

## Form of Participant Agreement Appendix 1

The following is an informational summary of select, significant terms from the Agreement. The terms of the Agreement itself shall govern.

### **Payment.**

**Pricing.** By ordering Products and Services through the execution of a Participant Order, Participants agree to pay Leanpath for such Products and Services based on the rates described for a given Duration in Exhibit C attached hereto or such other agreed upon rates indicated in the applicable Participant Order. Leanpath may modify the rates in Exhibit C from time to time upon mutual written amendment to this Agreement by Leanpath and Brand. Pricing for current Participants shall be updated to the then-current pricing at the conclusion of the Term of each respective Order upon execution of a renewal Order. Pricing for Participant Renewal Terms shall be as set forth in a pre-renewal notice sent by Leanpath to the applicable Participant's street address no later than ninety (90) days prior to the expiration date of the then current Term of the applicable Participant's Service.

**Other Costs.** The pricing set forth in Exhibit C is exclusive of, as applicable, (i) sales, value added and similar taxes, (ii) customs duties (iii) cost of delivery & logistics (including shipping) from Leanpath to Participants, and is predicated upon standard freight shipping of parts from Leanpath's suppliers to Leanpath (collectively, "Other Costs"). In the event a Participant Order will necessitate translation of materials or technology into a then-unsupported language or import into a then-unsupported jurisdiction then Leanpath shall provide Participant with an estimate of (iv) translation costs (using rates defined in Exhibit C) and (v) equipment certification costs required to qualify to import into a jurisdiction not listed in Exhibit E as a Leanpath serviced-market ("Additional Costs"). Leanpath shall pass through such Other Costs (i) to (iii) to Participant without obtaining Participant's advance approval and Participant will pay such Other Costs in accordance with this section, unless otherwise agreed in the Participant Order. Leanpath shall provide Participant with the opportunity to approve or reject such Additional Costs (iv) and (v) in advance and, if approved in writing, Participant will pay such additional costs in accordance with this section. In the event that Leanpath incurs increased costs to expedite parts from its suppliers to meet any delivery date demanded by Participant, and Leanpath provides Participant with the opportunity to approve or reject expediting in advance in writing, Leanpath reserves the right to pass through to Participant the Participant approved expedited shipment costs so incurred, and Participant will pay such additional costs in accordance with this section.

**Payments.** Leanpath will invoice Participants individually for ordered Products and Services upon receipt of the Participant Order and thereafter on an annual basis unless otherwise agreed upon in the Participant Order. Charges shall be invoiced in the defined currency per market, and payment shall be made in the defined currency per market. Each Participant shall pay undisputed, properly submitted invoices within thirty (30) days of receipt thereof.

**Disputed Amounts.** If any amount is the subject of a dispute between Leanpath and Participant, and such dispute cannot be resolved promptly, Participant shall pay the amounts due under this Agreement, less the disputed amount, and shall advise Leanpath in reasonable detail of the reason for the dispute. If the disputed amount is later determined to have been payable, Participant will pay Leanpath interest on such amount from the sixtieth (60th) day after the disputed invoice was originally received by Participant at the Late Payment Rate. If Participant paid an amount that was not due under this Agreement, Leanpath shall refund such amount within thirty (30) days after receipt of notice thereof from Participant. If such refund is not completed within thirty (30) days of receipt of such notice, such amount shall bear interest at the Late Payment Rate. If any portion of such amount is in dispute, Leanpath shall refund the amounts not in dispute and shall notify Participant in reasonable detail of the reason for the dispute. If the disputed amount is later determined to have been refundable, Leanpath will pay Participant interest on such amount from

the thirtieth (30th) day after the disputed refund notice was originally received by Leanpath at the Late Payment Rate.

