

## **LEAN MD TERMS OF USE**

Last Updated: October 1<sup>st</sup>, 2018

Welcome to the Lean MD mobile application (the “App”)!

To use our App, you are required to agree to these Terms of Use (the “Terms”). These Terms constitute a legally binding agreement between you (whether personally or on behalf of an entity that you represent (“you”)) and us. To make these Terms easier to read, we do not refer to ourselves as Lean MD, Inc., which is our legal name. Instead, we simply refer to ourselves “we” or “us”.

In addition to these Terms, your use of the App is governed by our Privacy Policy located at [www.coachcare.com/leanmd/privacy.pdf](http://www.coachcare.com/leanmd/privacy.pdf) (“Policy”), which is incorporated herein by reference. These Terms and our Policy govern your access to and use of the App, as well as any related materials, information, services, or offerings included in the App. You agree that by accessing the App, you have read, understood, and agreed to be bound by all of these Terms and the Policy. **IF YOU DO NOT AGREE WITH ALL OF THESE TERMS AND THE POLICY, THEN YOU ARE EXPRESSLY PROHIBITED FROM USING THE APP AND YOU MUST DISCONTINUE USE IMMEDIATELY.**

We reserve the right, in our sole discretion, to make changes or modifications to these Terms and the Policy at any time and for any reason. In the event that we change these Terms or the Policy, we will update the “Last Updated” date above, and also provide you notice of such changes, either by email, your account, or upon you opening the App. If you do not agree to either these Terms or the Policy, now or as amended in the future, you must not use or access the App. It is your responsibility to periodically review these Terms to stay informed of updates. Your continued use of the App evidences your acknowledgement and acceptance of any Term and Policy revisions.

### **THE APP**

Lean MD provides a number of weight loss and weight management programs (each, a “Program”) that are supported or supervised by physicians (inclusive of the members and support staff of the physician’s practice, a “Supervising Physician”). Our App is an extension of the Programs we offer to assist you in your weight loss and weight management journey.

Some of the App features include: weight tracking (both manually and automated), meal, water consumption tracking, and supplement tracking, personal notes, recommended food portions based on your calorie intake profile, and access to our web-based success manuals.

To use the App, you must be enrolled in a Lean MD Program through a Supervising Physician. As such, any information, content, or material that you provide to us or in the App (“Info”) will be automatically transmitted to your Supervising Physician.. You hereby agree that and consent to Lean MD sharing and transmitting your Info to your Supervising Physician.

### **ACCOUNT AND GENERAL TERMS**

- **Age:** The App is intended for users who are at least 18 years old. Persons under the age of 18 are not permitted to use or register for the App. As such, we do not knowingly accept or request, or market to individuals under the age of 13. If we receive actual knowledge that anyone under the age of 13 has provided personal information to us without the appropriate parental consent, we will delete such information as soon as reasonably practicable.
- **Account:** In order to access or use the App, you will need to register for and create an account (“Account”) by providing any information prompted during Account registration, which may include, but is not limited to, the following: name, email address, age, and gender. You acknowledge and agree that you: (a) are

solely responsible for your Account and any use of your Account, (b) are solely responsible for any unauthorized use of your Account, and (c) will notify us in writing immediately if you become aware of any unauthorized use of your Account.

- **Account Activation:** Once you have created an Account, we will verify that you are enrolled in a Program and then activate your Account.
- **Login Information:** Upon creating an account, you will be given a username and password (“Login Information”). You acknowledge and agree that you are solely responsible for the security of your Login Information and will notify us in writing immediately if you become aware of any unauthorized use of your Login Information.
- **Account Use:** You may not provide any other party with access to your Account or to use the App, unless you have express permission and are authorized under these Terms to do so.
- **Your Information:** You acknowledge and consent to all actions we take consistent with our Policy concerning information you provide us, or concerning your access or use of the App.

### **PROFESSIONAL OR MEDICAL ADVICE**

WE ARE NOT A MEDICAL ORGANIZATION AND WILL NOT AND CANNOT GIVE MEDICAL ADVICE, DIAGNOSIS, OR TREATMENT. THE INFORMATION, CONTENT AND MATERIALS PROVIDED IN THE APP OR THROUGH A PROGRAM ARE NOT AND SHALL NOT BE INTERPRETED AS A SUBSTITUTE OR REPLACEMENT FOR PROFESSIONAL MEDICAL ADVICE, DIAGNOSIS, OR TREATMENT. YOU ARE ADVISED TO SEEK ASSISTANCE FROM A PHYSICIAN OR HEALTH-CARE PROFESSIONAL BEFORE FOLLOWING ANY LEAN MD PROGRAM OR USING ANY CONTENT, INFORMATION, OR MATERIAL WITHIN THE APP. THE APP OFFERS INFORMATION PERTAINING TO WEIGHT LOSS AND WEIGHT MANAGEMENT, AND IS DESIGNED FOR EDUCATIONAL AND INFORMATIONAL PURPOSES ONLY. PLEASE CONTACT A MEDICAL PROFESSIONAL IF YOU HAVE ANY CONCERNS OR QUESTIONS ABOUT YOUR HEALTH. THE USE OF ANY INFORMATION OR CONTENT CONTAINED IN THE APP IS SOLELY AT YOUR OWN RISK. NOTHING STATED OR POSTED ON THE APP IS INTENDED TO BE THE PRACTICE OF MEDICINE. WE MAKE NO WARRANTY OF ANY KIND AS TO THE ACCURACY, COMPLETENESS, OR APPROPRIATENESS OF THE APP FOR ANY PURPOSE.

### **LICENSE TO USE**

You are hereby granted a revocable, non-exclusive, non-transferable, limited right to install and use the App in accordance with these Terms (the “License”). Your License is subject to your compliance with these Terms, and , among other things, your agreement to not:

- Decompile, reverse engineer, disassemble, attempt to derive the source code of, decrypt, modify, improve, adapt, enhance, translate, or make a derivative work of the App;
- Violate any applicable laws or regulations in connection with your access or use of the App;
- Remove or alter any proprietary mark (copyright or trademark) that we post to the App;
- Commercialize the App without our express written consent;
- Use the App to create any product or service competitive with the App;
- Use the App in any way that violates any third party rules and terms to which you may be subject, such as the those of Google Play or the Apple App Store;
- Circumvent, disable, or otherwise interfere with security related features of the App;
- Transmit or attempt to transmit any harmful or malicious software, such as spyware, viruses and Trojan horses, or other content intended to interfere with the proper functioning of the App or with any party’s uninterrupted use and enjoyment of the App;
- Use the App for purposes of spamming or phishing;
- Use the App in any manner meant to trick, defraud, deceive, harass, abuse, or harm us or any third party; and

- Enter Info into the App that would constitute information that is protected by any privacy law or regulation, such as HIPAA.

### **LICENSE TERMINATION**

WE RESERVE THE RIGHT, IN OUR SOLE DISCRETION, TO SUSPEND OR TERMINATE YOUR ACCOUNT AND LICENSE AT ANY TIME, WITH OR WITHOUT NOTICE, AND TO REFUSE ANY AND ALL CURRENT OR FUTURE USE OF THE APP FOR ANY REASON OR NO REASON. If we terminate or suspend your Account or License for any reason, you are prohibited from, directly or indirectly, registering and creating a new Account for your use.

### **YOUR REPRESENTATIONS AND WARRANTIES**

By using the App, you represent and warrant to us that you:

- Are at least 18 years old, and have the legal capacity to agree to these Terms;
- Will not use or access the App to violate these Terms or any law, rule, or regulation;
- Will not be in violation of any agreement, law or regulation to which you are subject, if you use or access the App;
- Will not use a bot, script or any similar automated means to access or use the App;
- Will only provide information to us or in the App that is true, accurate, complete, and not misleading;
- Will immediately correct or update any untrue, inaccurate, incomplete, or misleading information that you have provided to us or in the App; and
- Acknowledge and understand that the App is not meant to be used to capture, store, or transmit any information, content, or material that may be protected by privacy laws (including HIPAA), and that you expressly agree to not include any such information, content, or material in the App.

### **INTELLECTUAL PROPERTY RIGHTS**

Unless we indicate otherwise in writing, the App (including all designs, text, graphics, pictures, information, data, software, and files included therein (“Materials”), as well as the selection and arrangement thereof) is property of Lean MD or its licensors, as applicable, and is protected by United States and international copyright, trademark, patent, trade secret and other intellectual property or proprietary rights laws. The App is provided to you “AS IS” for your information and personal use only. You may not copy, reproduce, aggregate, republish, post, publicly display, encode, translate, transmit, distribute, sell, license, or otherwise commercially exploit the App or Material without our express prior written consent.

Please be aware that any suggestion, idea, feedback, or other information that you provide to us is not confidential (each, an “Idea”), and becomes our sole property. We shall exclusively own all intellectual property rights relating to or arising from any such Idea, and may, in our sole discretion, use or commercialize any such Idea. You hereby acknowledge and agree that we owe you no compensation in relation to any Idea that you may submit to us. Furthermore, you hereby waive any and all moral rights that you have to any Idea. Lastly, you agree to hold us harmless against any and all claims arising out of or relating to any Idea you provide to Us and your rights thereto.

### **THIRD PARTY CONTENT**

As part of the App, we may provide you with convenient links to third party website(s) and content (“Third Party Content”). These links are provided as a courtesy to you, but please note that we have no control over, nor do we endorse, investigate, or monitor, any Third Party Content, or the promotions, materials, information, goods or services available therein. We cannot guarantee that Third Party Content will be safe, accurate, non-offensive, or reliable. If you decide to use or access any Third Party Content, you do so at your own risk, and if you download or interact with any Third Party Content, you must be aware that there is a risk that it may be harmful; in the event that such harm manifests, you agree to hold us harmless from any loss or damage you suffer. Furthermore, if you decide to visit any Third Party Content, you must also

be aware that the terms of use and privacy policy of the provider of Third Party Content will govern your use and access of the Third Party Content.

## **MONITORING**

We may monitor your Account and use of the App to ensure compliance with these Terms. We reserve the right to take appropriate legal action against you or anyone else who, in our sole discretion, violates these Terms; such legal action may include reporting you or any other user who violates these Terms, to law enforcement. As noted above, we reserve the right, in our sole discretion, to suspend or terminate your Account and refuse any and all current or future use of the App for any reason or no reason.

## **MODIFICATIONS**

We provide the App “As-Is”. As such, we have no obligation to improve or update the App. However, we may, in our sole discretion, change, modify, improve, limit, suspend, or discontinue the App (“Change”) at any time with or without notice. As such, we shall not be liable to you for any losses or damages you suffer as a result of any Change to the App.

## **DATA USE**

Please be advised the App is hosted in the United States. If you access the App from country that has laws differing from those of the United States concerning the collection, use, and disclosure of personal information, then be aware that your use of the App transfers your data to the United States, and you expressly consent to have your data transferred to and processed in the United States.

## **TERMINATION**

In the event that you discontinue a Program, or that your Account or License is suspended or terminated, you may lose access to the App and any information, materials, data, and content stored therein.

## **GOVERNING LAW**

These Terms and your use of the App are governed by and construed in accordance with the laws of the State of California applicable to agreements made and to be entirely performed within the State of California, without regard to its conflict of law principles.

## **ARBITRATION**

PLEASE READ THE FOLLOWING PARAGRAPHS CAREFULLY AS THEY REQUIRE YOU TO ARBITRATE DISPUTES WITH LEAN MD, AND LIMIT THE MANNER IN WHICH YOU CAN SEEK RELIEF FROM LEAN MD.

All claims and disputes arising from your use of the App or these Terms will be resolved by binding arbitration, rather than in court. Arbitration will be conducted by a neutral arbitrator, in accordance with the rules of the American Arbitration Association (“AAA”). Any claims or disputes where the total amount sought is less than \$10,000 USD may be resolved through binding non-appearance-based arbitration, at our election. The arbitrator will decide the jurisdiction and the respective rights and liabilities that you or we may have. The arbitrator will have the authority to grant motions dispositive of all or part of any claim or dispute. The arbitrator will have the authority to award monetary damages and to grant any other relief available to an individual under applicable law, the arbitral forum’s rules, and these Terms. The arbitrator will issue a written award and statement of a decision describing the essential findings and conclusions on which the award is based, including the calculation of any damages awarded. The arbitrator has the same authority to award relief on an individual basis that a judge in a court of law would have. The award of the arbitrator is final and binding. Any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

Both parties agree that any dispute resolution proceedings will be conducted on an individual basis, and not

as a class, consolidated, or representative action. If for any reason a claim proceeds in court rather than in arbitration, each party waives any right to a jury trial. Both parties also agree that either party may bring suit in court to enjoin infringement or other misuse of intellectual property rights. This provision shall survive the termination of your use of the App, these Terms, or any other agreement that you may have with us.

If, for any reason, a dispute proceeds in court rather than arbitration, the dispute shall be commenced or prosecuted in the state and federal courts located in Contra Costa County, California, and you hereby consent to, and waive all defenses concerning lack of personal jurisdiction, and forum non conveniens with respect to venue and jurisdiction in such state and federal courts.

If this provision is found to be illegal or unenforceable, then neither Party will elect to arbitrate any dispute falling within the illegal or unenforceable part of this provision, and such dispute shall be decided by a court of competent jurisdiction within the courts listed for jurisdiction above.

