiliates are not responsible for unauthorized access to your account by others. You must contact us immediately if you believe an unauthorized third party may be using your account or if your account information is lost or stolen.

The following terms of this Agreement supplement all Order Confirmations and govern your access to the Services, unless a separate signed agreement between you and LeanPath expressly governs your use of the Services. To the extent of a conflict between the provisions of the foregoing documents, the order of precedence will be (1) the signed agreement (including any nondisclosure agreements), (2) a LeanPath Order Confirmation, and (3) this Terms of Use Agreement. All additional terms in connection with purchase orders, order confirmations and similar separate documentation you send to LeanPath in connection with ordering the Services shall not apply and do not become part of any contract terms with LeanPath unless expressly agreed by LeanPath in a signed writing.

1. DEFINITIONS.

1.1 **"Waste Data"** means data or content generated by your use of the Equipment, including but not limited to quantity, type, value, source, disposition, loss reason, operator name, time and date of loss, pan type, day part, stage of processing, event order number, transaction path and time duration, or photograph of food waste.

1.2 **“Customer Descriptive Data”** means data, content or information submitted by you through your use of the Services or provided directly to LeanPath, including but not limited to (i) data regarding the volume of meals you serve during a specified time period, (ii) total food purchases, total food consumed, food cost ratios or food cost per meal during a specified time period, (iii) sales volume information during a specified time period, (iv) sales and food cost budget targets, (v) menu items, recipes, recipe costs and costs in individual ingredients or supplies, and (iv) any other customer descriptive data.

1.3 **“Account Data”** means your contact and billing information and may include personally identifiable information, submitted by or collected from you in conjunction with opening, administering or closing your account.

1.4 **“System Data”** means all data, content and information in the nature of de-identified or aggregate system administrative data, statistical and demographical data, geographic data and operational information and data generated by or characterizing the use of the Services. System Data includes location-data describing the geographic whereabouts and condition of any Equipment.

1.5 **“Services” and “Service”** means the following products and services to which you have subscribed through an Order Confirmation: a) online applications, features, reporting seats, enterprise seats and data warehouse platform(s) provided by LeanPath via <http://online.leanpath.com>, including enhancements, upgrades, and extensions thereto, b) Tracker data collection and transfer software embedded within the Equipment including enhancements, upgrades, and extensions thereto, c) coaching services, d) technical support services, and e) any other services that may be provided by LeanPath from time to time.

1.6 **“Order Confirmation”** means a LeanPath Order Confirmation form, signed proposal acceptance, customer purchase or service order or other written or electronic document in which you select and subscribe to the Services, including selecting your plan, number of reporting user seats, number of enterprise user seats, number of coaching points of contact (CPOC), number of technical points of contact (TPOC), as well as Equipment purchase and rental options and Professional Services options, together with any other applicable requirements and restrictions. The Order Confirmation is part of this Agreement, and its terms prevail in the event of any conflict with this Agreement.

1.7 **“Malicious Code”** means unauthorized data, malware, viruses, Trojan horses, spyware, worms, or other malicious or harmful code.

1.8 **“LeanPath Tracker”** means a LeanPath waste data collection terminal including supporting sensors such as scales, cameras and other data collection devices.

1.9 **“Location”** means a discrete physical foodservice operation, kitchen, pantry or dining area located within a Licensed Site.

1.10 **“Equipment”** means a LeanPath Tracker and any other equipment provided by LeanPath to you under the terms of a separate rental or purchase agreement.

1.11 **“Licensed Site”** means a physical site deploying, using, or accessing Equipment and/or LeanPath Services. Each Licensed Site may deploy Equipment and Services at multiple Locations under this Terms of Use Agreement and any related Service agreements provided that all such Locations shall be owned by the same entity and located within reasonable walking distance to one another or

accessible via an owner-provided private shuttle transport service with travel time not greater than ten (10) minutes. To the extent these criteria are not met, and absent a waiver from LeanPath, each Location shall be deemed a separate Licensed Site.

1.12 **“Reporting Seat”** means the right for a single specific named individual within a Customer organization to access the Services and view, modify, or execute those Services available at the “Reporting” user level. Customer may transfer Reporting Seats to a different named user once every 90 days.

1.13 **“Enterprise Seat”** means the right for a single specific named individual within a Customer organization to access the Services and view, modify, or execute those Services available at the “Enterprise” user level. Customer may transfer Enterprise Seats to a different named user once every 90 days.

1.14 **“Available” or “Availability”** means that Customer is able, in an uninterrupted fashion, to access and use the Services, including access for Reporting Seats and Enterprise Seats at <http://online.leanpath.com> and to the data collection software installed on the Equipment, to the extent provided in the Order Confirmation. Notwithstanding the foregoing, in the event Customer is a) unable to access and use the software installed on the Equipment due to Equipment performance, failure, theft or damage or b) unable to transmit and receive data to and from the LeanPath data center due to local or wide area network performance or configuration issues, such events shall not constitute unavailability of the Services.

