



MASTER SUBSCRIPTION AGREEMENT

BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE OR BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

Customer cannot use the LeanDNA Software until Customer has carefully read and agreed to this Agreement. If Customer disagrees with the terms and conditions of this Agreement, Customer cannot use the Software. By paying for, accessing or otherwise using the Software, which may include related materials and documentation, or any portion thereof, Customer agrees to be bound by all of the terms of this Agreement. The Agreement sets forth the terms and conditions under which Licensee may Use (as defined herein).

1. LICENSE GRANT AND RIGHT OF USE

- 1.1. **License Grant.** Subject to all limitations and restrictions contained herein, LeanDNA grants Customer a subscription, software as a service (SaaS), nonexclusive and nontransferable right to use the Software as hosted by LeanDNA ("LeanDNA Software Subscription") solely for the purpose of lean project management, performance management, and supply chain analytics ("Use").
- 1.2. **Use.** Customer shall not allow any website, that is not fully owned by Customer, to frame, syndicate, distribute, replicate, or copy any portion of Customer's web site that provides direct or indirect access to the Software.
- 1.3. **Additional Restrictions.** In no event shall Customer disassemble, decompile, or reverse engineer the Software or Confidential Information (as defined herein) or permit others to do so. Disassembling, decompiling, and reverse engineering include, without limitation: (i) converting the Software from a machine-readable form into a human-readable form; (ii) disassembling or decompiling the Software by using any means or methods to translate machine-dependent or machine-independent object code into the original human-readable source code or any approximation thereof; (iii) examining the machine-readable object code that controls the Software's operation and creating the original source code or any approximation thereof by, for example, studying the Software's behavior in response to a variety of inputs; or (iv) performing any other activity related to the Software that could be construed to be reverse engineering, disassembling, or decompiling. To the extent any such activity may be permitted pursuant to written agreement, the results thereof shall be deemed Confidential Information subject to the requirements of this Agreement. Customer may use LeanDNA's Confidential Information solely in connection with the Software and pursuant to the terms of this Agreement.

2. PAYMENT

- 2.1. **Fees and Payment Terms.** Customer will pay to LeanDNA the fees indicated in the applicable Order Form and any subsequent Orders issued hereunder. Customer also agrees to pay reimbursable expenses described in the applicable Order. Any payments due LeanDNA from Customer will be invoiced for the first year in advance and will be due and payable thirty (30) days after the invoice date. Customer will be invoiced for the first year of its LeanDNA Software Subscription on the Effective Date of Order. All fees are due and payable in U.S. dollars, non-refundable (except to the extent set forth herein). The initial payment for the Software must be made prior to the first Use.
- 2.2. **Work Fees and Expenses.** The Work and Deliverables provided by LeanDNA shall be at the pricing set forth in the applicable Order Form. In the event an Order Form does not reference any specific pricing, such Work shall be provided at LeanDNA's then current standard time and material rates. Customer shall reimburse LeanDNA for all reasonable travel, food, lodging and other out-of-pocket expenses incurred in performance of a given Order Form. Work fees and applicable expenses may be billed to Customer monthly.
- 2.3. **Late Payments.** Any sum that is not paid within thirty (30) calendar days of its due date shall bear interest from the due date thereof to the date of payment at a rate of interest equal to 1.5 % per month, or the highest rate allowed by applicable law, whichever is less, calculated and payable monthly.
- 2.4. **Taxes.** The license, service fees, and other amounts required to be paid hereunder do not include any amount for taxes or levy (including interest and penalties). Customer shall reimburse LeanDNA and hold LeanDNA harmless for all sales, use, VAT, excise, property or other taxes or levies which LeanDNA is required to collect or remit to applicable tax authorities. This provision does not apply to LeanDNA's income or franchise taxes, or any taxes for which Customer is exempt, provided Customer has furnished LeanDNA with a valid tax exemption certificate.

