

LabArchives® Terms of Use

Last Updated: November 14, 2023

PLEASE READ THE FOLLOWING TERMS OF USE (“TERMS”) CAREFULLY BEFORE USING THE LABARCHIVES SERVICES. USE OF THE LABARCHIVES SERVICES WILL SIGNIFY YOUR AGREEMENT TO BE BOUND BY THESE TERMS. IF YOU DO NOT AGREE TO THESE TERMS, DO NOT USE THE LABARCHIVES SERVICES.

As a LabArchives user, you may have access to LabArchives products via an institutional license, in which case, these Terms of Use may be superseded by the agreement in place with your institution or company.

These LabArchives Terms may be accepted in any manner indicating acceptance and shall govern the contractual relationship between the person or entity identified as the customer (i) in any click-through contract with LabArchives which states that it is subject to these Terms (the “Customer”) and LabArchives, LLC (“LabArchives”); (ii) by clicking on a button or checking a checkbox for the acceptance of these Terms; or (iii) registering to, using or accessing the LabArchives Products (each manner of accepting these Terms, an “Order Form”). LabArchives may amend these Terms at any time in its sole discretion, effective upon posting the amended Terms at the domain or subdomains of <http://www.labarchives.com> where the prior version of the Terms was posted, or by communicating these changes through any written contact method LabArchives has established with Customer.

LabArchives has developed and owns software-based products for the online management of laboratory data, laboratory inventory, and resource scheduling. Access to the features and functionality of these software-based products are delivered and made accessible via a SaaS model (hereinafter referred to as the “Product(s)"). By accessing the Products, Customer agrees to comply with and to be bound by these Terms. If Customer does not understand or agree with these Terms, please do not use the Products.

Description of Products

As between the parties, LabArchives owns all rights, title, and interest in and to the LabArchives Products and LabArchives Confidential Information (as defined below), including all intellectual property and proprietary rights therein. Except as expressly set forth herein, LabArchives does not convey any rights to the Customer or any User.

The LabArchives Products comprise ELN (“Electronic Lab Notebook” or “Notebook(s)”), Inventory, and Scheduler Products. The description of the Products are defined as follows:

- o **LabArchives ELN for Research** is a solution for the online management of laboratory data, and includes sharing and collaboration features. You can create and edit content within the account you establish with the Product and if you choose to do so, you can publish and share such content.

o **LabArchives ELN for Education** is a solution for the online management of laboratory data, and includes sharing and collaboration features. You can create and edit content within the account you establish with the Product and if you choose to do so, you can publish and share such content. The LabArchives ELN for Education also includes a set of features and functionality which is used for distribution of course materials, course management, grading, and other learning technology, custom publishing of course content, and includes a curated collection of hundreds of course activities.

o **LabArchives Inventory** is a solution for the online management of laboratory inventory data and includes order request workflow and management features. You can add and edit inventory information with the inventory account you create or to which you are added, as well as link information from Inventory to content in Notebooks for which you have access and edit rights.

o **LabArchives Scheduler** is a solution for the online management of resources (equipment, rooms, etc.) used by an organization. It provides management tools to set up resources, schedules, and specify user privileges. Users can reserve a resource in accordance with administrative options.

Customer and its Authorized Users may connect to the Product(s) using any supported internet browser. Customer and its Authorized Users are solely responsible for obtaining and maintaining access to the internet and the equipment necessary to use the Product(s) at its own expense. USE OF OR CONNECTION TO THE INTERNET PROVIDES THE OPPORTUNITY FOR UNAUTHORIZED THIRD PARTIES TO CIRCUMVENT SECURITY PRECAUTIONS AND ILLEGALLY GAIN ACCESS TO THE SAAS SOLUTIONS AND CUSTOMER DATA. ACCORDINGLY, LABARCHIVES CANNOT AND DOES NOT GUARANTEE THE PRIVACY, SECURITY OR AUTHENTICITY OF ANY INFORMATION TRANSMITTED OVER OR STORED IN ANY SYSTEM CONNECTED TO THE INTERNET. IN ORDER TO PROTECT CUSTOMER'S DATA, LABARCHIVES MAY SUSPEND CUSTOMER'S USE OF THE SERVICES IMMEDIATELY, WITHOUT PRIOR NOTICE, PENDING AN INVESTIGATION, IF ANY BREACH OF SECURITY IS SUSPECTED.