1.15 **“Scheduled Downtime”** means those periods of time scheduled by LeanPath or its providers for routine maintenance, database servicing, third party software and equipment maintenance, and/or off-line dedicated back-up purposes.

1.16 **“Privacy Policy”** means the LeanPath Privacy Policy available at <http://www.leanpath.com/terms/privacy>, as amended.

2. SERVICES.

2.1 **Right to Use the Services.** LeanPath hereby grants you the non-exclusive, non-transferable, non-sublicensable, non-refundable (subject to your rights under Section 7.4) right to access and use the Services, pursuant to this Agreement, the applicable Order Confirmations during each subscription term, and your payment. You agree that your subscription hereunder is neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by LeanPath regarding future functionality or features. Your use is further subject to any limitations set forth in the Order Confirmation. You may use the Services solely for your own internal benefit and business purposes. Your customers and other vendors have no right to access the Services. You may not use your subscription to offer use of the Services to third parties in the manner of a service bureau or shared resource. You may permit your third-party authorized users (“Authorized Users”) to access the Services solely for your benefit in accordance with the Agreement, provided that you (a) will be fully responsible for the acts and omissions of your Authorized Users with respect to the Services; (b) ensure that any access to the Services by your Authorized Users is completely disabled upon completion of the Authorized Users’ services requiring use of the Services; and (c) you have an

agreement in place with each Authorized User substantively requiring that the Authorized User protect the Services, confidential information and intellectual property at least to the same extent as set forth in this Agreement. You acknowledge that LeanPath makes no warranty and has no other obligations to the Authorized Users. Any breach of this Agreement by your Authorized Users will be deemed to be a breach by you.

2.2 Equipment. In order to use the Services, you must either purchase or rent Equipment from LeanPath. If you elect to purchase the Equipment, the terms found on the LeanPath website at <http://www.leanpath.com/terms/360/1000/purchase> apply and are incorporated herein. If you elect to rent the Equipment, the terms found on the LeanPath website at <http://www.leanpath.com/terms/360/1000/rental> will apply and be incorporated herein, including provisions to compensate LeanPath in the event of loss or damage. Your choice of purchasing or renting equipment will be reflected on an Order Confirmation.

2.3 Professional Services. You may elect to engage LeanPath to provide training or other professional services. If you select professional services, they will be delivered under the Professional Services Terms and Conditions found on the LeanPath website at <http://www.leanpath.com/terms/360/1000/services> and incorporated herein. Your Professional Services selections will be reflected on the Order Confirmation.

2.4 Subscriptions. Unless otherwise specified in the applicable Order Confirmation, Services are purchased as subscriptions based on the particular plan or edition that you select in the Order Confirmation. Features, support, coaching, Reporting Seats, Enterprise Seats, data access rights, and other attributes of the Services vary based on the plan you select. You may upgrade your plan during the subscription term, prorated for the remainder of the subscription term in effect at the time the upgraded Services are added. All subscriptions are non-refundable, subject to your rights under Section 7.4, and will be billed annually in advance unless otherwise specified in an Order Confirmation. Subscriptions may not be downgraded during a Subscription term but may be downgraded at the time of renewal, provided that you will need to establish a new account upon downgrade and no prior Waste Data will be carried over.

2.5 LeanPath Responsibilities. LeanPath shall provide the Services as specified in an Order Confirmation and in accordance with applicable laws, regulations and government orders. The Services will be Available at least 95% of the time, as calculated on a monthly basis 24 hours per day, 365 days per year, excluding Scheduled Downtime. LeanPath agrees to provide reasonable prior notice to Customer for all Scheduled Downtime expected to last more than four (4) hours. Notwithstanding the foregoing, LeanPath is not liable for any errors or interruption in the Availability of the Services due to causes outside of LeanPath's reasonable control. LeanPath will use reasonable efforts to respond to any report of an unscheduled service outage to resolve the outage and make the Services Available as soon as practicable. In the event that you report that any of the Services are not Available for more than an aggregate of 36 hours in any given month other than as a result of Scheduled Downtime, you shall be entitled to receive a credit against your account payable (in the next billing cycle) amounts in the amount of one pro-rated day of service for every full hour of downtime in a calendar month in excess of such 36 hours; provided, however, that such credits shall not exceed the pro-rata monthly fee (excluding equipment rental charges) paid in the month during which credits are accrued. Notwithstanding the foregoing remedies, to be eligible to receive a remedy hereunder, you must notify LeanPath of your right to receive a credit by 5:00pm Pacific Time on the thirtieth (30th) day of the next calendar month

following the month in which the Services are not Available as required hereunder. If you fail to notify LeanPath of your right to receive a remedy, within the foregoing time period, your right to a remedy terminates for the previous calendar month in which the Services are not Available as required hereunder.