**Sales and Value Added Taxes; Other Taxes; Withholding.** All amounts payable under this Agreement are exclusive of any value added, goods and services, sales, excise or similar taxes ("Taxes"). If required by any law, statute, or regulation, Leanpath will collect from Participant and remit to the appropriate authorities, any Taxes applicable to the provision of the Services or Deliverables, if any. Leanpath will issue the required tax invoice to Participant unless Participant provides Leanpath with a timely and valid tax exemption certificate authorized by the appropriate taxing authority. If Participant has paid such Taxes to Leanpath, Participant shall have no other responsibility with respect to such Taxes and Leanpath shall be responsible for promptly paying such Taxes to the appropriate taxing authority. If it is later determined that such Tax, or any portion thereof, was not required, Leanpath will promptly refund the overpaid amount to Participant together with interest on such amounts at the Late Payment Rate regardless of whether Leanpath has recovered such amount from such taxing authority. To the extent applicable law requires any such Taxes to be paid by Participant directly to a governmental authority or to the extent a reverse charge mechanism is available and applicable to Participant, Participant shall account for and pay such Taxes according to applicable legal requirements. Notwithstanding the foregoing, and for the avoidance of doubt, Leanpath will pay income taxes imposed (including by withholding or other means) by any competent governmental authority on any payments made by Participant under this Agreement. If Participant is required by law to withhold or deduct any amount from its payments to Leanpath, Participant will provide Leanpath with an official tax receipt of other appropriate documentation to support such withholding. The Parties will cooperate to more accurately determine and minimize, to the extent commercially reasonable, their respective tax liability. Each Party will provide tax information or tax documents reasonably requested by the other Party. Each Party will promptly notify the other of any claim for taxes asserted with respect to this Agreement or a Participant Order by a taxing authority with jurisdiction over either Party. With respect to any claim arising out of a tax form or return signed by a Party to this Agreement, the signing Party may control the response to and settlement of the claim, but the other Party may participate to the extent it may be liable.

**Use of the Services and Products.** Upon execution of a Participant Order and upon payment of all subscription fees thereunder, Leanpath will grant the applicable Participant a license pursuant to the terms of this Agreement and the Participant Order, to access and use the Services for the Duration or such other period designated in the Participant Order. If Participant is renting Rented Products or equipment from Leanpath, Leanpath will provide such Rented Products pursuant to the terms of this Agreement and the Participant Order.

**The Participant shall not:**

- use Services without payment of the Service fees or in violation of the terms and conditions hereof;
- use Rented Products without payment of the rental fees or in violation of the terms and conditions hereof;
- permit any third-party entity or person or other unauthorized person to access or otherwise make use of the Services or Rented Products except as set forth in this Agreement;
- sell, resell, rent, lend, share or lease the Services or the Rented Products;
- pledge or otherwise encumber the Rented Products;
- knowingly use or allow use of the Services or the Products to store or transmit unauthorized data, malware, viruses, Trojan horses, spyware, worms, or other malicious or harmful code;
- interfere with or disrupt the integrity or performance of the Services or third-party data or accounts of other Leanpath customers utilizing the Leanpath Services platform;
- modify the Services or Products or incorporate any portion of the Services or Products into any other software or create derivative works of any portion of the Services or Products;

- 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 of the Services or Products;
- access the Services or Products in order to build a competitive product or service, or copy any features, functions or graphics thereof without the express written consent of Leanpath;
- remove any copyright or proprietary notices displayed through or on the Services or Products;
- attempt to gain unauthorized access to the Services or their related systems or networks; and
- use the Services or Products and 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 illegal activities.

**Participant shall:**

- immediately notify Leanpath if any event the section above occurs;
- immediately notify Leanpath in the event of theft or tampering of any Product (including Purchased Product and Rented Product) in order that Leanpath may terminate any Cloud Services to such Product; and

**Rental Terms.**

**Rental of Rented Product.** Subject to the terms and conditions of this Agreement, if Participant has elected in its Participant Order to rent Rented Product from Leanpath, upon execution of the Participant Order and upon payment of all rental Service fees thereunder, Leanpath hereby loans and rents to Participant the Rented Product(s) described in such Participant's Participant Order.

**Maintenance, Title and Risk of Rented Products.** Participants shall maintain any Rented Products in good working order and shall be liable for the cost to repair or replace equipment which is stolen or damaged, except for normal wear and tear. Participant warrants that the Rented Products will at all times remain in the possession and control of Participant. Participant shall not make any alteration or improvement or addition to the Rented Products without Leanpath's prior written consent. Participant shall bear all risk of loss, damage, destruction, theft and condemnation, partial or complete, to or of the Rented Products from any cause whatsoever ("Loss") until the Rented Products have been returned to Leanpath. In the event of a Loss, Participant shall immediately notify Leanpath, and Leanpath will assess the damage and determine, in its sole discretion, to repair or replace the Rented Product. Leanpath shall have the right, in its sole discretion, to charge, and Participant shall pay, a reasonable repair fee or replacement fee for any Loss. Any and all replacements, repairs or substitutions of parts to the Rented Products shall be at the sole expense of Participant subject to Leanpath's reasonable repair fee or replacement fee for any Equipment Loss. Title to Rented Products remains with Leanpath at all times, and Participant shall acquire no right, title or interest in the Rented Products other than a leasehold interest solely as lessee subject to all the terms and conditions of this Agreement.

