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11. Minimum Service Protection. ESHA Cloud Services guarantees 99% uptime over a period of 60 consecutive day's availability of its service provider servers. The following shall not be included in server uptime: (a) server is unavailable due to factors beyond the ESHA service provider's control; (b) server is unavailable due to interruption of service at *Partner*; (c) server unavailable due to maintenance and/or updates (to be done after common business hours or on weekends); and (d) time reasonably required for immediate maintenance as needed to address pressing security threats, potential loss of data or depletion of integrity of the network.
12. Backing Up Licensee's Data. ESHA's Cloud Platform, will perform regular full system backups, as well as daily differential backups, of data stored on a host server through your use of Licensed Software. ESHA will maintain a copy of the latest full backup and all interim differential backups performed after the last full backup, on a two-week rotation schedule. ESHA nor any third-party

hosting provider or contractor shall be responsible for maintaining copies of any other backups. Once a full system backup has been performed, ESHA may delete or destroy all copies of previously performed backups. ESHA will make commercially reasonable efforts to maintain data integrity in any backup, but ESHA nor any third-party hosting vendors, affiliates or contractors are responsible to Licensee for loss of data or data integrity so long as ESHA and/or any third-party hosting vendors, affiliates or contractors, has performed its backups in a commercially reasonable manner. Neither ESHA nor any third-party hosting vendors, affiliates or contractors will not maintain copies of data manipulations made by you through your use of the Licensed Software between backups, and ESHA's responsibility for maintaining your data is limited to what is contained in the backups described above.

13. Return of Licensee's Data. Following the termination of this Agreement, Licensee may request a copy of their data within (10) days. ESHA and/or any third-party hosting vendors, affiliates or contractors, will retain a copy of your data 30 days to give you an opportunity to verify that all of your data has been delivered if requested. Request for delivery of licensee data must be made within 10 days of agreement termination. Promptly upon your receipt of such data, but in any event within ten (10) days after such receipt, you shall examine and test the returned data as you deem necessary or desirable to verify the receipt of all of your data. You shall promptly notify ESHA in the event you discover any issues with your data, and you shall reasonably cooperate with ESHA and ESHA and/or any third-party hosting vendors, affiliates or contractors, to resolve any identified issues. Unless you notify ESHA of a problem with your data within 10 days following your receipt of it, ESHA or any third-party hosting vendors, affiliates or contractors may erase your data, including all copies or backups, without any further notice to you and without any liability or further obligation to you.

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15. Term of Agreement, Termination.

- This Agreement shall become effective upon Licensee's electronic execution of the Agreement, as set forth below. Subject to the termination provisions below, the license

rights granted herein shall remain in effect on in increments specified in your Purchase Agreement.

- ESHA may terminate this Agreement and the licenses granted herein immediately in the event Licensee breaches any term or condition of this Agreement and fails to cure such breach within 10 days following its receipt of written notice thereof. In addition, either party may terminate this Agreement, or the licenses granted herein for its own convenience upon 20 days prior written notice to the other party. For purposes of this provision, ESHA may provide written notice by sending notice to Licensee at the email address set forth in the “ESHA Cloud Registration Form”. If the licenses granted under this Agreement expire or terminate, Licensee services will be terminated. Licensee acknowledges and agrees that in the event a license expires or terminates, ESHA may remotely disable or otherwise remove the applicable Licensed Software from Licensee’s use without further notice or approval.
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16. Confidential Information. The Licensed Software (including the nutritional database embedded therein) and all other information ESHA discloses to Licensee in connection with them, shall be considered ESHA’s Confidential Information, which ESHA discloses only subject to a license agreement. Licensee agrees that it and its employees, agents and representatives shall: (i) keep ESHA’s Confidential Information strictly confidential, and shall not disclose such information to any other person or entity without the express written consent of ESHA; (ii) limit internal disclosure of the Confidential Information solely to its employees, agents and representatives who must be apprised of the Confidential Information to advance the purposes of this Agreement, and only to the extent that they must be apprised for those purposes; (iii) contractually bind all such persons to honor the confidentiality and use restrictions imposed upon the Licensee; (iv) use the Confidential Information solely for the purpose of using the Licensed Software as licensed by ESHA in this Agreement; and (v) upon demand, immediately surrender to ESHA the Confidential Information and all notes, records, documentation, models, software, databases and other items or materials containing such Confidential Information. Confidential Information shall not include: (i) information that is in, or enters into, general public access without breach of this Agreement through no fault of Licensee; (ii) information Licensee was demonstrably in possession of prior to receiving it from ESHA; (iii) information Licensee can demonstrate was developed by Licensee independently of, and with neither use of nor reference to, ESHA’s Confidential Information; and (iv) information Licensee receives from a third party without restriction on disclosure and without breach by such third party of a nondisclosure obligation. Notwithstanding the above, Licensee understands and acknowledges that the public availability of, or Licensee’s possession of, any particular nutritional data shall not in any manner reduce the confidentiality of the nutritional database embedded within the Licensed Software as a confidential and proprietary collection of data.

17. Warranty of Original Development. ESHA warrants that the ESHA Software is, and will be, of original development by ESHA.

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20. Independent Parties. ESHA and Licensee agree that Licensee is an independent licensee and that the relationship created by this Agreement is not that of employer and employee, partnership, joint venture or franchise. Licensee further acknowledges that ESHA’s Third Party Vendors are independent licensors and not partners or joint venture’s. No independent party shall have the authority to bind or obligate any other party in any manner.
21. Remedies. In the event Licensee breaches or defaults upon any covenant, warranty, term or condition of this Agreement, ESHA may pursue any legal or equitable remedies available to it under the laws of the state of Oregon or the applicable laws of the United States. The parties agree that in the event of a breach of any of the covenants pertaining to ESHA’s intellectual property rights or Confidential Information, such a breach will result in irreparable and continuing damage in an amount which is not readily ascertainable and for which there will be no adequate remedy at law. In the event of any breach of such covenants, ESHA shall be entitled to injunctive relief and such other and further relief, including damages, as may be provided by law.
22. Notice of Claims. You must notify ESHA in writing of any claim you have against ESHA within ninety (90) days following your knowledge of such claim or the claim shall be barred and you will have waived any right to proceed against ESHA on such claim. Nothing herein shall limit or preclude any statutory limitations on the assertion of claims.
23. Non-Waiver. The failure or delay of either party to require performance of, or to otherwise enforce, any condition or other provision of this Agreement shall not waive or otherwise limit that party’s right to enforce, or pursue remedies for the breach of, any such provision or condition. No waiver by either party of any particular condition or provision of this Agreement, including this non-waiver provision, shall constitute a waiver or limitation on that party’s right to enforce performance of, or pursue remedies for the breach of, any other condition or provision of this Agreement.
24. Successor Interests. This Agreement and the rights granted hereunder are not assignable or transferable by Licensee without the express written consent of ESHA, which shall not be unreasonably denied or delayed. Subject to this restriction, this Agreement is binding upon, and

shall inure to the benefit of, the successors, assigns and bankruptcy estates of each of the parties.

25. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state of Oregon without regard to, or application of, any conflict of law provisions.
26. Jurisdiction, Venue. The parties agree that any suit, action or arbitration proceeding arising out of or relating to this Agreement shall be brought in Multnomah County, Oregon, and the parties expressly consent to the personal jurisdiction over them of any state or federal court in Multnomah County, Oregon.
27. Attorney's Fees. If either party to this Agreement breaches any term of this Agreement, then the other party shall be entitled to recover all expenses of whatever form or nature, costs and attorney's fees reasonably incurred to enforce the terms of the Agreement, whether or not suit is filed, including such costs or fees as may be awarded in arbitration or by a court at trial or on appeal. In addition, in the event either party to this Agreement becomes a debtor subject to the United States Bankruptcy Code, the non-debtor party shall be entitled to recover any expenses, costs and fees, including attorney's fees, incurred in connection with enforcing its rights against the debtor party, whether those rights arise under this contract or involve matters arising solely under the Bankruptcy Code.
28. Severability. If any court of competent jurisdiction finds any term of this Agreement or of any other document or instrument referred to or contemplated in this Agreement, to be invalid or unenforceable, such determination shall not affect the validity and enforceability of the remainder of the Agreement, and the court shall enforce the Agreement in such a manner as to give substantial effect to the intent of the parties as expressed in the Agreement.
29. Paragraph Headings. All paragraph headings in this Agreement appear for convenience of reference and shall not affect the meaning or interpretation of the Agreement.
30. Amendments. This Agreement may be amended or modified only by a written instrument executed by the parties, which expressly states the intent of the parties to modify or amend this Agreement.
31. Entire Agreement. This Agreement and the Purchase Agreement constitute the entire agreement between the parties pertaining to the subject matter of the Agreement, and supersede all prior discussions, negotiations, understandings, representations and agreements, whether oral or written. The Purchase Agreement shall, for all purposes, consist solely of the standard purchase documentation provided by ESHA to you. No terms or conditions in any purchase Agreement form, order acknowledgement or similar documentation provided by you, nor any amendments you make to ESHA's Purchase Agreement, shall be effective. All terms of this Agreement are contractual and not mere recitals.