2.6 Your Responsibilities. As between you and LeanPath, you agree to be solely responsible for and assume all liability relating to the following:

- a) All aspects of your business, including your obligations to end users or other third parties and all business or financial results obtained by you from using the Services;
- b) All technology, equipment, content and data provided by or through you for use with the Services, including performance of software applications provided by you;
- c) Decisions about your computer, network and communications systems needed to access and support the Services. You take responsibility for providing a network and communications infrastructure consistent with LeanPath's summary of technical and network requirements (both LAN and WAN);
- d) Decisions made by you with respect to maintenance, remote assistance, or other actions taken by LeanPath at your direction or according to event scripts or specifications provided or used by you;
- e) Compliance with all applicable laws and governmental regulations regarding your business or use of the Services;
- f) The results of your use of the Services provided to third parties or your customers and users, and their compliance with this Agreement and LeanPath's acceptable use standards contained in Section 2.7;
- g) Your commercially reasonable efforts to prevent unauthorized access to or use of the Services, including access to or use by individuals without an assigned Reporting Seat or Enterprise site, and your responsibility to notify LeanPath promptly of any such unauthorized access or use; and
- h) The accuracy, quality, integrity and legality of Customer Descriptive Data and Waste Data.

2.7 Acceptable Use Standards. You shall comply with the following acceptable use standards of LeanPath. You shall not:

- a) Make the Services available to persons not employed by you or under an independent contractor relationship with you that authorizes them to access the Services using a valid Reporting or Enterprise Seat on your behalf and in compliance with this Agreement;
- b) Sell, resell, rent, lend, share or lease the Services;
- c) Use or allow the use of the Services to store or transmit Malicious Code;

- d) Interfere with or disrupt the integrity or performance of the Services or third-party data or accounts of other LeanPath customers utilizing the LeanPath Service platform;
- e) Attempt to gain unauthorized access to the Services or their related systems or networks; or
- f) Use the Services and related information generated thereby to commit fraud, libel or defamatory acts, or to facilitate or commit abusive or otherwise malicious or harmful acts to any person or entity, discriminate based on race, gender, religion, nationality, disability, sexual orientation, or age, or to carry out or commit any other illegal activities.
- g) Allow, enable or tolerate use of a single Reporting Seat or Enterprise Seat by any person other than the named user.

2.8 Audit and Certification. LeanPath reserves the right to monitor use of the Services to ensure compliance with your Order Confirmations, account limitations and other terms of this Agreement. If LeanPath determines that you are not in compliance with this Agreement, LeanPath reserves the right to take appropriate action including, but not limited to, suspension or cancellation of your account. You agree that within thirty (30) days of a written request from LeanPath or LeanPath's authorized representative, you will fully document and certify that your use of the Services conforms to this Agreement.

3. INTELLECTUAL PROPERTY.

3.1 LeanPath's Intellectual Property. You acknowledge that the Services, and the underlying source code, algorithms, data structures, methods, processes, screen formats, report formats, ideas and concepts used to provide the Services, are valuable intellectual property owned by LeanPath and its licensors, including all associated patent, copyright, trade secret, trademark, and other intellectual property rights. You shall not, except as expressly authorized and only to the extent established by applicable statutory law, attempt (or permit others) to decompile, disassemble or otherwise reverse engineer or attempt to reconstruct or discover any source code, underlying ideas or concepts, algorithms, data structures, methods, processes or file formats used to provide the Services by any means. You shall not develop methods to enable unauthorized parties to use the Services, or access and use the Services to develop any other product based on any of the concepts and ideas contained in the Services. You shall not modify the Services or incorporate any portion of the Services into any other software or create a derivative work of any portion of the Services. You shall not access the Services in order to build a competitive product or service, or copy any features, functions or graphics of the Services without the express permission of LeanPath. In the event that you are developing a product or service to compete with the Services contemporaneously with maintaining an account and subscription for the Services, you shall be required to demonstrate, upon the request of LeanPath, that all such competitive product and service development has occurred independently of your use of the Services, and such proof shall be through written evidence of your development procedures. You shall not remove any copyright or other proprietary notices displayed through your use of or placed in conjunction with the Services. LeanPath reserves all rights not expressly granted hereunder. The rights granted herein do not constitute a sale of any software or tangible product (other than lease or sale of Equipment under the Order Confirmation). You agree not to challenge the ownership or rights in and to the Services and related materials, including without limitation, all copyrights and other proprietary rights. You acknowledge and agree that any violation of the terms of this Section 3.1 would irreparably

harm LeanPath and that LeanPath may enforce the terms of this Section 3.1 through injunctive relief, without limitation to any other rights and remedies available to LeanPath.