**Return of Rented Products.** Upon expiration or termination of the applicable Participant Order or the rental period specified in the applicable Participant Order, Participant shall, within thirty (30) business days and at Participant's expense, return any and all Rented Property to Leanpath's designated return address.

**License Grant.**

**Right to Use the Services.** Subject to the terms and conditions of this Agreement, upon execution of a Participant Order and upon payment of all Service fees thereunder, Leanpath hereby grants

Participant the non-exclusive, non-transferable, non-sublicensable, non-refundable (subject to Section 29), revocable right to access and use the Services solely in accordance with the specifications provided by Leanpath and solely for the purpose of food waste measurement and prevention, pursuant to this Agreement and the applicable Participant Order, for the Duration or for a term specified in the applicable Participant Order. Participant acknowledges and agrees that its subscription for the Services 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. Each Participant's use is further subject to any limitations set forth in the applicable Participant Order. Participant may use the Services solely for its own internal benefit and business purposes. Participant's customers have no right to access the Services, and Participant shall prevent any such access. Participant may not offer the Services to third parties in the manner of a service bureau or shared resource. Participant may permit its employees authorized by Participant ("Authorized Users") to access the Services solely for Participant's own benefit in accordance with this Agreement, provided that Participant (i) will be fully responsible for the acts and omissions of Authorized Users; (b) ensure that any access to the Services by Authorized Users is completely disabled upon completion of the Authorized Users' services requiring use of the Services; and (c) has in place with each Authorized User a policy requiring that the Authorized User protect Leanpath's confidential information and intellectual property. Participant acknowledges and agrees that Leanpath makes no warranty and has no obligations to the Authorized Users. Any breach of this Agreement by Authorized Users will be deemed to be a breach by Participant.

**Technical Support.** Leanpath's specific maintenance and technical support obligations to each Participant are set forth in Exhibit D. All Participants will receive standard technical support, including (i) maintenance updates of the software-as-a-service components of the Services purchased under the applicable Participant Order, when and if available; and (ii) online or remote technical support or self-help to assist with implementation and use of the Services.

**Products.** In order to use the Services, Participant understands and agrees that it must either purchase or rent Products and will indicate its option to such purchase or rental in the Participant Order.

**Training and Other Professional Services.** Participant may elect to order training or other professional Services in the Participant Order.

**Audit and Certification.** Leanpath reserves the right to monitor Participant's use of the Services and Rented Products to ensure compliance with this Agreement and the applicable Participant Order, including Participant account limitations. If Leanpath determines that Participant's use of the Services or Products is not in compliance with this Agreement or its Participant Order, which shall constitute a material breach, Leanpath reserves the right to take appropriate action, including, but not limited to, suspension or cancellation of a Participant Order.

## **Data Ownership, Use and Security.**

**Waste Data.** Pursuant to the terms and conditions of this Agreement and the applicable Participant Order, Participant shall own the Waste Data created or generated through Participant's use of the Services or Products and may make any use of such data. Participant shall be responsible and liable for its own use of all Waste Data. Pursuant to the terms and conditions of this Agreement and the applicable Participant Order, Participant hereby grants Leanpath a perpetual, worldwide, irrevocable, royalty free, fully-paid right and license to use all Waste Data for any legitimate business purpose related to any business conducted by Leanpath, provided that Leanpath shall not disclose such Waste Data to third parties in any manner that identifies Brand or any Participant unless both Brand and Participant provide written approval to use Participant's Waste Data in an identifying manner. For the avoidance of doubt, Leanpath's disclosure of Waste Data shall not be a prohibited disclosure of Confidential Information provided such disclosure does not disclose, and

could not be used to infer, Brand's or any Participant's identity. Participant hereby provides express consent to Leanpath to share all Waste Data with Brand.

**System Data.** All System Data is owned exclusively by Leanpath and may be used by Leanpath for its business purposes, including, but not limited to, management of the Services and evaluating the efficiency, utility and functionality of the Services.

