

## **NUTRICOUNT TERMS AND CONDITIONS TERMS OF SERVICE AGREEMENT**

Last Updated: September 1, 2016

PLEASE READ THESE TERMS OF SERVICE CAREFULLY AS THEY CONTAIN IMPORTANT INFORMATION REGARDING YOUR LEGAL RIGHTS, REMEDIES AND OBLIGATIONS. THESE INCLUDE VARIOUS LIMITATIONS AND EXCLUSIONS, A CLAUSE THAT GOVERNS THE JURISDICTION AND VENUE OF DISPUTES, AND OBLIGATIONS TO COMPLY WITH APPLICABLE LAWS AND REGULATIONS. BY ACCESSING OR USING THE SITE, APPLICATION OR SERVICES OR BY DOWNLOADING OR POSTING ANY CONTENT FROM OR ON THE SITE, VIA THE APPLICATION OR THROUGH THE SERVICES, YOU ARE INDICATING THAT YOU HAVE READ THESE TERMS, AND THAT YOU UNDERSTAND AND AGREE TO BE BOUND BY THESE TERMS, WHETHER OR NOT YOU HAVE REGISTERED WITH THE SITE AND APPLICATION. IF YOU DO NOT AGREE TO THESE TERMS, THEN YOU MAY NOT ACCESS OR USE THE SITE, APPLICATION, OR SERVICES.

IF YOU ACCEPT OR AGREE TO THESE TERMS ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO BIND THAT COMPANY OR OTHER LEGAL ENTITY TO THESE TERMS AND, IN SUCH EVENT, "YOU" AND "YOUR" WILL REFER AND APPLY TO THAT COMPANY OR OTHER LEGAL ENTITY.

NutriCount., (hereafter "NUTRICOUNT", "we", "us", or "our") provides users ("Clients") a nutritional analysis and recommendations based on photos of their grocery receipts (collectively, the "Services"). The Services are accessible at <http://nutricount.io> and any other websites through which NUTRICOUNT makes the Services available (collectively, the "Site") and as an application for mobile devices (the "Application"). Please note that by using the Site and Application, you agree to comply with and be legally bound by the terms and conditions of these Terms of Service ("Terms"), whether or not you become a registered user of the Services. These Terms govern your access to and use of the Site, Application and Services and all Collective Content (defined below), and constitute a binding legal agreement. NUTRICOUNT HAS NO CONTROL OVER THE CONDUCT OF, CLIENTS, GUESTS AND OTHER USERS OF THE SITE, APPLICATION AND SERVICES, AND DISCLAIMS ALL LIABILITY IN THIS REGARD.

Certain areas of the Site and Application (and your access to or use of certain aspects of the Services or Collective Content) may have different terms and conditions posted or may require you to agree with and accept additional terms and conditions. If there is a conflict between these Terms and terms and conditions posted for a specific area of the Site, Application, Services, or Collective Content, the latter terms and conditions will take precedence with respect to your use of or access to that area of the Site, Application, Services, or Collective Content.

### **2. CERTAIN DISCLAIMERS**

BY USING THE SERVICE, YOU ACKNOWLEDGE THAT ALL INFORMATION PROVIDED BY THE SERVICE (INCLUDING THE WEBSITE, EMAILS, AND MOBILE APP), INCLUDING NUTRIENT CONTENT INFORMATION, NUTRITION RECOMMENDATIONS, INGREDIENT LISTS, POINT SYSTEM, NUTRITION REPORTS, AND INFORMATION RELATED TO HEALTH IS FOR INFORMATIONAL PURPOSES ONLY AND NOT PROVIDED AS MEDICAL ADVICE.

NUTRICOUNT DOES NOT ASSUME ANY LIABILITY FOR INACCURACIES OR MISSTATEMENTS ABOUT THE PRODUCTS, WHETHER BASED ON THIRD PARTY INFORMATION OR ON RATINGS AND POINT SYSTEMS GENERATED BY THE MOBILE APP AND/OR SERVICES. YOU SHOULD CAREFULLY READ ALL INFORMATION PROVIDED BY THE MANUFACTURERS OF THE PRODUCTS OR IN THE ACTUAL PRODUCT PACKAGING AND LABELS, INCLUDING FOR FOOD ALLERGEN AND CONTACT INFORMATION, NUTRIENT CONTENT, QUALIFIED HEALTH CLAIMS, AND DISCLAIMERS REGARDING FOOD SUPPLEMENT STRUCTURE AND FUNCTION CLAIMS, BEFORE USING OR CONSUMING A PRODUCT. FOR ADDITIONAL INFORMATION ABOUT A PRODUCT, PLEASE CONTACT THE MANUFACTURER.

INFORMATION PROVIDED BY THE SERVICE IS NOT INTENDED AS A SUBSTITUTE FOR THE ADVICE PROVIDED BY A HEALTHCARE PROFESSIONAL. YOU SHOULD NOT USE INFORMATION PROVIDED BY THE SERVICES FOR THE DIAGNOSIS OR TREATMENT OF A HEALTH PROBLEM OR DISEASE. YOU SHOULD ALWAYS CONSULT YOUR HEALTHCARE PROVIDER BEFORE MAKING ANY DIETARY OR NUTRITIONAL DECISION.

IN ADDITION TO ALL OTHER LIMITATIONS AND DISCLAIMERS IN THIS AGREEMENT, NUTRICOUNT DISCLAIMS ANY LIABILITY OR LOSS IN CONNECTION WITH THE CONTENT PROVIDED ON THE SERVICES.

IF YOU SUFFER FROM ANY ALLERGIES OR DIETARY RESTRICTONS,

BE SURE TO WORK WITH YOUR DOCTOR OR REGISTERED DIETITIAN TO DETERMINE WHAT FOOD YOU CAN CONSUME, IN CONNECTION OR NOT WITH NUTRICOUNT'S RECOMMENDATION ENGINE AND POINT SYSTEM.

#### KEY TERMS

- NUTRICOUNT Content means all Content that NUTRICOUNT makes available through the Site, Application, Emails, or Services, including any Content licensed from a third party, but excluding Member Content.
- Collective Content means Member Content and NUTRICOUNT Content.
- Content means any and all text, graphics, images, music, software (excluding the Application), audio, video, information or other materials.
- Member means a person who completes NUTRICOUNT's account registration process, including, but not limited to, Clients, as described under "Account Registration" below.
- Member Content means all Content that a Member posts, uploads, publishes, submits or transmits to be made available through the Site, Application or Services.
- Tax or Taxes mean(s) any sales taxes, value added taxes (VAT), goods and services taxes (GST) and other similar municipal, state, and federal indirect or other withholding and personal or corporate income taxes.

#### MODIFICATION

NUTRICOUNT reserves the right, at its sole discretion, to modify the Site, Application or Services or to modify these Terms, including the Service Fees, at any time and without prior notice. If we modify these Terms, we will post the modification on the Site or Application or provide you with notice of the modification via e-mail to the e-mail address listed in your NUTRICOUNT Account. We will also update the "Last Updated Date" at the top of these Terms. By continuing to access or use the Site, Application or Services after we have posted a modification on the Site or via the Application or have provided you with notice of a modification, you agree to comply with and be legally bound by the modified Terms. If the modified Terms are not acceptable to you, please cease using the Site, Application and Services.

## ELIGIBILITY

The Site, Application and Services are intended solely for persons who are 18 or older. Any access to or use of the Site, Application or Services by anyone under 18 is expressly prohibited. By accessing or using the Site, Application or Services you represent and warrant that you are 18 or older.

## How the Site, Application and Services Work

NUTRICOUNT Services are listed on the Site and Application.

As stated above, NUTRICOUNT provides nutrition analysis and recommendations of grocery receipts. The information presented to "Clients" is not intended to take the place of professional medical advice. The information contained herein is neither intended to dictate what constitutes reasonable, appropriate or best care for any given health issue, nor is it intended to be used as a substitute for the independent judgment of a physician or dietitian for any given health issue. NUTRICOUNT is not an owner or operator of an agency. .

## ACCOUNT REGISTRATION

Anyone may view certain information about our Services as an unregistered visitor; however, if you wish to become a user of our services, you must first create a "NUTRICOUNT Account" and become a Member.