3.2 **Suggestions.** If you provide any suggestions to LeanPath, LeanPath will own all right, title, and interest in and to the suggestions, even if you have designated the suggestions as confidential. LeanPath will be entitled to use the suggestions without restriction. You hereby irrevocably assign to LeanPath all right, title, and interest in and to the suggestions and agree to provide us any assistance we may require to document, perfect, and maintain our rights in the suggestions.

4. **DATA OWNERSHIP, USE AND SECURITY.**

4.1 **Ownership of Waste Data.** LeanPath owns all Waste Data and may make any legal use of such data without notifying you or sharing such data with you; provided, however, that LeanPath will not disclose any such Waste Data to any third party in any way that would identify you or the identity of the Locations or the Licensed Site(s) without your written permission. LeanPath hereby grants you a non-exclusive, non-transferable, perpetual, royalty-free, worldwide license to view and use your Waste Data via LeanPath Online and to download and use your data subject to LeanPath's bulk export policies then in effect. LeanPath may use and disclose any Waste Data in aggregate form without restriction. Notwithstanding the foregoing terms, LeanPath is free to transfer all Waste Data to any party who succeeds to LeanPath's business through a merger, acquisition, reorganization or sale or transfer of substantially all the assets pertaining to the Equipment or Services, or to an affiliate of LeanPath, so long as such transferee parties abide by the foregoing terms.

4.2 **Ownership of Customer Descriptive Data.** As between LeanPath and you, you exclusively own all rights, title and interest in and to all Customer Descriptive Data. You are solely responsible for the content of your Customer Descriptive Data. You will secure rights in Customer Data necessary for LeanPath to provide you the Services without violating the rights of any third party, or otherwise obligating LeanPath to you or to any third party.

4.3 **License to Use Customer Descriptive Data.** You hereby grant to LeanPath a worldwide, royalty-free, non-exclusive, perpetual, sublicensable right and license to use, copy, display, Customer Data for the purposes of research, benchmarking, analytics, other food waste prevention, evaluating the efficiency, effectiveness, utility and functionality of the Services; provided, however, that LeanPath will not disclose any such Customer Data in any manner inconsistent with the Privacy Policy.

4.4 **LeanPath's Use of System Data.** All System Data is owned exclusively by LeanPath. LeanPath may make any legal use of such System Data without notifying you or sharing such data with you. Specifically, LeanPath may publish and share System Data with others in aggregate or statistical form to promote the Services and for evaluating the efficiency, utility and functionality of the Services. LeanPath, however, agrees that no System Data will be disclosed to others in any way that would identify you or your personnel or disclose any identifiable Customer Descriptive Data, unless approved by you in writing or unless such System Data is provided to a third party who is under agreement with LeanPath to protect and limit the use of such System Data.

4.5 **Account Data.** Your Account Data is subject to the Privacy Policy.

4.6 **Protection of Data.** Although total security does not exist on the Internet, LeanPath shall make commercially reasonable efforts to safeguard the information that you submit by maintaining appropriate administrative, physical, and technical safeguards for protection of the security,

confidentiality and integrity of Waste Data, Customer Descriptive Data, System Data and Account Data. These methods include, at a minimum, data storage on redundant systems in a secure data center and daily back-up to physically remote cold storage. LeanPath shall not (i) modify Customer Descriptive Data, or (ii) disclose Customer Descriptive Data or Account Data in any manner inconsistent with the Privacy Policy.

4.7 Your Security Responsibilities. You are responsible for properly configuring and using the Services and for taking your own steps to maintain appropriate security, protection and backup of Customer Descriptive Data and Waste Data. This may include routine archiving and the use of encryption technology to protect your content from unauthorized access. Each LeanPath Subscription plan includes bulk data download rights which may require payment of an additional fee. A bulk data download will be required to perform a back-up of your Waste Data. In the event of Equipment theft, you authorize LeanPath to take actions to disable and locate your Equipment.

4.8 Compliance with Laws. Notwithstanding anything to the contrary in this Agreement, LeanPath may preserve or disclose all information that is or comes into LeanPath's possession or control, including Waste Data, Customer Descriptive Data, Account Data, and/or System Data, if LeanPath believes that it is reasonably necessary to comply with applicable law, regulation or a lawful order from a competent judicial, administrative or law enforcement authority with jurisdiction over LeanPath or such information. U.S. law authorizes LeanPath to respond to requests for user information from foreign law enforcement agencies that are issued via U.S. court either by way of a mutual legal assistance treaty or a letter rogatory. It is LeanPath's policy to respond to such U.S. court ordered requests when properly served.