**Protection of Data.** Leanpath acknowledges that certain data provided by Participants could in some cases include personally identifiable information ("Personally Identifiable Information" or "PII") that are subject to federal and state privacy and data security laws and must be kept private and confidential. Leanpath will safeguard information that each Participant submits by maintaining appropriate, administrative, physical and technical safeguards for protection of the security, confidentiality and integrity of Waste Data, System Data and Account Data.

### **Access to Data.**

Each Participant hereby grants permission for (a) Leanpath to access to all Waste Data, Account Data and System Data, and (b) access to any and all Leanpath software comprising the Service, either on-site or remotely via Participant's network, to access and collect Waste Data and to the extent necessary for Leanpath to perform its obligations and exercise its rights under this Agreement, including, the licenses granted to Leanpath hereunder and to provide on-site and remote technical support services to Participant. At its sole discretion, each Participant may provide Leanpath with any Waste Data which are not created through use of the Services. Such Participant-provided Waste Data shall be conveyed to Leanpath using a mutually agreed upon electronic format, transmittal method and delivery schedule. If Participant does not provide such Waste Data, Leanpath shall have no obligation to perform Services that are reliant on such Waste Data.

### **Intellectual Property Rights.**

**Ownership of Works of Leanpath; Feedback.** All right, title and interest, including all Intellectual Property Rights, in and to the Products, Services, all software and documentation provided by Leanpath under this Agreement, and all works, inventions and other subject matter created by Leanpath, whether prior to, separate from, pursuant to or in connection with, this Agreement, including all customizations, enhancements, improvements and other modifications thereof (collectively, "Leanpath Material"), are and will remain the exclusive property of Leanpath. If Brand, Participant, or any of their respective employees or contractors sends or transmits any communications or materials to Leanpath by mail, email, telephone, or otherwise, suggesting or recommending changes to Leanpath Material, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("Feedback"), Leanpath is free to use such Feedback irrespective of any other obligation or limitation between the parties hereto governing such Feedback. To the extent Brand or Participant owns any Feedback, Brand or Participant (as applicable) hereby assigns on its behalf, and on behalf of its employees, contractors and/or agents, all right, title, and interest in, and Leanpath is free to use, without any attribution or compensation to any party, any ideas, know-how, concepts, techniques, or other Intellectual Property Rights contained in the Feedback, for any purpose whatsoever, although Leanpath is not required to use any Feedback.

**Leanpath Trademark License.** Leanpath hereby grants Brand during the Term, and each Participant during its applicable Duration, a non-exclusive, nontransferable, royalty-free, revocable license to use, reproduce, and display Leanpath's trademarks and logos as reasonably necessary to inform Brand's and Participant's employees and customers about Brand's and Participant's efforts to reduce food waste using Leanpath's services under this Agreement; provided, that all uses of such materials must be pre-approved in writing by Leanpath, which approval may be granted or withheld in Leanpath's sole discretion. In the event Leanpath approves of any use,

reproduction, or display of Leanpath's trademarks or logos, Brand and Participants further agree to be bound by the brand guidelines made available by Leanpath and applicable to the use of Leanpath's marks.

### **Warranties, Disclaimers, Indemnity and Limitation of Liability.**

**Purchased Product Warranty.** Leanpath warrants that, upon shipment, (a) it has good title to the Purchased Products supplied; (b) the Purchased Products were manufactured in conformity with generally prevailing industry standards for similar products; and (c) the Purchased Products are free and clear of all liens and encumbrances. Except as expressly stated in this Agreement and as noted in [Exhibit C](#), Leanpath warrants that all Purchased Products purchased under this Agreement shall conform with the foregoing warranties for a period of one (1) year from date of shipment and shall remedy all defects in material, design or workmanship discovered during said period which prevent the Purchased Product from performing its essential purpose. Notwithstanding the foregoing, Leanpath's warranty remedy shall be limited to 1) parts, 2) labor, 3) cost to deliver equipment needing repair to a Leanpath repair depot, if applicable and, 4) cost to deliver repaired or replaced equipment to Participant following any such repair. The foregoing warranty is a defect warranty only and does not apply to accidental or intentional damage or normal course wear and tear. In the event of a repair or replacement, Participant may opt to have Leanpath provide a similar used Product in lieu of recovering, repairing and returning Participants Product. In such event, Participant's title in the original Purchased Product shall terminate upon its receipt of the replacement used Product and Leanpath shall simultaneously transfer title for the replacement used Product to Participant and shall include a warranty of equivalent duration to the warranty remaining, if any, on the Product which was replaced.