### **WARRANTY DISCLAIMER**

THE APP AND ANY CONTENT OR INFORMATION THEREIN, IS PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND. WE MAKE NO EXPRESS OR IMPLIED WARRANTIES AND CONDITIONS REGARDING THE APP OR THE USE OR PERFORMANCE OF THE APP. WITHOUT LIMITING THE FOREGOING, WE EXPRESSLY DISCLAIM ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, REGARDING THE APP (INCLUDING ANY CONTENT AND INFORMATION THEREIN) INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, SECURITY, ACCURACY, AND NON-INFRINGEMENT. WITHOUT LIMITING THE FOREGOING, WE MAKE NO WARRANTY OR REPRESENTATION THAT ACCESS TO OR OPERATION OF THE APP WILL BE UNINTERRUPTED OR ERROR FREE. YOU ASSUME FULL RESPONSIBILITY AND RISK OF LOSS RESULTING FROM YOUR USE OF THE APP. SOME JURISDICTIONS LIMIT OR DO NOT PERMIT DISCLAIMERS OF WARRANTY, SO THIS PROVISION MAY NOT APPLY TO YOU.

### **LIMITATION OF LIABILITY**

TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL WE OR OUR AFFILIATES, DIRECTORS, OR EMPLOYEES, OR ITS LICENSORS OR PARTNERS, BE LIABLE TO YOU FOR ANY FOR ANY INTERRUPTION OF THE APP, LOSS OF USE, LOST SAVINGS OR OTHER CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES, HOWEVER ARISING. WE WILL NOT BE LIABLE FOR ANY DELAY IN ACCESSING AND/OR INABILITY TO ACCESS THE APP, WHETHER DUE TO AN ACT OF GOD, ACTION BY GOVERNMENTAL ENTITY, STRIKE, NETWORK DIFFICULTY, ELECTRONIC MALFUNCTION, OR ANY RELIABILITY OR EFFECTIVENESS RELATED TO THE APP. WE MAKE NO WARRANTY OR REPRESENTATION THAT THE OPERATION OF THE APP WILL BE UNINTERRUPTED OR THAT THE APP WILL BE ACCURATE, COMPLETE, RELIABLE, CURRENT OR ERROR-FREE. OUR LIABILITY TO YOU FOR DAMAGES FROM ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT (EVEN IF A FUNDAMENTAL BREACH), TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, WILL BE LIMITED TO THE GREATER OF (A) THE TOTAL FEES PAID BY YOU USE OF THE APP IN THE 12 MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM, OR (B) \$100.

### **INDEMNIFICATION**

You agree to defend, indemnify, and hold us, including our subsidiaries, affiliates, and all of our respective officers, directors, agents, partners, and employees, harmless from and against any loss, damage, liability, claim, or demand, including reasonable attorneys' fees and expenses ("Claim"), made by any third party

arising out of or related to your:

- Use of the App;
- Breach of these Terms;
- Any breach of your representations and warranties set forth in these Terms; and
- Your violation of the rights of a third party, including but not limited to intellectual property rights.

We will use commercially reasonable efforts to notify you as soon as reasonably practicable after becoming aware of any Claim subject to indemnification.

### **CONSENT TO ELECTRONIC COMMUNICATION**

You consent to receive electronic communications, and you agree that all agreements, notices, disclosures, and other communications we provide to you electronically, via email and on the App, satisfy any legal requirement that such communication be in writing. YOU HEREBY AGREE TO ELECTRONIC DELIVERY OF NOTICES, POLICIES, AND RECORDS OF TRANSACTIONS INITIATED OR COMPLETED BY US OR VIA THE APP. You hereby waive any rights or requirements under any law or regulation requiring an original signature or delivery or retention of non-electronic records, or to payments or the granting of credits by any means other than electronic means.

### **MISCELLANEOUS**

- **Entire Agreement:** These Terms and any policies or operating rules posted by us on the App constitute the entire agreement and understanding between you and us concerning your use of the App.
- **Waiver:** Our failure to exercise or enforce any right or provision of these Terms shall not operate as a waiver of such right or provision.
- **Assignment:** We may assign any or all of our rights and obligations to others at any time.
- **Force Majeure:** We shall not be responsible or liable for any loss, damage, delay, or failure to act caused by any cause beyond our reasonable control.
- **Severability:** If any provision of these Terms is determined to be unlawful, void, or unenforceable, that provision or part of the provision is deemed severable from these Terms and does not affect the validity and enforceability of any remaining provisions.
- **No Partnership:** There is no joint venture, partnership, employment or agency relationship created between you and us as a result of these Terms or use of the App.
- **Drafting:** You agree that these Terms will not be construed against us by virtue of having drafted them.
- **Consent to Electronic Form:** You hereby waive any and all defenses you may have based on the electronic form of these Terms and the lack of signing by the parties hereto to execute these Terms.

### **CONTACT US**

In order to resolve a complaint regarding the App or to receive further information regarding use of the App, please contact us at:

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