



# LEAN Library

## CONNECTING CONTENT

### Terms and Conditions

v. 2 feb. 2018

These terms and conditions (“Terms and Conditions”) are a legal agreement between the person or entity who is licensing to use the services of Lean Library (“you”, “your,” “Licensee”) and Lean Library B.V. (“Lean Library”, “Licensor”, or “we”).

These Terms and Conditions govern our respective rights and obligations with respect to your access and use as well as the support of the service of Lean Library (the “Service”) and the associated electronic documentation (collectively, the “Materials”).

#### 1. License Grant

Subject to the provisions of these Terms and Conditions and Licensee’s payment of the Fees in accordance with Section 3, below, Licensor grants to Licensee a non-exclusive, non-transferable, limited and sub licensable strictly under the conditions of these Terms and Conditions right to remotely access and use the Service for its own business purposes only (“License”). The License includes the right of access and use of the Service under these Terms and Conditions for authorized users who are registered with the Licensee (“Users”). It is solely the Licensee’s responsibility to ensure that Users comply with the provisions of these Terms and Conditions that relate to the access and use of the Service by the Users. Upon Licensor’s request, Licensee shall at its own cost enforce those provisions against Users who violate them. The License explicitly excludes, without limitation, (i) the right to (sub)license or grant persons or entities other than Users right to access and use the Services, (ii) the right for the Licensee to access and use the Services outside its own business purposes.

#### 2. Revisions

Licensor may change, revise, modify or delete (either permanently or temporarily) a part or all of the functionality or scope of the Service at any time at its sole discretion (an “Update”). Following such Update, the definition of the term “Service” shall be automatically amended without any further action on the part of any of the parties to include such Update. Licensor may also delete or discontinue (either permanently or temporarily) the Services at its sole discretion after reasonable notification, such without being liable for any costs or damages. Licensor shall however in that case reimburse those Fees paid by Licensee in advance, for the remaining period during which the Services are discontinued.

#### 3. Fees, Payments, and Taxes

Unless agreed otherwise in writing, the yearly fees for access and use of the Service under the License (“Fees”) will be billed at the start of the License period. The Fees must be paid by

Licensee without set-off or deduction within the invoice term and if no term is mentioned on the invoice, within thirty (30) days. If Licensee does not timely pay an invoice, Licensee is immediately in payment default (“*verzuim*”, Dutch), in which case Licensor is, without limiting any remedies that it may have hereunder or at law, entitled to suspend the provision of the Services, and/or its other obligations. From the date of payment default, all Licensor’s other claims on the Licensee become immediately payable; furthermore Licensor is entitled to increase the invoice amount with the statutory rent and the recovery costs, with a minimum of 10% (ten percent) of the invoice amount. If Licensor has to initiate legal proceedings to recover an invoice, Licensee is obliged to pay the actual costs in relation to such legal proceedings, irrespective of the costs awarded by the court, in case Licensee is ordered to pay the invoice. Licensor is entitled to have amounts paid by Licensee cover the costs for recovery first, then the accrued statutory rent and finally the invoice amount. Licensee is responsible for all sales, excise, VAT and all other taxes associated with Licensee’s use of the Service other than taxes on Licensor’s net income. Licensor may increase the Fees at any time and from time to time upon thirty (30) days prior notice to Licensee. Any such increase will go into effect at the next renewal of the current subscription.

#### 4. Location of Service and Access, Account

- a) **Location of Service and Access.** The Service will be hosted on one or more servers either owned or used by Licensor and will be accessible by Licensee and the Users over the Internet.
- b) **Licensee Account.** In order to access the Service, Licensee will be required to register an account with Licensor (an “Account”) and will be provided with a unique user name and password for each such Account (“Account Access Information”). The Account Access Information is strictly personal, for use by Licensee only. Licensee is responsible for the confidentiality of the Account Access Information.
- c) **Access by Users.** In order to access the Service, Users will be required to enter the access information, such as user name and password, which are registered with the Licensee (“User Access Information”). It is solely the Licensee’s responsibility to ensure that Users use the correct User Access Information and that Users keep this confidential and strictly personal.
- d) **Monitoring.** Licensor has the right but not the obligation to monitor access to the Service and, without limiting any remedies that it may have hereunder or at law, may deny access to any Licensee or User who violates these Terms and Conditions.