1. **Modification of Terms of Use.** As provided above, LabArchives may modify the Terms upon notice to Customer at any time. These modifications may include, without limitation, eliminating the free accounts for individual users and requiring payment to use the Products. Customer will be provided notice of any such modification by email or by LabArchives publishing the changes on the website Terms of Use. Customer will be provided the option to terminate their use of the Products if the Terms are modified in a manner that substantially affects Customer's use of the Products. Customer's continued use of the Products after notice of any change to the Terms will be deemed to be Customer's agreement to the amended Terms. If Customer terminates their use of the Products, no refunds will be issued.
2. **Grant of License.** Either (a) in consideration of the payment of applicable fees or (b) on a limited, free, no-obligation trial basis, LabArchives hereby grants to Customer a limited, non-exclusive, non-transferable (except as set forth herein), right to access and use the Product(s) specified in each Order Form in accordance with the terms and conditions set forth herein during the applicable term per each Order Form, including subsequent

renewals. Customer accepts and agrees to these Terms by doing any of the following: (a) signing, written or confirmed acceptance of LabArchives Order Form; (b) issuing a purchase order referencing the Order Form; (c) using the relevant Products specified in the Order Form; or (d) making any payment for the relevant LabArchives Products specified in the Order Form. The use of pre-printed forms, including but not limited to purchase orders, e-mail, or acknowledgements, shall be for convenience only and all pre-printed terms and conditions stated on such forms are void and of no effect. No Order Form issued to LabArchives shall be binding upon LabArchives unless and until LabArchives has accepted the Order Form. LabArchives may accept an Order Form by countersigning and returning a copy of the same, by expressly confirming acceptance by email or website pop-up acknowledgement, or by commencing delivery of the requested LabArchives Product(s). No Order Form will otherwise be deemed binding upon LabArchives merely by LabArchives' inaction or the passage of time. This license extends to Customer's employees, faculty, staff and students, as the case may be, ("Authorized Users"). Customer and its Authorized Users may use the Product(s) solely for their intended use. The Product(s) may be networked throughout Customer's geographic location and may also be made available remotely through secure access procedures that Customer establishes and manages.

3. **User Registration Obligations.** Customer's Authorized Users must (a) provide true, accurate, current and complete information about themselves as prompted by the Product(s) registration process ("Registration Data"); and (b) maintain and promptly update their Registration Data to keep it true, accurate, current and complete. If any Authorized User provides any information that is untrue, inaccurate, outdated, or incomplete, or if LabArchives has reasonable grounds to suspect that such information is untrue, inaccurate, outdated, or incomplete, LabArchives may terminate the account of such Authorized User and deny him/her access to the Product(s).
4. **Personal Information and Privacy.** Personal information provided to LabArchives through the Product(s) is/are governed by the LabArchives Privacy Policy. The election to use the Product(s) indicates acceptance of the terms of the LabArchives Privacy Policy. Each Authorized User is responsible for maintaining the confidentiality of his/her username, password and other sensitive information, and in accordance with Customer policy, if applicable. Each Authorized User is responsible for all activities that occur in his/her LabArchives account and agrees to inform LabArchives immediately of any unauthorized use of his/her account by emailing support@labarchives.com or by calling on any of the numbers listed on the [online support](#) page. LabArchives is not responsible for any loss or damage to any Authorized User or to any third party incurred as a result of any unauthorized access and/or use of any Authorized User's account, or otherwise.
5. **Communications from LabArchives.** LabArchives sends all users of the Product(s) certain communications such as product announcements, administrative messages and newsletters. An Authorized User may opt-out from receiving newsletters from LabArchives but may not opt-out from receiving product announcements and administrative messages.
6. **Fees, Term and Payment.**