5. MAINTENANCE, SUPPORT, COACHING AND PROFESSIONAL SERVICES.

5.1 Maintenance and Support. LeanPath's specific maintenance and support obligations to you, if any, are set forth in the Order Confirmation. All subscribers will receive standard support, including (i) automatic product upgrades of the Services purchased on the Order Confirmation, when and if available; (ii) maintenance updates of the Services purchased on the Order Confirmation, when and if available; (iii) online self-help designed to assist you with implementation and use of the Services, available at <http://www.leanpath.com>.

5.3 Coaching. Each Subscription plan defines coaching service levels which are available only to specific named Coaching Points of Contact (CPOC). Named CPOC may be changed not more than once every ninety (90) days. Specific coaching will be provided based on the selected Subscription plan set forth in the Order Confirmation. LeanPath coaches provide waste prevention perspective; however, you are responsible for exercising professional judgment in contextualizing this advice among all priorities in your operation. You are responsible for being fully informed about all food safety, public health and other regulatory matters which affect the safety of the food you serve and for making all decisions regarding the safety of any and all food items you serve. LeanPath specifically disclaims any responsibility or liability for food safety decisions you make.

6. FEES AND TAXES.

6.1 Subscription Fees. All subscription fees are non-refundable and non-cancelable except as expressly provided in this Agreement or an Order Confirmation. All amounts payable under this Agreement will be made without setoff or counterclaim, and without any deduction or withholding.

Fees and charges for any new Service or new feature of a Service will be effective when we notify you or post updated fees and charges to the LeanPath website, unless we expressly state otherwise in a notice. We may increase or add new fees and charges for any existing Services by giving you at least 30 days' advance notice. We may charge you interest at the rate of 1.5% per month (or the highest rate permitted by law, if less) on all late payments.

6.2 **Taxes.** All fees and charges payable by you are exclusive of applicable taxes and duties, including Value Added Tax ("VAT") and applicable sales or use tax. You are responsible for all VAT and applicable sales or use tax. LeanPath will collect and pay VAT or other taxes only if LeanPath is required by law to collect such taxes. If LeanPath is required by law to collect such taxes, then you shall provide LeanPath with any information LeanPath reasonably requests in order to comply with such laws. If any deduction or withholding is required by law, you will notify us and will pay us any additional amounts necessary to ensure that the net amount that we receive, after any deduction and withholding, equals the amount we would have received if no deduction or withholding had been required. Additionally, you will provide us with documentation showing that the withheld and deducted amounts have been paid to the relevant taxing authority.

7. **TERM, TERMINATION AND SUSPENSION.**

7.1 **Initial Term of Agreement.** This Agreement commences on the earlier of when you first access the Services or when you sign an Order Confirmation incorporating these terms and continues for one (1) year or the initial term stated in the Order Confirmation.

7.2 **Renewal Terms.** Except as otherwise specified in the applicable Order Confirmation, all subscriptions shall automatically renew for additional periods equal to the expiring subscription term or one year (whichever is longer), unless either party gives the other notice of non-renewal not less than fifteen (15) days before the end of the relevant subscription term.

7.3 **Termination for Cause.** A party may terminate this Agreement for cause (i) upon 30 days' written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

7.4 **Refund or Payment upon Termination.** Upon any termination for cause by you, LeanPath shall refund any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. Upon any termination for cause by LeanPath, you shall pay any unpaid fees covering the remainder of the term of all Order Confirmations after the effective date of termination. In no event shall any termination relieve you of the obligation to pay any fees payable to LeanPath for the period prior to the effective date of termination.

7.5 **LeanPath's Additional Rights to Terminate or Restrict Services.** LeanPath reserves the right (but shall have no obligation) to take additional action, up to and including termination, in the following limited circumstances:

a) With or without notice, LeanPath may modify or terminate any or all Services or restrict your use in whole or in part if, in LeanPath's sole judgment, use of the Services by you or as provided to your end users (i) presents a material security risk or will interfere materially with the proper continued operation of a data center, equipment, telecommunications network, or related services, or (ii) is

subject to an order from a court or governmental entity stating that such use generally or for certain activities must stop. Where permitted under the relevant court or governmental order, LeanPath will notify you of such order promptly so that you will have an opportunity to respond to the order. LeanPath also will notify you promptly of any security risks identified under clause (i) above and any action taken by LeanPath with respect to such security risks.

b) Upon notice of not less than seven (7) days and failure to cure within the notice period, LeanPath may modify or terminate any or all Services or restrict your use in whole or in part if, in LeanPath's reasonable judgment, your use of the Services (i) violates applicable laws or governmental regulations, including, without limitation, consumer protection, securities regulation, child pornography, obscenity, data privacy, data transfer and telecommunications laws; (ii) violates or infringes any intellectual property right of LeanPath or a third party; (iii) violates export control regulations of the United States or other applicable countries; or (iv) otherwise violates LeanPath's acceptable use standards in Section 2.7 above.