**Rented Product Warranty.** Leanpath warrants that, upon shipment and for the applicable Duration or rental period specified in the applicable Participant Order, Rented Products will materially conform to the applicable Rented Product specifications provided by Leanpath. Notwithstanding the foregoing, Leanpath's warranty remedy shall be limited to 1) parts, 2) labor, 3) cost to deliver equipment needing repair to a Leanpath repair depot, if applicable and, 4) cost to deliver repaired or replaced equipment to Participant following any such repair. The foregoing warranty does not apply to accidental or intentional damage or Loss or normal course wear and tear. At Leanpath's option, Leanpath may provide, but is not obligated to provide, newer models of Rented Products during the applicable rental term. In the event that Leanpath declares a product to be "end-of-life" or "end-of-service" Leanpath shall replace such equipment, at its cost, prior to the date on which product support concludes.

**Services Warranty.** Leanpath warrants that any Services rendered by or on behalf of Leanpath shall be performed in a professional and workmanlike manner in conformity with applicable federal and state and national laws and reasonable standards of quality in the industry and in a manner so as to reasonably ensure the safety of all persons and the preservation of property. Leanpath warrants that the Services shall meet the Service Levels defined in Exhibit D.

**New and Used Equipment.** Leanpath warrants that, unless otherwise specified, all Purchased Products purchased in accordance with this Agreement shall be new unless otherwise agreed by the purchasing Participant. Rented equipment or Rented Products provided by Leanpath on an interim rental basis as a "loaner" device may be either new or used, and shall carry the warranty set forth in [the Agreement](#).

**No Performance Guarantee.** Nothing in this Agreement shall constitute a guarantee by Leanpath that Brand or Participants will experience waste reduction or food cost reduction results.

**Disclaimers.** EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS [SECTION](#), ALL PRODUCTS AND SERVICES ARE PROVIDED "AS IS" AND LEANPATH HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER, AND

LEANPATH SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, LEANPATH MAKES NO WARRANTY OF ANY KIND THAT THE PRODUCTS OR SERVICES, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET BRAND'S, PARTICIPANT'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERROR FREE.

**Indemnification by Leanpath.** Leanpath shall defend, indemnify and hold harmless Brand and Participants from and against any and all Losses incurred by Brand and Participants as a result of any claim, suit or proceeding ("Claim") brought by a third party against Brand or a Participant based on (i) the allegation or establishment that the use or performance of the Products or any Services furnished by or on behalf of Leanpath or a Leanpath Affiliate under this Agreement constitutes an infringement of any third party Intellectual Property Rights (provided, that Leanpath will have no liability for any such third party Claim arising out of, in connection with, or relating to any such Product or Service that is (A) modified, changed or altered by anyone other than Leanpath, or (B) not used in accordance with applicable regulatory, state or federal laws or all specifications and instructions provided by Leanpath), (ii) Leanpath's gross negligence, willful misconduct or breach by Leanpath or a Leanpath Affiliate of any representation, warranty, or other obligation under this Agreement; (iii) any material violation by Leanpath or a Leanpath Affiliate of applicable laws, rules, regulations, ordinances, orders, and directions of federal, state, provincial, county, and municipal governments, all as they may be amended from time to time; or (iv) gross negligence, recklessness or willful misconduct by or on behalf of Leanpath or the applicable Leanpath Affiliate in connection with this Agreement, including injury to or death of persons and damages to or destruction of property suffered as a result thereof; provided, that Brand or Participant, as applicable, (x) promptly gives Leanpath written notice of the Claim, and (y) in the event of a third party Claim that the Products or Services constitutes an infringement of such third party's Intellectual Property Rights, gives Leanpath sole control of the defense and settlement of the Claim and provides Leanpath with reasonable assistance to defend and settle the Claim. If any third party makes a Claim against Brand or Participant based on infringement by the Service or any Product, Leanpath shall, at its option, (1) terminate the infringing part of the Service and refund the Service fees associated with the infringement, (2) replace the infringing Service or Product with non-infringing Service or Product, in Leanpath's sole discretion (and, Leanpath may charge an additional fee if Participant elects to replace the non-infringing Service or Product with a Service or Product that is offered for a higher fee by Leanpath), (3) modify the Service or Product so as to make it non-infringing; (4) obtain, at Leanpath's expense, a license for Brand or Participant, as applicable, to continue use of the Service or Product; or (5) terminate the Agreement or the applicable Participant Order effectively immediately and Participant shall pay all fees in accordance with Section 29(e)(ii).

**Mutual Indemnities.** Each of Leanpath and Participant (each, a "Party") agrees to indemnify, defend and hold harmless the other Party and its respective officers, directors, employees, agents, successors, and assigns, from any Losses related to, arising from, or in connection with any Claims alleging: (a) personal injury, wrongful death, or property damage proximately caused by the negligence or willful misconduct by or on behalf of an indemnifying Party, including its employees, agents or subcontractors, in connection with this Agreement; b) an act or omission of the indemnitor in its capacity as employer of a person; and (c) any breach by the indemnitor of its obligation with respect to Confidential Information under this Agreement.

**Limitation of Liability between Participant and Leanpath.** Subject to the remainder of this Section, as between Leanpath and each Participant, Leanpath's and each Participant's maximum aggregate liability under this Agreement for damages resulting from or relating to the performance or non-performance under this Agreement shall be limited to the higher of (x) one (1) times the aggregate amount paid under this Agreement by the applicable Participant during the twelve (12) month period immediately preceding the incident that gave rise to the claim, and (y) USD \$25,000

per claim. IN NO EVENT WILL ANY PARTICIPANT OR LEANPATH BE LIABLE TO ONE ANOTHER UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED OR PUNITIVE DAMAGES, LOST PROFITS, LOSS OR CORRUPTION OF DATA, OR FOR THE COST OF PROCUREMENT OF SUBSTITUTE SERVICES, GOODS OR TECHNOLOGY, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. NOTWITHSTANDING ANYTHING CONTRARY IN THIS SECTION OR OTHERWISE IN THIS AGREEMENT, NO LIMITATIONS OF LIABILITY SHALL APPLY TO (I) DAMAGES RELATING TO THIRD PARTY CLAIMS DUE TO PERSONAL INJURY OR DEATH, (II) A PARTY'S WILLFUL MISCONDUCT OR GROSS NEGLIGENCE, (III) A PARTY'S BREACH OF SECTION 19 (CONFIDENTIALITY AND PUBLICITY), OR (IV) PAYMENT OF FEES IN CONNECTION WITH TERMINATION AS PROVIDED IN SECTION 29.

The parties shall comply with all applicable laws and regulations while performing under this Agreement.

**Term; Termination.** The Term of Participant's Participant Order shall begin upon the earlier of (a) completion of installation of the food waste tracking system at the Participant site, or (b) ninety (90) days following execution of the Participant Order unless otherwise agreed to in the Participant Order. The Duration of the Participant Order shall be defined therein (the "Order Form Initial Term") provided that no Participant Order Initial Term shall be longer than thirty-six (36) months. Upon expiration of the Order Form Initial Term, the Participant Order will automatically renew for another twelve-month period (the "Participant Order Renewal Term.") unless (i) Participant elects not to renew in response to the Pre-Renewal Notice or unless otherwise terminated pursuant to this Agreement. If Leanpath fails to provide a Pre-Renewal Notice, the Participant's Order shall not auto-renew and shall expire at the end of the then current term.

**Termination of a Participant Order for Cause.** In the event either Participant or Leanpath commits a material breach of this Agreement (as between Leanpath and the applicable Participant only) or the applicable Participant Order, the party asserting the breach may give the breaching party written notice of such material breach. If such material breach is not remedied within thirty (30) days of such notice or such other period as agreed, the party asserting the breach shall have the right to terminate the relevant Participant Order upon expiration of such remedy period by providing written notice of termination to the breaching party. Upon a termination under Section 29, such Participant shall remain liable for and pay for (i) all sums billed but unpaid for Services performed and Products delivered up to the date of the written notice of such breach, and (ii) all Services performed and Products delivered but unbilled up to the date of the written notice of such breach, except that, with respect to pre-paid amounts, (A) in the event Participant terminates its Participant Order upon failure of Leanpath to remedy its material breach, Leanpath shall refund all pre-paid subscription fees for Services not yet performed and Products not yet delivered to the applicable Participant (with the refunded amount being equal to the subscription fee paid for the applicable Duration, multiplied by the percentage of the Duration remaining as of the termination date), or (B) in the event that Leanpath terminates Participant's Participant Order upon failure of Participant to remedy its material breach, no pre-paid amounts shall be refunded to Participant and Participant shall remain liable for all fees for Products and Services ordered but not yet delivered or performed through the conclusion of the full contracted Duration of the Participant Order.

**Termination of a Participant Order without Cause.**

- i. A Participant may terminate its respective Participant Order and elect to discontinue receiving Products and Services without cause at any time during the Duration of the applicable Participant Order by providing ninety (90) days' prior written notice of termination to Leanpath. A terminating Participant shall remain liable for and pay for (A) all sums billed but unpaid, (B) all Services performed and Products delivered but unbilled as of the



termination date, and (C) with regard to for Products and Services ordered but not yet delivered or performed through the full Duration of the Participant Order, i) 100% of the fees remaining for the full Duration if the Order is terminated during Months 1-12, or ii) 75% of the fees remaining for the full Duration if the Order is terminated during Months 13-24, or iii) 50% of the fees remaining for the full Duration if the Order is terminated during Months 25-36 of the agreement. Upon termination of a Participant Order by Participant under Section 29(e)(i), no pre-paid amounts shall be refunded to Participant.

- ii. Leanpath may terminate any Participant Order without cause at any time during the Duration of the applicable Participant Order by providing ninety (90) days' prior written notice of termination to Participant. In the event of termination by Leanpath under this Section 29(e)(ii), Participant shall remain liable for and pay for (A) all sums billed but unpaid, and (B) all Services performed and Products delivered but unbilled as of the termination date, except that, with respect to pre-paid amounts, Leanpath shall refund within sixty (60) days of the termination date all pre-paid but unused subscription fees to the applicable Participant (with the refunded amount being equal to the subscription fee pre-paid for the applicable Duration, multiplied by the percentage of the Duration remaining as of the termination date).
- iii. In the event of a Participant Change of Control (as defined herein), a Participant may elect to terminate its respective Participant Order per Section 29(e)(i) effective on the date the Participant Change of Control occurs and, notwithstanding Section 29(e)(i), such Participant shall be released from any obligation to make future payments for Products and Services ordered through the conclusion of the contracted Duration of the Participant Order. Participant shall remain liable for and pay for (A) all sums billed but unpaid prior to the termination date, and (B) all Services performed and Products delivered but unbilled as of the termination date and Leanpath shall not be obligated to refund any pre-paid amounts.

**Effect of Expiration or Termination.** Upon any expiration or termination of this Agreement or any applicable Participant Order, except as otherwise expressly provided in this Agreement:

With respect to expiration or termination of this Agreement or a Participant Order, all rights, licenses, consents and authorizations granted by either Leanpath (on the one hand) or Brand or Participant (on the other hand) to the other hereunder will immediately terminate for the terminated Products and Services, other than Leanpath's license to use the Waste Data granted pursuant to Section 13(a) which shall survive any such expiration or termination; the applicable Participant shall immediately cease any and all use of the terminated Products and Services; the applicable Participant shall promptly return or destroy the Confidential Information of Leanpath and other information related to the terminated Products and Services; and

### **Internet Connectivity**

Participant shall be responsible for either (a) providing a reliable Ethernet, cellular, or wireless connection at Participant's premises for each Product requiring Internet connectivity which does not require human authentication at any time other than during initial set-up, or (b) order from Leanpath a cellular data connection. In the event Participant selects other methods to connect a Leanpath Product to the Internet, it does so at its own risk and accepts any degraded performance or outcomes associated with network performance and access issues.

### **Independent Contractor**

Leanpath is an independent contractor, and this Agreement will not be construed to create any partnership, joint venture, agency or employment relationship between Leanpath (on the one hand) and Brand or Participant as applicable (on the other hand). Leanpath will not represent itself to be

an employee, representative, joint venture or agent of Brand or any Participant. Brand and Participants will not represent itself to be an employee, representative, joint venture or agent of Leanpath.

### **Notice**

Any notice or communication required or permitted to be given hereunder shall be in writing and served personally, delivered by courier, facsimile transmission, or sent by certified mail, postage prepaid with return receipt requested or traceably by overnight courier, addressed to the other party.

### **Delivery & Logistics**

Participant shall, in a timely manner, take all reasonable actions necessary to facilitate receipt of shipments from Leanpath including, but not limited to, responding to communications from delivery personnel and executing any required customs and or delivery facilitation documentation or receipts, including acting as an IOR, as LeanPath may require. Shipments outside the United States shall be made on Incoterms CPT