- (a) If you select a paid tier of the Products (a “**paid account**”) Customer will pay LabArchives the applicable fees per the purchased subscription as set forth in the applicable Order Form. Customer hereby authorizes LabArchives, either directly or via our payment processing service, to charge such fees via Customer’s selected payment method, upon due date. Fees are non-cancelable and non-refundable. In the event of failure to collect the fees owed by Customer, LabArchives may, in its sole discretion (but shall not be obligated to) retry to collect at a later time, or suspend or cancel the account without notice.
- (b) The term of Customer’s Subscription Term will be one (1) year, and thereafter the Subscription Term shall automatically renew and extend for an additional period equal to the initial Subscription Term (a “Renewal Subscription Term”), and such renewals shall likewise be repeated for successive extensions upon expiration of each Renewal Subscription Term, unless either party provides written notice to the other of its intention not to renew at least thirty (30) days prior to the expiration of the then-current Subscription Term or Renewal Subscription Term, as applicable. Unless otherwise communicated to you, credit card, debit card, or other non-invoice forms of payment are due at the beginning of the relevant Subscription Term. Customer authorizes LabArchives to charge Customer for all fees for all Subscription Terms when due. LabArchives may enable other forms of payment in the Account Settings page, which may be subject to additional terms. If payment becomes overdue, LabArchives shall, at its sole discretion, turn off or limit Customer’s access to the Products until overdue payment is made.
- (c) Termination. Either party may terminate these Terms: (i) upon 30 days written notice if the other party is in material breach of these Terms (e.g., non-payment of undisputed fees) and fails to cure such breach within the notice period; or (ii) with immediate effect if the other party ceases its business operations or becomes subject to insolvency proceedings and the proceedings are not dismissed within 60 days. If Customer terminates these Terms under (i) , LabArchives will refund Customer the unused prepaid fees covering the terminated portion of the Product. If Customer terminates these Terms for any other reason, Customer will not be entitled to a refund of any prepaid fees. This Section 6(c) states LabArchives’s entire obligation Customer’s sole remedies in connection with any claim regarding termination.
- (d) Effect of Termination. On termination of these Terms, (i) all Order Forms will terminate; (ii) LabArchives will disable Customer and each Authorized User’s access to the Product(s); (iii) Customer will immediately pay any accrued but unpaid and undisputed fees; (iv) each party will return and make no further use of, or destroy (subject to each party’s automated deletion schedule and back-up policy), any Confidential Information belonging to the other party, subject to (v); and (v) provided Customer has permanently closed its account, LabArchives will delete all Customer Data therein in accordance with its automated deletion schedule and back-up policy. Any terms that by their nature survive termination or expiration hereof, will survive.

- 7. Restrictions on Use.** Customer acknowledges that the Product(s), and any derivatives thereof, is proprietary to LabArchives and that the Product(s) shall remain the exclusive property of LabArchives and that Customer has no rights therein other than as explicitly set forth herein. Customer (and its Authorized Users) shall not: (a) license, sublicense, sell, resell, rent, lease, transfer, distribute, time share or otherwise commercially exploit or make the Product(s) available to any third party (except for authorized individuals collaborating with Customer's Authorized Users and authenticated by Customer); (b) provide any service based on the Product(s); (c) make derivative works of, disassemble, reverse compile or reverse engineer any part of the Product(s), or access the Product(s) in order to build a similar or competitive product or service (or contract with a third party to do so); (d) use the third party links to websites without agreeing to the terms and conditions of such websites; (e) post links to third party websites or use the logo, company name, or other proprietary information from such websites, etc. without express written permission or (f) run any automated or manual technology testing or tools, including security or load testing, that may affect performance or availability of the system.
- 8. Spamming and Illegal Activities.** Customer (and its Authorized Users) is/are solely responsible for the content of transmissions through the Product. Customer (and its Authorized Users) agree(s) not to use the Product(s) for illegal purposes, or for the transmission of material that is unlawful, defamatory, harassing, libelous, invasive of another's privacy, abusive, threatening, harmful, vulgar, pornographic, obscene, offends religious sentiments, promotes racism, contains viruses, or that infringes or may infringe the intellectual property or the proprietary or other similar rights of another or is otherwise objectionable. Customer (and its Authorized Users) agree(s) not to use the Product(s) for the transmission of "junk mail," "spam," "chain letters," "phishing" or unsolicited mass distribution of email. LabArchives reserves the right to terminate access to the Product(s) to Customer or any Authorized User if there are reasonable grounds to believe that the Product(s) has been used in contravention of this paragraph.
- 9. Inactive User Accounts.** We reserve the right to terminate free accounts that are inactive for a continuous period of 120 days. We will provide you prior notice of such termination by email.
- 10. User Generated Content.** Customer (and its Authorized Users) may store, transmit or publish content created by using the Product(s). However, Customer (and its Authorized Users) shall be solely responsible for such content and the consequences of its transmission or publication. Any content made public will be accessible through the internet and may be crawled and indexed by search engines. Customer (and its Authorized Users) is/are responsible for ensuring that any private content is not made publicly available. Any content that may be received from other users of the Product(s) is provided AS IS for the information and personal use of Customer (and its Authorized Users) only and Customer for itself and its Authorized Users agree(s) not to use, copy, reproduce, distribute, transmit, broadcast, display, sell, license or otherwise exploit such content for any purpose, without the express written consent of the person who owns the rights to such content. In the course of using the Product(s), copyright notice(s) may not be removed and copy protection