3. MAINTENANCE AND SUPPORT SERVICES

- 3.1. **Maintenance.** LeanDNA shall use commercially reasonable efforts to provide corrections to reported problems that (i) prevent the Software from conforming in material respects to its specifications, and (ii) are replicated and diagnosed by LeanDNA as defects in the Software ("Maintenance and Support Services"). LeanDNA shall use commercially reasonable efforts to begin working on a resolution to Customer's written notice of reported problems within fourteen (14) days, provided corrections shall be prioritized in LeanDNA reasonable discretion. A response is not a guaranty of a solution to the reported problem; however LeanDNA will keep Customer apprised of the resolution closure. Additional features and functions are not included as part of the maintenance and support services.
- 3.2. **Service Availability.** LeanDNA's goal is to provide Software availability twenty-four hours per day, seven (7) days per week (referred to as "24x7 Availability") EXCEPT during times of scheduled updates. However, the parties recognize that 24x7 Availability is only a GOAL, and LeanDNA cannot represent or guarantee that such goal can be achieved. These response time goals apply only to public production servers (i.e. web servers, application servers, and database servers). LeanDNA shall use reasonable efforts to achieve 99% Software availability. The Software availability goal exclude any time Customer requests the site be taken down for scheduled updates. LeanDNA does not and cannot control the flow of data to or from LeanDNA's network and other portions of the Internet. Such flow depends in large part on the performance of Internet services provided or controlled by third parties. At times, actions or inactions of such third parties can impair or disrupt Customer's connections to the Internet (or portions thereof). Although LeanDNA will use reasonable efforts to take actions it deems appropriate to remedy and avoid such events, LeanDNA cannot guarantee that such events will not occur. Accordingly, LeanDNA disclaims any and all liability resulting from or related to such events.
- 3.3. **Exclusions.** LeanDNA shall not be obligated to provide Maintenance and Support Services for any software other than the generally available Software delivered to Customer pursuant to this Agreement (collectively the "Unsupported Code"). Any LeanDNA support services related to Unsupported Code shall be subject to execution of a mutually agreed upon agreement.
- 3.4. **Third Parties.** LeanDNA shall have the right to use third parties, including employees of LeanDNA's affiliates and subsidiaries ("Subcontractors") in performance of its obligations and services hereunder and, for purposes of this Section, all references to LeanDNA or its employees shall be deemed to include such Subcontractors.

4. PROFESSIONAL SERVICES

- 4.1. **Time and Materials.** Unless otherwise provided on an Order Form, all Work to be performed hereunder shall be performed on a time and materials basis and Customer shall pay for all Work provided by LeanDNA.
- 4.2. **Order Form.** Each Order Form shall define the Work to be provided to Customer, the applicable pricing, Deliverables to be created thereunder, Customer deliverables and obligations, and all other appropriate terms and conditions. LeanDNA will not be obligated to begin any Work unless a Order Form governing such Work has been executed by both parties. LeanDNA may immediately cease performing Work, without liability, if an Order Form expires and is not immediately extended or replaced with a valid Order Form.

5. OWNERSHIP

- 5.1. **Reservation of Rights.** By Use of the Software, Customer irrevocably acknowledges that, subject to the licenses granted herein, Customer has no ownership interest in the Software, Deliverables, or LeanDNA materials provided to Customer. LeanDNA shall own all right, title, and interest in such Software and LeanDNA materials, subject to any limitations associated with intellectual property rights of third parties. LeanDNA reserves all rights not specifically granted herein.

6. CONFIDENTIALITY

- 6.1. **Definition.** "Confidential Information" includes all information marked pursuant to this Section and disclosed by either party, before or after the Effective Date, and generally not publicly known, whether tangible or intangible and in whatever form or medium provided, as well as any information generated by a party that contains, reflects, or is derived from such information.
- 6.2. **Confidentiality of Software.** All Confidential Information in tangible form shall be marked as "Confidential" or the like or, if intangible (e.g. orally disclosed), shall be designated as being confidential at the time of disclosure and shall be confirmed as such in writing within thirty (30) days of the initial disclosure. Notwithstanding the foregoing, the following is deemed LeanDNA Confidential Information with or without such marking or written confirmation: (i) the Software and other related materials furnished by LeanDNA; (ii) the oral and visual information relating to the Software; and the terms and conditions of this Agreement.
- 6.3. **Exceptions.** Without granting any right or license, the obligations of the parties hereunder shall not apply to any material or information that: (i) is or becomes a part of the public domain through no act or omission by the receiving party; (ii) is independently developed by the other party without use of the disclosing party's Confidential Information; (iii) is rightfully obtained from a third party without any obligation of confidentiality; or (iv) is already known by the receiving party without any obligation of confidentiality prior to obtaining the Confidential Information from the disclosing party. In addition, neither party shall be liable for disclosure of Confidential Information if made in response to a valid order of a court or authorized agency of government, provided that notice is promptly given to the disclosing party so that the disclosing party may seek a protective order and engage in other efforts to minimize the required disclosure. The parties shall cooperate fully in seeking such protective order and in engaging in such other efforts.
- 6.4. **Ownership of Confidential Information.** Nothing in this Agreement shall be construed to convey any title or ownership rights to the Software or other Confidential Information to Customer or to any patent, copyright, trademark, or trade secret embodied therein, or to grant any other right, title, or ownership interest to the LeanDNA Confidential Information. Neither party shall, in whole or in part, sell, lease, license, assign, transfer, or disclose the Confidential Information to any third party and shall not copy, reproduce or distribute the Confidential Information except as expressly permitted in this Agreement. Each party shall take every reasonable precaution, but no less than those precautions used to protect its own Confidential Information, to prevent the theft, disclosure, and the unauthorized copying, reproduction or distribution of the Confidential Information.
- 6.5. **Non-Disclosure.** Each party agrees at all times to keep strictly confidential all Confidential Information belonging to the other party. Each party agrees to restrict access to the other party's Confidential Information only to those employees or Subcontractors who (i) require access in the course of their assigned duties and responsibilities; and (ii) have agreed in writing to be bound by provisions no less restrictive than those set forth in this Section.
- 6.6. **Injunctive Relief.** Each party acknowledges that any unauthorized disclosure or use of the Confidential Information would cause the other party imminent irreparable injury and that such party shall be entitled to, in addition to any other remedies available at law or in equity, temporary, preliminary, and permanent injunctive relief in the event the other party does not fulfill its obligations under this Section.
- 6.7. **Suggestions/Improvements to Software.** Notwithstanding this Section, unless otherwise expressly agreed in writing, all suggestions, solutions, improvements, corrections, and other contributions provided by Customer regarding the Software or other LeanDNA materials provided to Customer shall be owned by LeanDNA, and Customer hereby agrees to assign any such rights to LeanDNA. Nothing in this Agreement shall preclude LeanDNA from using in any manner or for any purpose it deems necessary, the know-how, techniques, or procedures acquired or used by LeanDNA in the performance of services hereunder.