#### 5. Certain Rights and Restrictions Regarding Access and Use of the Service

- a) **Equipment and Service.** Licensee shall provide at its expense all hardware, Internet service and other items necessary for the access and use of the Service.
- b) **No Copies.** The Service is protected by international intellectual property right laws, including copyright and trade secret laws and treaties. Except as otherwise provided in this Section, Licensee nor User may make any copies of the Service or accompanying Materials.

- c) **No Reverse Engineering and the like.** User nor Licensee may, or may cause or permit any of its employees or any third party to, modify, adapt, translate, reverse engineer, decompile, disassemble, translate or create derivative works based on the Service without the prior written consent of Licensor, which Licensor may withhold in its sole discretion. If applicable statutory provisions grant Licensee a right to reverse engineer in order to bring about interoperability with other software applications, this is always subject to both (i) Licensee first asking Licensor for the information required to bring about the intended interoperability and (ii) all applicable statutory conditions being fulfilled.
- d) **No Rent, Lease or Transfer.** The Service is licensed for the Licensee's benefit only. Licensee shall not sublicense (except as permitted under these Terms and Conditions to Users), transfer, lease, assign, rent, distribute, sell or otherwise dispose of the Service (including any of the Materials) on a temporary or permanent basis except with the written consent of Licensor, which Licensor may withhold in its sole discretion. Prior to transferring the Service to an authorized transferee, the transferee shall agree in writing to be bound by all of these Terms and Conditions.
- e) **Access Restrictions and Security.** Without limiting any other provision in these Terms and Conditions, Licensor cannot be held liable for any loss, cost, claim, damages or other liability whatsoever that may arise from the unauthorized use of any Account Access Information or any User Access Information. If any of Licensee's Account Access Information or any User Access Information is compromised, lost or stolen, it is Licensee's responsibility to immediately notify Licensor thereof so that the Account can be deactivated and new Account Access Information can be provided by the Licensor. Although Licensor has taken measures to safeguard the security of information submitted in using the Service, Licensor cannot guarantee the security of information transmitted during use of the Service or stored by Licensor and, without limiting any other provision in these Terms and Conditions, cannot be held liable to Licensee or any other person or entity in any way for any compromise of the security of such information. The limitation on liability stated in this section shall not apply for any losses or liability arising on the part of the Licensor due to gross negligence, fraud and willful misconduct.
- f) **Manner of Use.** Licensee is solely responsible for all data and other type of content uploaded into the Service ("Licensee's Content") and all activity that occurs under Licensee's Accounts. Licensee nor User shall use the Service for any illegal or unauthorized purpose(s). Licensee nor User may, in the use of the Service, violate any applicable laws (including but not limited to copyright laws, and other applicable laws). Licensor may, but has no obligation to, remove Licensee Content and Accounts containing Licensee Content that Licensor determines in its sole discretion is/are unlawful, offensive, threatening, libelous, defamatory, pornographic, obscene or otherwise objectionable or violates any party's intellectual property, these Terms and Conditions, or applicable law (in addition to all rights of Licensor).

**6. Ownership of Service and Intellectual Property Rights**

Licensor does not sell the Service to Licensee, but only grants Licensee a license to use the Service according to these Terms and Conditions. Licensor and its licensors retain ownership in the Service and all intellectual property rights in the Service, including without limitation any and all patents, copyrights, trade secrets, trademarks and any other proprietary and other rights. Licensee agrees that Licensor may audit Licensee's use of the Service for compliance with these Terms and Conditions at any time, upon reasonable notice. All rights not specifically granted under these Terms and Conditions are reserved by Licensor and its licensors.

**7. Intellectual Property Right on Content**

Licensor claims no intellectual property rights in the Licensee Content.

**8. Data**

**a) Anonymous data collection**

Licensor collects anonymous data regarding the use of the Service, in order to enable, evaluate and monitor the use of the Service. This data is shared with Licensee.

**b) No Personal Data**

Licensor does not collect any personal data of Users. The Service automatically checks the validity of the User Access Information by redirection to the Licensee's proxy server; Licensor does not itself actually register any User Access Information.

**c) Data security**

All back end data and service traffic are encrypted.

**d) Data ownership**

Licensee owns the data mentioned under sub a). This ensures that we won't sell any such data to third parties. However, Licensee grants Licensor the right to use that data in order to monitor the usage of the Service, to improve it, and to innovate further.

**9. Relationship of Parties**

In performing any and/or all of our respective obligations under the License, Licensor and Licensee shall each operate as and have the status of being an independent contractor of the other party, and neither party shall act as or be an agent or employee of the other party.

**10. Confidentiality**

Licensee acknowledges and agrees that these Terms and Conditions and the Service contain proprietary information of Licensor ("Confidential Information"), and Licensee hereby agrees to maintain the confidentiality of the Confidential Information using at least as great of degree of care as it uses to maintain the confidentiality of its own most confidential information. Notwithstanding the foregoing, in the event that Licensee is required by a valid order by a court or other governmental body to disclose Confidential Information, Licensee may disclose such Confidential Information provided that Licensee first gives Licensor prompt notice thereof in order to enable Licensor to have the opportunity to seek protection from such order of disclosure.

#### **11. Representations**

Licensee hereto represents and warrants to Licensor that it has the power and authority to enter into these Terms and Conditions. Further, Licensee agrees that Licensee possesses the necessary skills and qualifications to competently use the Service in accordance with these Terms and Conditions.

#### **12. Indemnification of Licensor.**

Licensee will defend, indemnify and hold harmless Licensor and its subsidiaries, licensors and affiliates (and their respective officers, directors, employees and agents) against any and all claims, losses, damages, liabilities, deficiencies, judgments, assessments, fines, costs and other expenses (including reasonable attorneys' fees and costs) arising from or relating to (i) (Users) accessing the Service, (ii) use or misuse of the Service (including any Licensee Content and other data or information input in the Service or file or database created thereby), (iii) breach of any of the provisions of these Terms and Conditions, by Licensee or by any User.

#### **13. Disclaimer of Warranties.**

Except as expressly provided in these terms and conditions, the service (including any written materials), and any support are all provided "as is" and best effort (*"inspanningsverbintenis"*, Dutch) without warranty of any kind, express, implied or statutory, including but not limited to the implied warranties of merchantability and fitness for a particular purpose or use and any warranty of error free application or non-infringement. Without limiting the generality of the foregoing, licensor does not warrant the use, results or performance of the service, that the service will be uninterrupted, error-free or secure, or that the server(s) that make(s) the service available, is free of viruses or other harmful components.

#### **14. Limitation of Liability**

Neither licensor nor any person or entity who has been involved in the creation, production, operation or support of the service shall be liable (whether in contract, tort (including negligence), warranty, product liability or other cause of action) to licensee, user or any other person or entity for any direct, indirect, consequential or incidental damages (including but not limited to damages for loss of business revenue or profits, business interruption for any reason, loss of business information or data, injury to reputation, personal injury (whether physical or mental or both), goodwill, use, licensee content, data or other intangible losses or violation of any applicable privacy laws arising out of (i) the use, misuse, or inability to use the service; (ii) the cost of procurement of substitute goods and services resulting from any goods, data, information or services purchased or obtained or messages received or transactions entered into through or from the service; (iii) unauthorized access to or alteration of licensee's transmissions or data; (iv) statements or conduct of any third party on the service; (v) termination of any of licensee's or users' accounts; or (vi) any other matter relating to the service or use thereof, even if licensee has been advised of the possibility of such damages. In no event shall licensor's entire liability exceed the total amount paid by licensee to licensor under these terms and conditions. The limitation of liability stated in this section above shall not apply for any losses or liability arising on the part of the licensor due to gross negligence, fraud or willful misconduct of its management. In no event shall licensor be liable for any damage unless it has been served a written notice of default, setting out the default in detail and

allowing licensor a reasonable remedy term of at least two weeks to remedy the default and licensor has not remedied the default within such term.