feature(s) may not be disabled. By making any copyrighted/copyrightable content available on the Product(s), Customer (for itself and its Authorized Users) affirms that it or they will have the consent, authorization or permission, as the case may be, from every person who may claim any rights in such content to make such content available in such manner. Customer expressly agrees that LabArchives will have the right to block access to or remove such content made available if LabArchives receives complaints concerning any illegality or infringement of third party rights in such content. By using the Product(s) and transmitting or publishing any content using the Product(s), Customer expressly consents to the determination of questions of illegality or infringement of third party rights in such content by the agent designated by LabArchives for this purpose.

11. **Family Educational Rights and Privacy Act of 1974 (FERPA) Applies to Certain US Customers Only.** To the extent that (i) the Customer or its Authorized Users legally upload any student data into LabArchives hosted server and (ii) that student data is subject to the FERPA, LabArchives will comply with FERPA with respect to such information. FERPA provides guidelines for the handling, storage and release of student data. It protects the privacy of education records, the right of a student to inspect and review his/her academic records and the ability to amend records that are deemed inaccurate.

12. **Disclaimer of Warranties. CUSTOMER EXPRESSLY UNDERSTANDS AND AGREES THAT THE USE OF THE PRODUCT(S) IS AT THE SOLE RISK OF CUSTOMER AND ITS AUTHORIZED USERS. THE PRODUCT(S) IS PROVIDED ON AN AS-IS-AND-AS-AVAILABLE BASIS. LABARCHIVES EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE WITH REGARD TO THE PRODUCT, TITLE, NON-INFRINGEMENT OR ANY WARRANTIES ARISING FROM USAGE OF TRADE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR STATUTORILY. LABARCHIVES MAKES NO WARRANTY THAT THE PRODUCT(S) WILL BE UNINTERRUPTED, TIMELY, SECURE, OR VIRUS FREE. USE OF ANY MATERIAL DOWNLOADED OR OBTAINED THROUGH THE USE OF THE PRODUCT(S) SHALL BE AT CUSTOMER'S OWN DISCRETION AND RISK AND CUSTOMER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO ITS COMPUTER SYSTEM, OR TO ITS AUTHORIZED USERS' MOBILE TELEPHONES, WIRELESS DEVICES OR DATA THAT RESULTS FROM THE USE OF THE PRODUCT(S) OR THE DOWNLOAD OF ANY SUCH MATERIAL. NO ADVICE OR INFORMATION, WHETHER WRITTEN OR ORAL, OBTAINED FROM LABARCHIVES, ITS EMPLOYEES OR REPRESENTATIVES SHALL CREATE ANY WARRANTY.**

13. **Limitation of Liability.**
 - (a) **CUSTOMER AGREES THAT LABARCHIVES SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, OR OTHER LOSS OR DAMAGE WHATSOEVER (INCLUDING LOSS OF DATA, REVENUE, USE OR OTHER ECONOMIC ADVANTAGE) OR FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, COMPUTER FAILURE,**

LOSS OF BUSINESS INFORMATION, OR OTHER LOSS ARISING OUT OF OR CAUSED BY THE USE OF OR INABILITY TO USE THE PRODUCT(S), EVEN IF LABARCHIVES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