7. WARRANTY

- 7.1. **Authorized Representative.** Customer and LeanDNA warrant that each has the right to enter into this Agreement and that the Agreement shall be executed by an authorized representative of each entity.
- 7.2. **Disclaimer of Warranties.** Customer acknowledges and agrees that it is not relying on any statement or warranty not expressly provided herein with respect to the Software or maintenance, or other services provided hereunder. EXCEPT AS OTHERWISE STATED IN THIS AGREEMENT, THE SOFTWARE IS PROVIDED "AS IS" AND LEANDNA MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT.
- 7.3. **No Modifications.** Notwithstanding anything to the contrary in this Section, any and all warranties under this Agreement are VOID if Customer has made changes to the Software or has permitted any changes to be made other than by or with the express, written approval of LeanDNA.

8. LIMITATION OF LIABILITY

- 8.1. **Liability Cap.** IN NO EVENT SHALL LEANDNA BE LIABLE UNDER ANY THEORY OF LIABILITY, WHETHER IN AN EQUITABLE, LEGAL, OR COMMON LAW ACTION ARISING HEREUNDER FOR CONTRACT, STRICT LIABILITY, INDEMNITY, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, FOR DAMAGES WHICH, IN THE AGGREGATE, EXCEED THE AMOUNT OF THE FEES PAID BY CUSTOMER FOR THE SOFTWARE OR SERVICES WHICH GAVE RISE TO SUCH DAMAGES IN THE SIX (6) MONTH PRIOR TO THE CLAIM AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY.
- 8.2. **Disclaimer of Damages.** IN NO EVENT SHALL LEANDNA BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND AND HOWEVER CAUSED INCLUDING, BUT NOT LIMITED TO, BUSINESS INTERRUPTION OR LOSS OF PROFITS, BUSINESS OPPORTUNITIES, OR GOODWILL EVEN IF NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGE, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY.

9. TERM AND TERMINATION

- 9.1. **Termination by LeanDNA.** This Agreement and any license created hereunder may be terminated by LeanDNA (i) if Customer fails to make any payments due hereunder within fifteen (15) days of the due date; (ii) on thirty (30) days written notice to Customer if Customer fails to perform any other material obligation required of it hereunder, and such failure is not cured within such thirty (30) day period; or (iii) Customer files a petition for bankruptcy or insolvency, has an involuntary petition filed against it, commences an action providing for relief under bankruptcy laws, files for the appointment of a receiver, or is adjudicated a bankrupt concern.
- 9.2. **Termination by Customer.** This Agreement may be terminated by Customer on thirty (30) days written notice to LeanDNA if LeanDNA fails to perform any material obligation required of it hereunder, and such failure is not cured within thirty (30) days from LeanDNA's receipt of Customer's notice or a longer period if LeanDNA is working diligently towards a cure.
- 9.3. **Termination.** Upon termination of this Agreement, Customer shall no longer access the Software or Deliverables and Customer shall not circumvent any security mechanisms contained therein.
- 9.4. **Other Remedies.** Termination of this Agreement shall not limit either party from pursuing other remedies available to it, including injunctive relief, nor shall such termination relieve Customer's obligation to pay all fees that have accrued or are otherwise owed by Customer under this Agreement.

10. CUSTOMER OBLIGATIONS

- 10.1. **Ancillary Agreements.** Customer agrees that no employees of LeanDNA shall be required to individually sign any agreement in order to perform any services hereunder including, but not limited to, access agreements, security agreements, facilities agreements or individual confidentiality agreements.