Notwithstanding anything to the contrary in this Agreement, LeanPath reserves the right to take whatever steps are necessary to comply with the shorter notice periods or other requirements of any applicable law or regulation of the jurisdiction where Services are performed.

8. EFFECT OF TERMINATION

8.1 **Account.** After your account is terminated, LeanPath may keep your account open with limited account access and without Service access for a reasonable amount of time to complete processing of all payments, billing and administration of the account termination.

8.2 **Return of Customer Descriptive Data.** Upon request by you made within 30 days after the effective date of termination, LeanPath will make available to you for download a file of Customer Data in XML format along with attachments in their native format. After such 30-day period, LeanPath shall have no obligation to maintain or provide any Customer Descriptive Data.

8.3 **Surviving Provisions.** The sections titled "Your Responsibilities," "Intellectual Property," "Data Ownership and Use," "Fees and Taxes," "Refund or Payment upon Termination," "Effect of Termination," "Disclaimer," "Limitation on Liability," "Indemnification," "Other Terms," and "Governing Law and Venue" shall survive termination or expiration of this Agreement.

9. **NOTICE TO U.S. GOVERNMENT USERS:** LeanPath provides the Services, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Services include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with LeanPath to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.

10. LIMITED WARRANTY, WARRANTY DISCLAIMERS AND LIMITATION OF LIABILITY

10.1 **LeanPath's Warranties.** LeanPath warrants that the Services will be provided in conformity with professional standards applicable in the food service technology industry. LeanPath's entire liability and your exclusive remedy shall be, at LeanPath's option, either: (i) return of all or a portion, as applicable, of the subscription fee paid to LeanPath for the Services and termination of this Agreement, or (ii) correction of the error and re-performance of the Service. This warranty is void if the error results from your negligence, accident, abuse, or misuse.

10.2 **Your Warranties.** You represent and warrant to LeanPath that: (i) you or your licensors own all right, title, and interest in and to the Customer Descriptive Data and Account Data and (ii) you have all rights in the Customer Descriptive Data, Waste Data and Account Data necessary to grant the rights contemplated by this Agreement.

10.3 **Disclaimer.** EXCEPT FOR THE LIMITED WARRANTIES PROVIDED HEREIN, THE SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, BOTH EXPRESSED AND IMPLIED. LEANPATH, ITS SUPPLIERS AND LICENSORS DO NOT WARRANT THAT THE SERVICES WILL MEET YOUR REQUIREMENTS OR THAT THEIR OPERATION WILL BE UNINTERRUPTED OR ERROR FREE. LEANPATH DOES NOT WARRANT THAT THE SERVICES ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, OR THAT THEY WILL BE ACCESSIBLE ON A PERMANENT BASIS OR WITHOUT INTERRUPTION OR THAT THE CUSTOMER DATA OR WASTE DATA WILL NOT BE LOST OR DAMAGED. YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT YOUR USE OF THE SERVICES IS AT YOUR SOLE RISK. LEANPATH, ITS SUPPLIERS AND LICENSORS DISCLAIM AND EXCLUDE ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, SATISFACTORY QUALITY OR ARISING FROM A COURSE OF DEALING, LAW, USAGE, OR TRADE PRACTICE TO THE EXTENT ALLOWED BY APPLICABLE LAW. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE WARRANTY PERIOD. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, THE ABOVE LIMITATION MAY NOT APPLY. THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION. THIS DISCLAIMER AND EXCLUSION SHALL APPLY EVEN IF THE EXPRESS WARRANTY SET FORTH ABOVE FAILS OF ITS ESSENTIAL PURPOSE. LEANPATH MAKES NO WARRANTIES WITH RESPECT TO SERVICES WHICH ARE PROVIDED AT NO CHARGE, ALL OF WHICH ARE PROVIDED "AS IS."

10.4 **Limitation on Liability.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND REGARDLESS OF WHETHER ANY REMEDY HEREIN FAILS OF ITS ESSENTIAL PURPOSE, IN NO EVENT SHALL LEANPATH OR ITS THIRD PARTY SUPPLIERS AND LICENSORS BE LIABLE TO YOU OR ANY THIRD PARTY ARISING OUT OF THE USE OF OR INABILITY TO USE THE PRODUCT OR ANY SERVICES UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY, FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS), OR FOR LOSS OF OR CORRUPTION OF DATA, LOST PROFITS, OR FOR COST OF PROCUREMENT OF SUBSTITUTE GOODS OR TECHNOLOGY, IRRESPECTIVE OF WHETHER LEANPATH HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. LEANPATH'S MAXIMUM LIABILITY FOR DAMAGES SHALL BE LIMITED TO THE SUBSCRIPTION FEES ACTUALLY RECEIVED BY LEANPATH UNDER THIS AGREEMENT FOR THE PARTICULAR SERVICE(S) WHICH CAUSED THE DAMAGES. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATION OR EXCLUSION OF CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

10.5 Indemnification.

10.5.1 **By Customer.** You shall defend LeanPath against any claim, demand, suit, or proceeding (“Claim”) made or brought against LeanPath by a third party alleging that the Customer Descriptive Data, Waste Data, Account Data or your use of the Services in violation of this Agreement, infringes or misappropriates the intellectual property rights of a third party or violates applicable law, and you shall indemnify LeanPath for any damages finally awarded against, and for reasonable attorney’s fees incurred by, LeanPath in connection with any such Claim; provided that LeanPath (i) promptly gives you written notice of the Claim, (ii) gives you sole control of the defense and settlement of the Claim (provided that you may not settle or defend any Claim unless it unconditionally releases LeanPath of all liability), and (iii) provides you with all reasonable assistance, at your cost.

10.5.2 **By LeanPath.** LeanPath will defend and or settle any Claim by a third party against Customer or its directors, officers, employees and agents arising out of or resulting from any Claims that the Service infringes or violates the intellectual property rights of any third party. LeanPath will pay any damages finally awarded or settlement amounts entered into to the extent such damages or settlement amounts are based upon such a Claim, provided that Customer (i) promptly gives LeanPath written notice of the Claim, (ii) gives LeanPath sole control of the defense and settlement of the Claim, and (iii) provides LeanPath with all reasonable assistance, at Customer’s cost. If any third party makes a Claim against Customer based on infringement by the Service, LeanPath shall, at its option (i) terminate the infringing part of the Service and refund the subscription fees associate with the infringement; (ii) replace the infringing items, without additional charge, with functionally equivalent and noninfringing items; (iii) modify the Service to avoid the infringement; or (iv) obtain, at LeanPath’s expense, a license for Customer to continue to use the Service.

11. **GOVERNMENT REGULATION:** You acknowledge that the United States controls and limits the export of certain technical data and materials, including such information in textual, image and video formats. You agree that you will not use the Services in connection with any technical data or materials that require an export license, that involve blocked or restricted persons or entities, and that any restricted technical data and materials will not be shipped, transferred, or exported into any country or used in any manner prohibited by the United States or by other multi-lateral sanctions with which the United States participates. You will comply with all laws, regulations, permits, orders and other restrictions to the extent that they are applicable to the import or export of controlled technical data or materials.

12. **CONFIDENTIALITY.** Either party may disclose confidential information (the “Disclosing Party”) to or receive confidential information (the “Recipient”) from the other party. Confidential Information means any information or material which is proprietary to the Disclosing Party or designated as Confidential Information by the Disclosing Party whether or not owned or developed by the Disclosing Party, which is not generally known other than by the Disclosing Party, and which the Recipient may obtain knowledge of through or as a result of the relationship established with the disclosing party. Customer and LeanPath agree that Waste Data is not Confidential Information and that any information or data, including, without limitation, Waste Data, developed by LeanPath or derived from Customer Confidential Information is not Confidential Information so long as it does not disclose any Confidential Information. The Recipient agrees that it will treat the Disclosing Party’s Confidential Information with the same degree of care and safeguards that it takes with its own Confidential Information, but in no event less than a reasonable degree of care. The Recipient agrees that, without the disclosing party’s

prior written consent, the Recipient will not disclose the Confidential Information to any third party. The Recipient will not disclose the Confidential Information to Recipient's employees, agents and consultants unless: (1) they have a need to know the information in connection with their employment or consultant duties; and (2) they personally agree in writing to be bound by the terms of this Agreement. Disclosure of Confidential Information pursuant to subpoena or other compulsory judicial or administrative process shall not constitute a breach of this Section 12. Upon the Disclosing Party's request, Recipient shall within 30 days return all original materials provided by the Disclosing Party and any copies, notes or other documents in Recipient's possession pertaining to the Confidential Information, and shall retain no such confidential information. This Section 12 does not apply to any information which (a) was in Recipient's possession or was known to Recipient, without an obligation to keep it confidential, before such information was disclosed to Recipient by the Disclosing Party; (b) is or becomes public knowledge through a source other than Recipient and through no fault of Recipient; (c) is independently developed by or for Recipient; (d) is or becomes lawfully available to Recipient from a source other than the Disclosing Party; or (e) is disclosed by Recipient with the Disclosing Party's prior written approval. This Section 12 and Recipient's duty to hold the Confidential Information in confidence shall remain in effect until the Disclosing Party sends Recipient written notice releasing Recipient from its obligations under this Section 12 and this obligation shall survive any termination of this Agreement. Recipient recognizes and acknowledges that any breach or threatened breach of this Section 12 by Recipient may cause the Disclosing Party irreparable harm for which monetary damages may be inadequate. Recipient agrees, therefore, that the Disclosing Party shall be entitled to an injunction to restrain Recipient from such breach or threatened breach. Nothing in this Section 12 shall be construed as preventing the Disclosing Party from pursuing any remedy at law or in equity for any breach or threatened breach of this Agreement.