- (b) EACH PARTY'S AGGREGATE LIABILITY FOR DAMAGES ARISING OUT OF OR RELATED TO THESE TERMS (WHETHER IN CONTRACT, TORT OR OTHERWISE) WILL NOT EXCEED THE GREATER OF (i) THE AMOUNT PAID OR PAYABLE BY CUSTOMER HEREUNDER WITHIN THE SIX (6) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO LIABILITY OR (ii) \$200.00. THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT ENLARGE THIS LIMIT. THE LIMITATIONS IN THIS SECTION DO NOT APPLY TO (A) A PARTY'S FRAUD OR WILLFUL MISCONDUCT; OR (B) CUSTOMER'S OBLIGATION TO PAY FEES OWED UNDER THESE TERMS. THESE LIMITATIONS OF LIABILITY ARE INDEPENDENT OF ANY EXCLUSIVE REMEDIES, AND WILL SURVIVE AND APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY SPECIFIED REMEDIES.**
- (c) THE FEES CHARGED UNDER THESE TERMS REFLECT THE OVERALL ALLOCATION OF RISK BETWEEN THE PARTIES, INCLUDING BY MEANS OF THE LIMITATION OF LIABILITY AND EXCLUSIVE REMEDIES DESCRIBED IN THESE TERMS. THESE PROVISIONS FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES AND A MODIFICATION OF THESE PROVISIONS WOULD AFFECT SUBSTANTIALLY THE FEES CHARGED BY LABARCHIVES. IN CONSIDERATION OF THESE FEES, CUSTOMER AGREES TO THIS ALLOCATION OF RISK AND HEREBY WAIVES ANY RIGHT, THROUGH EQUITABLE RELIEF OR OTHERWISE, TO SUBSEQUENTLY SEEK A MODIFICATION OF THESE PROVISIONS OR ALLOCATION OF RISK.**

14. Third Party Data Storage. LabArchives will have no liability of any kind as a result of the deletion, modification, destruction, damage, loss of or failure to store or encrypt any data which is stored on Customer's local or any third-party storage system such as local hard drives, temporary or permanent external storage devices, commercial or private cloud storage systems not under the complete and sole control of LabArchives, or any storage device, temporary or permanent, physical or virtual, which is not solely managed, maintained, and monitored by LabArchives.

15. Indemnification.

- (a)** Customer agrees to indemnify and hold harmless LabArchives, and its members, officers, directors, employees and agents, from and against any losses, damages, fines and expenses (including attorney's fees and costs) arising out of or relating to any third-party claims regarding the Customer's data or that Customer or any Authorized Users have used the Product(s) in violation of another party's rights (including any intellectual property rights including but not limited to any infringement claim), in violation of any law, in violation of any

provisions of the terms of these Terms, or any other claim related to the use of the Product(s) by Customer or its Authorized Users.

- (b) LabArchives agrees to indemnify and hold harmless Customer from and against any losses, damages, fines and expenses (including attorney's fees and costs) arising out of or relating to any claims brought against the Customer by a third-party alleging that a Product infringes such third-party's intellectual property rights. Notwithstanding the foregoing, LabArchives will not be obligated to indemnify the Customer if an infringement Claim arises from: (a) the Customer Data; (b) Customer's or Authorized User's misuse of the Product; (c) Customer's or Authorized User's use of the Product in combination with any products, services, or technology not provided by LabArchives; or (d) continued use of a Product after written notice by LabArchives to discontinue use. If an infringement Claim is made or threatened, LabArchives may, in its sole discretion: (i) replace or modify the infringing Product so that it is non-infringing (but functionally equivalent); (ii) procure the right for Customer to continue its use of the Product; or (iii) notwithstanding LabArchives' obligation to indemnify, terminate use of the infringing Product and refund any unused prepaid fees covering the terminated portion of the Product.
- (c) The Party seeking indemnification will provide the other Party prompt written notice of any Claim. LabArchives will have the exclusive right to defend any indemnified claim (including the right to select and control the work of counsel) and make settlements thereof at its own discretion. Customer may not settle or compromise any indemnified claim, action or allegation, except with prior written consent of LabArchives. LabArchives may not, without Customer's prior written approval, enter into any settlement of an indemnified claim that imposes a direct financial liability on Customer or includes an admission of fault by Customer. Customer shall give such non-monetary assistance and information as LabArchives may reasonably require to settle or defend indemnified claims.

16. **Arbitration.** Any controversy or claim arising out of or relating to these Terms shall be settled by binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association, applying the substantive laws of the state of Nevada. Any such controversy or claim shall be arbitrated on an individual basis, and shall not be consolidated in any arbitration with any claim or controversy of any other party. The decision of the arbitrator shall be final and unappealable. The arbitration shall be conducted in Nevada and judgment on the arbitration award may be entered into any court having jurisdiction thereof. Notwithstanding anything to the contrary, LabArchives may at any time seek injunctions or other forms of equitable relief from any court of competent jurisdiction. Customer shall safeguard the Proprietary Information indefinitely.
17. **Suspension and Termination.** LabArchives may suspend the entire Customer account or the account of any Authorized User or temporarily disable access to all or part of the Product(s) in the event of any suspected illegal activity or requests by law enforcement or other government agencies. Objections to suspension or disabling of accounts should be

made to support@labarchives.com within thirty days of notification of the suspension or disabling. LabArchives may terminate a suspended or disabled account after thirty days. In addition, LabArchives reserves the right to terminate any account upon reasonable belief of the violation of any of the terms of these Terms, including non-payment. Termination of any LabArchives account will include denial of access to all Products and deletion of account information such as email IDs and passwords.

18. Access to Data. For Paid-for LabArchives ELN for Research or ELN for Education Customers Only.

- (a) Notwithstanding a legitimate, explicit request to delete earlier, LabArchives will maintain all of the data of Customer's Authorized Users in a "Read Only" format during the term of these Terms, and for a reasonable period of time no less than three (3) years post termination of the license. LabArchives will allow Customer to export the data once per year during the term of the then current Order Form for no additional charge upon request by the Customer site administrator. At any time during the three (3) year period after termination of the license or for any export requests in excess of the once per annum provided for in this section of the Agreement, Customer must pay for any downloads on a fixed fee basis subject to an additional Order Form. Once the data has been successfully retrieved by Customer, LabArchives, upon the request of Customer, shall securely destroy all copies of such data.
- (b) Access to the data will involve LabArchives sharing its proprietary information with you relating to the Product's software, including but not limited to LabArchives' data export files, file formats, file structure, other technical information, and source and object code (Proprietary Information"). Customer shall keep the Proprietary Information secret and will not disclose, publish or disseminate any Proprietary Information to anyone other than those of its employees with an absolute specific need to know for the purpose of downloading the content of its researchers, faculty and students LabArchives ELN accounts (including the data, datasets and notebooks) onto its local servers (the "Purpose"), provided that such employees agree to be bound by the obligations set forth in these Terms. Customer agrees to prevent the unauthorized use, disclosure, publication or dissemination of Proprietary Information by any of its employees, agents and/or Authorized Users who may have been given access to Proprietary Information. Customer agrees to accept Proprietary Information only for the Purpose.

19. Confidential Information. Each party agrees: (i) that it will use (and will ensure that its Authorized Users) reasonable efforts (which shall be no less than the efforts used to protect its own confidential information of a similar nature) to prevent the disclosure of the other party's Confidential Information to any person or entity, unless authorized in writing by the other party; and (ii) that it will not use Confidential Information of the other party for any purpose other than as authorized by these Terms or by the other party. As to LabArchives, the term "Confidential Information" includes information specifically designated as

confidential or that would be understood to be confidential or proprietary by a reasonable person, the features and functions of the Product(s) that are not available to the general public via the public internet (including screen shots of the same), future product plans, any Product documentation or specifications provided to Customer, the commercial terms (including pricing) of these Terms and any Order Form (but not the mere existence of these Terms), audit, performance and security test results (whether conducted by LabArchives or Customer), and any other proprietary, financial or business information supplied to Customer by LabArchives. As to Customer, the term "Confidential Information" includes information specifically designated as confidential or that would be understood to be confidential or proprietary by a reasonable person, login credentials for accessing the Product(s), and Customer Data (including personally identifiable data). Notwithstanding the foregoing, "Confidential Information" shall not include (i) information which is or becomes publicly known through no act or omission of the receiving party, or (ii) information gained by the receiving party independent of the disclosing party. Notwithstanding the foregoing, it shall not be a breach of these Terms to disclose Confidential Information required to be disclosed pursuant to administrative or court order, government or regulatory investigation or requirement, or arbitration or litigation arising out of these Terms; provided, however, that to the extent permissible, each party shall, in advance of any such disclosure promptly notify the other party in order to enable the other party reasonable time to seek a protective order with respect to the requested information or otherwise challenge or oppose the disclosure requirement.