11. MISCELLANEOUS

- 11.1. **Compliance With Laws.** Customer agrees to comply with all applicable laws, regulations, and ordinances relating to its performance under this Agreement. The parties agree that the Agreement shall not be governed by the United Nations Convention on the International Sale of Goods or by UCITA, the application of which is expressly excluded.
- 11.2. **Assignment.** Customer may not assign this Agreement or otherwise transfer any license created hereunder whether by operation of law, change of control, or in any other manner, without the prior written consent of LeanDNA. Any assignment or transfer in violation of this Section shall be null and void.
- 11.3. **Survival.** The provisions set forth in Sections 2, 6, 7.2, 8, 9.3, 9.4, and 11 of this Agreement shall survive termination or expiration of this Agreement and any applicable license hereunder.
- 11.4. **Notices.** Any notice required under this Agreement shall be given in writing and shall be deemed effective upon delivery to the party to whom addressed. All notices shall be sent to the applicable address specified on the face page hereof or to such other address as the parties may designate in writing. Unless otherwise specified, all notices to LeanDNA shall be sent to the attention of the CEO. Any notice of material breach shall clearly define the breach including the specific contractual obligation that has been breached.
- 11.5. **Force Majeure.** LeanDNA shall not be liable to Customer for any delay or failure of LeanDNA to perform its obligations hereunder if such delay or failure arises from any cause or causes beyond the reasonable control of LeanDNA. Such causes shall include, but are not limited to, acts of God, floods, fires, loss of electricity or other utilities, or delays by Customer in providing required resources or support or performing any other requirements hereunder.
- 11.6. **Restricted Rights.** Use of the Software by or for the United States Government is conditioned upon the Government agreeing that the Software is subject to Restricted Rights as provided under the provisions set forth in FAR 52.227-19. Customer shall be responsible for assuring that this provision is included in all agreements with the United States Government and that the Software, when delivered to the Government, is correctly marked as required by applicable Government regulations governing such Restricted Rights as of such delivery.
- 11.7. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties regarding the subject matter hereof and supersedes all proposals and prior discussions and writings between the parties with respect thereto. Any signed copy of this Agreement made by reliable means (e.g., photocopy or facsimile) shall be considered an original.
- 11.8. **Modifications.** This Agreement changes from time to time and changes are effective upon posting. Please check back frequently for updates as it is your sole responsibility to be aware of changes. LeanDNA does not provide notices of changes in any manner other than by posting the changes.
- 11.9. **Nonsolicitation.** During the term of this Agreement and for a period of two (2) years thereafter, Customer agrees not to hire, solicit, nor attempt to solicit, the services of any employee or Subcontractor of LeanDNA without the prior written consent of LeanDNA. Customer further agrees not to hire, solicit, nor attempt to solicit, the services of any former employee or Subcontractor of LeanDNA for a period of one (1) year from such former employee's or Subcontractor's last date of service with LeanDNA. Violation of this provision shall entitle LeanDNA to liquidated damages against Customer equal to two hundred percent (200%) of the solicited person's gross annual compensation.
- 11.10. **Publicity.** Customer agrees to cooperate with LeanDNA (i) in preparation of at least one (1) press release, where the aforementioned materials can be used in/on LeanDNA's Web site, marketing materials, trade shows, public advertisements, and other associated marketing uses ("LeanDNA Marketing Materials"); and (ii) in preparation of an LeanDNA-sponsored testimonial advertisement to be run in newspapers, magazines, and other publications and for use in LeanDNA Marketing Materials. The parties further agree that LeanDNA may include Customer's logo on publicly displayed customer lists (including LeanDNA's Internet Web site and public advertisements). There shall be a "Powered by LeanDNA" logo, to be provided by LeanDNA, in the bottom portion of any of Customer's Web pages that utilize the Software, which logo shall link directly to the then-current LeanDNA Web site home page.
- 11.11. **No Waiver.** No failure or delay in enforcing any right or exercising any remedy will be deemed a waiver of any right or remedy.
- 11.12. **Severability and Reformation.** Each provision of this Agreement is a separately enforceable provision. If any provision of this Agreement is determined to be or becomes unenforceable or illegal, such provision shall be reformed to the minimum extent necessary in order for this Agreement to remain in effect in accordance with its terms as modified by such reformation.

11.13. **Choice of Law.** THIS AGREEMENT SHALL BE GOVERNED AND INTERPRETED BY THE LAWS OF THE STATE OF TEXAS WITHOUT REGARD TO THE CONFLICTS OF LAW PROVISIONS OF ANY STATE OR JURISDICTION. ANY ACTION ARISING OUT OF, OR RELATED TO, THIS AGREEMENT SHALL BE BROUGHT IN THE STATE OR FEDERAL COURTS LOCATED IN AUSTIN, TEXAS AND EACH PARTY HEREBY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS.