

**SIMPLY GOOD FOOD, LLC, D/B/A NUTRISTUDENTS K-12™  
END USER LICENSE AGREEMENT (EULA)**

**IMPORTANT- PLEASE READ THE TERMS AND CONDITIONS OF THIS USER LICENSE AGREEMENT (“AGREEMENT”) CAREFULLY. BY CLICKING ON THE “I AGREE” BOX, YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND THE TERMS AND CONDITIONS OF THIS AGREEMENT, AND YOU AGREE TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS CONTAINED IN THIS AGREEMENT. IF YOU DO NOT AGREE, CLICK ON THE “CANCEL” BUTTON BELOW, AND YOU WILL NOT BE ABLE TO ACCESS THE SYSTEM OR RELATED HOSTED DATA.**

**This Agreement** constitutes a legal agreement between you, either an individual or a legal entity ("you" or "your"), and Simply Good Food, LLC, d/b/a NutriStudents K-12™, a Minnesota Limited Liability Company ("we," "us" or "our"). Its terms and conditions govern your use of our software, menus, recipes, graphics, training tools, online documentation, database, forms, reports, and all third-party software, hardware and systems made available to you (collectively the “System”) in order to access, view, train and edit online our System, and any Client data (“Client Data”) belonging to any Client with whom we have a Software License Agreement (“Client”) that is hosted and made available to you through the System.

**1. LICENSE GRANT.** Subject to the terms and conditions of this Agreement, and only upon your payment of the License Fee for the System, as set forth in the NutriStudents K-12™ License Agreement separately executed by the parties, and incorporated herein by reference, we hereby grant you a nonexclusive, non-transferable, terminable and limited license, without right of sublicense, transfer or assignment, to use the System only to access and download menus, recipes, and graphics, view, train and/or edit, if applicable, as permitted by your user ID and password, online and submit the forms or reports, portions of the System and Client Data for Client’s personal purposes only. Your license may be terminated at any time by us, as provided in the termination section below.

**2. RESTRICTIONS ON USE.** Other than for the express use as defined in this Agreement, you may not reproduce or in any way disseminate menus, recipes, graphics, training modules, the System or any related Client Data, in whole or in part, unless we give you express written permission. You also may not modify, create derivative works of or distribute menus, recipes, graphics, training modules, the System or Client Data, except as expressly permitted herein. You may not attempt to reverse engineer, decompile, disassemble, or otherwise access the source code for, the System or any component thereof, except and to the extent permitted by law. You may not use the System, including, but not limited to, the menus, recipes, graphics, training tools, or other related information, in whole or in part, for the benefit (financial or otherwise) of any other party, both during or after the termination of the license grant above-described. You may not permit any third party to access the System or Client Data. You may not transmit the System or Client Data to a third party, in whole or in part, electronically or by any other means. You may not

access the System via any means other than over the Internet using our website and supporting technology.

- 3. OWNERSHIP.** You acknowledge and agree that we and our licensors retain ownership of all right, title and interest (including, all patent, copyright, database rights, menus, recipes, graphics, training modules, internet domain names, get-up, logos, trademark, trade secrets and other intellectual property rights) in and to, the System and any related software, training tools or related materials, and any authorized copies thereof, and that you will have no rights in and to the System or Client Data, except those expressly granted under this Agreement.
- 4. PASSWORDS.** You will create and be issued a password and identification number (“ID”). The first time you sign on to the System you will be asked for your acceptance of this Agreement via a sign up screen. You may use the ID issued to you to access and use the System and Client Data only as expressly permitted under this Agreement.
- 5. YOUR WARRANTY.** You represent and warrant that: (a) all information supplied by you during the registration process is true, accurate, current and complete; (b) you will not register under the name of, or attempt to enter or use the System or Client Data under an ID other than your own ID; and (c) you will comply with the terms and conditions of this Agreement. You will be responsible for complying with and for preserving the confidentiality of your ID and you will be liable for any use of your ID to access or use the System or Client Data including recipes, menus, graphics and training materials, whether or not, you know of such access or use. You agree to immediately notify us of any known or suspected unauthorized use of your password.
- 6. DISCLAIMER OF WARRANTY.** Except as expressly contained in this agreement, the system and access to the client data are licensed "as is" without any express or implied warranties whatsoever, including without limitation, the implied warranties of merchantability, fitness for a particular purpose, course of dealing, course of performance, and usage of trade. We and our licensors hereby disclaim any duty or commitment to provide any fix or correction to any problem, bug, defect or deficiency in the system or client data. We and our licensors do not warrant that the system and client data will operate error free, or in an uninterrupted fashion, or that any defects or errors in the system will be corrected, or that the system is compatible with any particular software or browser. Some jurisdictions do not allow the waiver or exclusion of implied warranties so they may not apply to you.
- 7. CONFIDENTIALITY.** Any information or materials provided by us to you, including, without limitation, the menus, recipes, graphics, training modules, System and the Client Data, will be considered confidential and proprietary information (“Confidential Information”). You agree to protect the Confidential Information from unauthorized use or disclosure during the term of this Agreement and thereafter, and you agree not to disclose to any third party such Confidential Information except as expressly permitted hereunder. Information will not be considered Confidential Information if it (a) is or becomes publicly

known without your fault, breach of contract or negligence; or (b) is lawfully disclosed to you by a third party who is not subject to any duty of confidentiality.