20. **Publicity.** Customer agrees that LabArchives may identify Customer as a recipient of Products and use its logo in sales presentations, marketing materials, press releases and financial presentations provided that LabArchives uses Customer's logo in accordance with Customer's logo guidelines.
21. **Severability.** If any term, clause or provision of these Terms shall be judged invalid for any reason whatsoever, such invalidity shall not affect the validity or operation of any other term, clause or provision and such invalid term, clause or provision shall be deemed to have been deleted from these Terms.
22. **Construction.** Section headings are for convenience only and shall not be construed as part of these Terms, nor shall they define or limit any of the terms or provisions hereof.
23. **Force Majeure.** A party to these Terms will be excused from performance under these Terms for any period of time that the party is prevented from performing its obligations hereunder as a result of an act of God, criminal acts, distributed denial of service attacks, any acts of the common enemy, the elements, earthquakes, floods, fires, epidemics, riots, war, utility or communication failures, or other cause beyond the Party's reasonable control. Both parties shall use reasonable efforts to mitigate the effect of a force majeure event.
24. **Entire Agreement.** These Terms, when effective, supersedes all previous agreements, understandings or commitments whatsoever between the parties in relation to the subject matter of these Terms whether oral or written, and represents the entire Agreement between them. Customer acknowledges and agrees that in entering into these Terms it

does not rely on any statement, representation (whether innocent or negligent) assurance or warranty (whether or not in writing) of LabArchives or any other person (whether or not party to these Terms) other than as expressly set out in these Terms. Customer specifically agrees that it has not relied upon and its purchase of subscriptions is not contingent upon the future availability of any software, products, services, programs, modifications, enhancements or updates in entering into the payment obligations in these Terms.

25. **Survival.** All provisions of these Terms that require or that can reasonably be inferred by their terms to survive the termination or expiration of these Terms shall so survive, including but not limited to the following: Sections 5-14 and 16.
26. **Office of Foreign Assets Control (OFAC).** Customer represents and warrants that it is not and will not provide a Service to any entity incorporated in or resident in a country subject to economic or trade sanctions by the U.S. State Department and/or OFAC or are listed as a "Specially Designated National," a "Specially Designated Global Terrorist," a "Blocked Person," or similar designation under the OFAC sanctions regime. Any breach of this Section is a material breach of these Terms and LabArchives may immediately terminate these Terms.
27. **Waiver.** The delay or failure of a Party at any time to enforce a right or remedy available to it under these Terms with respect to any breach or failure will not be construed as a waiver with respect to that breach or failure or any other breach or failure.
28. **Assignment.** Except for assignment to a Party's affiliate (any entity which directly or indirectly controls, is controlled by, or is under common control with such Party), or in the case of a merger, acquisition or sale of all or substantially all assets not involving a direct competitor of the other Party, neither Party may assign or otherwise transfer any right or obligation set forth under these Terms without the other Party's prior written consent, not to be unreasonably withheld or delayed. Notwithstanding the foregoing, LabArchives may subcontract the provision of Service in whole or in part to a LabArchives affiliate. Any purported assignment or transfer in violation of this Section 27 is void.
29. **Relationship of the Parties.** Each Party is an independent contractor in the performance of these Terms, and is solely responsible for all of its employees and agents and its labor costs and expenses arising in connection with these Terms.
30. **No Third-Party Beneficiaries.** There are no third-party beneficiaries to these Terms.
31. **Order of Precedence.** The terms and conditions of these Terms control to the extent any terms and conditions of these Terms conflict with the terms and conditions of an Order Form or any purchase order, except where the Order Form specifically states the intent to supersede a specific portion of these Terms.
32. **Counterparts.** These Terms and any Order Form may be signed in any number of counterparts all of which together will constitute one and the same document. A signed

copy of these Terms or any Order Form transmitted via facsimile, email or other electronic means will constitute an originally signed Agreement or Order Form, as applicable, and, when together with all other required signed copies of this same Agreement or Order Form, as applicable, will constitute one and the same instrument.