13. **AMENDMENTS AND MODIFICATIONS.** You agree that LeanPath may amend the terms and conditions of this Agreement at any time by posting a revised version of the Agreement on the LeanPath website at <http://www.leanpath.com/terms/360/current/TOU> or providing notice by e-mail, unless you give LeanPath written notice of rejection of the amendment within ten (10) days of the revised Agreement being posted to the LeanPath website or noticed via e-mail. In the event of such rejection, this Agreement will continue under its original provisions, and the amendment will become effective at the start of your next term (unless terminated pursuant to Section 7 above). Unless rejected, amendments and modifications become effective when you access the Services after the amendment notice is posted or transmitted via e-mail. By continuing to use the Services after the revised terms become effective, you agree to be bound to the revised terms.

14. **NOTICE.**

14.1 **To You.** We may provide any notice to you under this Agreement by sending a message to the e-mail address then associated with your account. Notices we provide by posting on the LeanPath website will be effective upon posting and notices we provide by e-mail will be effective when we send the e-mail. It is your responsibility to keep your e-mail address and account information current. You will be deemed to have received any e-mail sent to the e-mail address then associated with your account when we send the e-mail, whether or not you actually receive the e-mail.

14.2 **To Us.** To give us notice under this Agreement, you must contact LeanPath as follows: (i) by facsimile transmission to 503-961-1411, attention: Legal; or (ii) by personal delivery, overnight courier or registered or certified mail to LeanPath Inc., 10180 SW Nimbus Ave, Suite J1, Portland, OR 97223 Attention: Legal. We may update the facsimile number or address for notices to us by posting a

notice on the LeanPath website. Notices provided by personal delivery will be effective immediately. Notices provided by facsimile transmission or overnight courier will be effective one business day after they are sent. Notices provided registered or certified mail will be effective three business days after they are sent.

14.3 **Language.** All communications and notices to be made or given pursuant to this Agreement must be in the English language.

15. MISCELLANEOUS.

15.1 **Entire Agreement.** Except for any previously executed nondisclosure agreement between the parties or any contemporaneously signed agreement or click-accept agreement relating to the Services, this Agreement is the sole and exclusive agreement between the parties related to its subject matter, and supersedes and replaces all other prior agreements and communications related thereto, both oral and written; provided, however, that with respect to a separately signed nondisclosure agreement, this Agreement's terms shall prevail in the event of a conflict unless the separate nondisclosure agreement expressly amends this Agreement with respect to conflicting terms.

15.2 **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

15.3 **Governing Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon, without regard to its conflict of laws provisions, and all disputes shall have exclusive venue in the federal and state courts in Multnomah County, Oregon, and both parties consent to the jurisdiction of these courts. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act (USA) do not apply to this Agreement. The English language version of this Agreement shall be used for all legal interpretation and actions.

15.4 **Force majeure.** Neither party will be liable for any failure in performance due to causes beyond its reasonable control (such as fire, explosion, power blackout, earthquake, flood, severe storms, strike, embargo, labor disputes, acts of civil or military authority, war, terrorism (including cyber terrorism), acts of God, acts or omissions of Internet traffic carriers, actions or omissions of regulatory or governmental bodies (including the passage of laws or regulations or other acts of government that impact the delivery of Services).

15.5 **Waiver.** No waiver of any right under this Agreement shall be effective unless in writing, signed by a duly authorized representative of the waiving party; failure to insist upon strict compliance with this Agreement shall not be deemed a waiver of any future right arising out of this Agreement.

15.6 **Assignment.** You may not assign this Agreement without LeanPath's prior written consent; provided, however, that you may transfer this Agreement together with any Order Confirmations for subscription Services in the context of a reorganization, merger, acquisition or sale of the business assets to which the Order Confirmations and subscriptions belong without consent, but such transfer shall not be effective until the transferee opens a new account or takes over and updates your existing account, including accurate information for the full name and address of the transferee

where communications about the Services may be sent, and the transferee shall be bound to all terms and conditions herein. As a condition to providing Services to your permitted assignee hereunder, LeanPath may require your permitted assignee to acknowledge in writing that the assignee is bound by this Agreement and any Order Confirmation for ongoing Services, and all related financial responsibility for them. LeanPath is free to assign or transfer this Agreement at any time.

15.7 **Acknowledgement.** By accessing the Services, you further acknowledge that you have read this Agreement, understand it, and agree to be bound by its terms and conditions.