- 8. INTERLOCUTORY/INJUNCTIVE RELIEF.** You agree that we may seek remedies before a court of any competent authority of any interlocutory or injunctive relief in relation to any breach of this Agreement or infringement by you of our rights, without showing or proving any actual damage, and will have the right to recover our legal and other professional fees and expenses, and other costs incurred in obtaining such equitable relief.
- 9. TAXES, FEES OR ASSESSMENTS.** Unless collected by us, you are responsible to pay and agree to hold us harmless against any and all taxes, fees, duties, charges or assessments against you, however designated or imposed with regard to the transactions contemplated by this agreement, including but not limited to state and local sales, use and excise taxes, but excluding any taxes based on the net income of Simply Good Food.
- 10. LIMITATION OF LIABILITY, DAMAGES AND CLAIMS EXCLUSION.** WE SHALL HAVE NO LIABILITY WITH RESPECT TO OUR OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL (INCLUDING, BUT NOT LIMITED TO, LOSS OF GOODWILL, WORK STOPPAGE, LOST OR CORRUPTED DATA, LOST PROFITS, LOST SAVINGS, LOST REBATES, LOST BUSINESS OR LOST OPPORTUNITY, FAILED USDA AUDITS), PUNITIVE OR EXEMPLARY DAMAGES OR ANY CLAIMS OR DEMANDS BROUGHT AGAINST LICENSEE, EVEN IF WE HAVE BEEN ADVISED OF SUCH CLAIMS OR DAMAGES. IN NO EVENT SHALL OUR LIABILITY FOR ANY REASON AND UPON ANY CAUSE OF ACTION WHATSOEVER, INCLUDING BUT NOT LIMITED TO CONTRACT, NEGLIGENCE, STRICT LIABILITY OR TORT, EXCEED THE LICENSE FEES PAID BY YOU TO US UNDER THIS AGREEMENT. WE SHALL HAVE NO RESPONSIBILITY FOR LOSS OF DATA, IT BEING UNDERSTOOD THAT YOU ARE RESPONSIBLE FOR REASONABLE BACKUP PRECAUTIONS. THIS LIMITATION OF LIABILITY PROVISION CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT, AND WE WOULD NOT LICENSE THE SYSTEM AND CLIENT DATA TO YOU WITHOUT SUCH LIMITATION.
- 11. MODIFICATION OR OTHER MISUSE OF SYSTEM.** You shall not modify the System (including software, menus, recipes, graphics, training tools, online documentation, database, forms, reports and all third-party software), nor translate, de-compile, nor create or attempt to create, by reverse engineering or otherwise, the source code from the object code supplied hereunder, or adapt the System in any way, or use the System to create a derivative work. In such event, this Agreement shall be immediately terminated and all warranties and other obligations of Simply Good Food shall be deemed revoked by us and waived by you.

**12. REPRESENTATIONS AND WARRANTIES.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, SIMPLY GOOD FOOD DISCLAIMS ANY AND ALL PROMISES, REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE SERVICES AND SYSTEM PROVIDED HEREUNDER, INCLUDING THEIR CONFORMITY TO ANY REPRESENTATION OR DESCRIPTION, THE EXISTENCE OF ANY LATENT OR PATENT DEFECTS, AND THEIR MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE.

**13. ORDER OF PRECEDENCE AND SUPERCEDEURE** It is expressly understood and agreed by the parties that (a) the terms and conditions of the NutriStudents K-12™ License Agreement are incorporated herein by reference, (b) this EULA will be deemed a part of the NutriStudents K-12™ License Agreement, and (c) in the event of any conflict between the provisions of this EULA and the NutriStudents K-12™ License Agreement, the provisions of the EULA will govern.

**14. TERMINATION.** This Agreement will automatically terminate, without notice, if and when you fail to comply with the terms hereof, including, but not limited to, non-payment of the License Fees payable by you under the NutriStudents K-12™ License Agreement, or any other separate License Agreement between the parties, incorporated herein by reference, and in any event when Client ceases to have the right to use the System. At the conclusion of the initial twelve (12) month License Term, you may terminate this Agreement at any time with written notice to us; provided, however, that such written notice of termination shall not obligate us to refund any portion or all of the license fee paid hereunder. Upon any termination of this Agreement, your license to the menus, recipes, graphics, training modules, and other System and Client Data will automatically terminate, your ID will be immediately disabled, and you must destroy any and all copies you have of the System, menus, recipes, training tools, and Client Data in whole or in part, in all forms and formats. This and the prior sentence and the provisions of the Sections entitled “Restrictions on Use,” “Ownership,” “Disclaimer of Warranty,” “Limitation of Liability, Damages and Claims Exclusion,” “Confidential Information,” “Interlocutory/Injunctive Relief,” and “General Provisions” hereof will survive the expiration or any termination of this Agreement.

**15. GENERAL PROVISIONS.** This Agreement constitutes the entire and exclusive agreement between you and us with respect to the subject hereof and supersedes and replaces any and all prior and contemporaneous agreements, understandings, promises and representations, oral or written, made by either party to the other concerning the subject matter hereof. This Agreement may only be amended or modified in a writing duly executed by representatives of both parties. This Agreement may not be assigned or transferred by you except with our prior written consent. We may assign this Agreement at our discretion. Any prohibited assignment is null and void. This Agreement is governed by the laws of the State of Minnesota, excluding its choice of law rules. Any claim arising from or related to this Agreement must be brought in the state or federal courts located in St. Paul, Minnesota, USA. The parties expressly disclaim the application of the United Nations Convention on the International Sale of Goods to this Agreement. If any provision of this Agreement is found to be unenforceable or invalid by a court of competent

jurisdiction, such provision will be interpreted so as to best accomplish the objectives of such provision and the remainder of this Agreement will remain valid. Any indulgence or waiver of any breach of any term or any condition of this Agreement will not be construed as a waiver of any subsequent breach of any term or condition of this Agreement.

**I AGREE** \_\_\_\_\_

**CANCEL** \_\_\_\_\_