## 15. Termination

- a) **Term and termination.** The License shall become effective upon your agreement to the provisions of these Terms and Conditions and shall remain effective until terminated in accordance with this Section or as otherwise indicated in these Terms and Conditions. Licensor may terminate the License after giving the Licensee notice and a 14 days grace period to comply if:
- I. it becomes aware that Licensee unlawfully transmits through the Service copyrighted material without a license, valid defense or fair use privilege to do so;
  - II. Licensee causes or permits violation of Sections 4, 5 and/or 6 of these Terms and Conditions;
  - III. Licensee fails to comply with any provision of these Terms and Conditions, including without limitation, the Fee payment obligations and the obligation to enforce the provisions of these Terms and Conditions against Users who do not comply with them.
- b) **No return of Fees.** On termination based on the above Licensor shall not refund any Fees or portion of any Fees to Licensee.
- c) **Effect of Termination.** After termination of the License for whatever reason: i) Licensee shall, as soon as possible, cease from using and return all Confidential Information to Licensor; (ii) except as otherwise specifically provided in these Terms and Conditions, the License and all others rights and licenses granted to Licensee (including for the avoidance of doubt the sub-licenses to Users) hereunder shall automatically cease without any further action, (iii) Licensor is entitled to block the access and use of the Service and the Account, (iv) all of Licensee's uploaded Licensee Content residing on Licensor's server(s) as of the date of termination shall be returned to the Licensee at its request, to be made within 8 (eight) weeks of termination; and (v) all amounts due become immediately payable.
- d) **Survival Upon Termination**  
Sections:  
3 ('Fees, Payments, and Taxes'),  
5 ('Certain Rights and Restrictions Regarding Use of the Service'),  
6 ('Ownership of Service and Intellectual Property Rights'),  
7 ('Intellectual Property Right on Content'),  
8 sub d ('Data Ownership'),  
9 ('Relationship of Parties'),  
10 ('Confidentiality'),  
12 ('Indemnification of Licensor')

13 ('Disclaimer of Warranties')

14 ('Limitation of Liability')

15, sub b and c ('Termination')

16 ('Notices')

17 ('Injunctive Relief')

18 ('Miscellaneous')

and all other provisions of these Terms and Conditions intended to survive termination or expiration of the License will survive the termination or expiration of the License, as applicable to the extent the circumstances arise post agreement.

#### **16. Notices**

All notices required by these Terms and Conditions or given in connection with the License shall be deemed given as of the day they are emailed to you. The email address of record for notices and requests in connection with the License shall be deemed to be the email address provided by the Licensee at the time of Account creation. Licensor is not responsible for the deliverability or changes to the email address. Notification of any change to the Licensee's email address is the sole responsibility of the Licensee.

#### **17. Injunctive Relief**

Licensee acknowledges that breach of Sections 4, 5 and/or 6 of these Terms and Conditions will give rise to irreparable injury to Licensor, and leave Licensor inadequately compensated in damages. Accordingly, Licensor may seek and obtain injunctive relief against Licensee's breach or threatened breach, in addition to any other legal remedies, such as (but not limited to) suit for copyright infringement. Licensee further acknowledges and agrees that this provision is necessary for the protection of Licensor's legitimate business interests and is reasonable in scope and nature. The above is provided that the Licensee did not cause, knowingly assist or condone the continuation of a breach of these Terms and Conditions to continue after becoming aware of an actual breach having occurred.

#### **18. Miscellaneous**

1. The Services supports modern versions of all browsers. Specifically Safari, Chrome and Firefox. Any specific browser support is stated in the agreement between Licensee and Licensor.
2. In the event that any provision of these Terms and Conditions is found to be invalid, illegal or unenforceable, the validity, legality and enforceability of any remaining provisions shall not in any way be affected or impaired and a valid, legal and enforceable provision of similar intent and economic impact shall be substituted therefor.
3. These Terms and Conditions may be updated by Licensor from time to time after prior notification.
4. The provisions of these Terms and Conditions shall be interpreted and construed in accordance with their fair meanings, and not strictly for or against any party, regardless of which party may have drafted these Terms and Conditions or any specific provision of these Terms and Conditions.

5. The waiver of any provision of these Terms and Conditions shall not be effective unless in writing and signed by the party against which it is sought to be enforced. The failure of any party to insist, in any one or more instances, upon performance of any of these Terms or Conditions shall not be construed as a waiver of future performance of any terms, covenants or conditions of these Terms and Conditions, and the obligations of each party with respect thereto shall continue in full force and effect.
6. These Terms and Conditions shall be binding upon the parties and their successors and permitted assigns. Licensee may not assign the License, or any portion thereof, to any third party without Licensor's express prior written consent. Licensor may assign the License and all of its rights and obligations hereunder to any affiliate of such party or to any successor to Licensor's business.