You can also register to join by linking your NUTRICOUNT Account with an existing third-party account, such as Facebook or another social networking site. You may accomplish this by either: (i) providing your third-party account login information to NUTRICOUNT through the Site or Application; or (ii) allowing NUTRICOUNT to access your third-party account, as permitted under the applicable terms and conditions that govern your use of each account. You represent that you are entitled to disclose your third-party account login information to NUTRICOUNT and/or grant NUTRICOUNT access to your third-party account (including, but not limited to, for use for the purposes described herein), without breach by you of any of the terms and conditions that govern your use of the applicable account and without obligating NUTRICOUNT to pay any fees or making NUTRICOUNT subject to any usage limitations imposed by such third-party service providers. By granting NUTRICOUNT access to any third-party accounts, you understand that NUTRICOUNT will access, make available and store (if applicable) any Content that you have provided to and stored in your third-party account ("SNS Content") so that it is available on and through the Site, Services and Application via your NUTRICOUNT Account and

NUTRICOUNT Account profile page. Unless otherwise specified in these Terms, all SNS Content, if any, will be considered to be Member Content for all purposes of these Terms. Depending on the third-party accounts you choose and subject to the privacy settings that you have set in such accounts, personally identifiable information that you post to your third-party accounts will be available on and through your NUTRICOUNT Account on the Site or Application. Please note that if a third-party account or associated service becomes unavailable or NUTRICOUNT's access to such account is terminated by the third-party service provider, then SNS Content will no longer be available on and through the Site or Application. You have the ability to disable the connection between your NUTRICOUNT Account and your third-party accounts at any time by accessing the "Settings" section of the Site and Application. PLEASE NOTE THAT YOUR RELATIONSHIP WITH THE THIRD-PARTY SERVICE PROVIDERS ASSOCIATED WITH YOUR THIRD-PARTY ACCOUNTS IS GOVERNED SOLELY BY YOUR AGREEMENT(S) WITH SUCH THIRD-PARTY SERVICE PROVIDERS. NUTRICOUNT makes no effort to review any SNS Content for any purpose, including but not limited to for accuracy, legality or non-infringement and NUTRICOUNT is not responsible for any SNS Content.

Your NUTRICOUNT Account and your NUTRICOUNT Account profile page will be created for your use of the Site and Application based upon the personal information you provide to us or that we obtain via a third-party site as described above. You may not have more than one (1) active NUTRICOUNT Account. You agree to provide accurate, current and complete information during the registration process and to update such information to keep it accurate, current and complete. NUTRICOUNT reserves the right to suspend or terminate your NUTRICOUNT Account and your access to the Site, Application and Services if you violate these Terms in any manner, or if any information provided during the registration process or thereafter proves to be inaccurate, fraudulent, not current or incomplete. You are responsible for safeguarding your password. You agree that you will not disclose your password to any third party and that you will take sole responsibility for any activities or actions under your NUTRICOUNT Account, whether or not you have authorized such activities or actions. You will immediately notify NUTRICOUNT of any unauthorized use of your NUTRICOUNT Account.

#### NO ENDORSEMENT OR GUARANTEE

NUTRICOUNT does not endorse, guarantee, or vouch for the quality or credentials of any Member or Service. NUTRICOUNT does not perform background checks or otherwise regulate, police, or assume liability for its Members. As mentioned above, NUTRICOUNT is merely a connecting platform.

In addition, although these Terms require Members to provide accurate information, we assume no responsibility to confirm any Member's purported identity. You are responsible for determining the identity and suitability of others whom you contact via the Site, Application and Services. NUTRICOUNT is not responsible for any damage or harm resulting from your interactions with other Members. We encourage you to communicate directly with other Members on the Site and Application regarding any bookings or made by you or Services provided by you.

#### FINANCIAL TERMS

Gift Cards

NUTRICOUNT may provide promotional gift cards to users. NUTRICOUNT reserves the right to eliminate these promotional gift cards without previous notice.

#### Comission Paid By Companies to NUTRICOUNT

NUTRICOUNT is entitled to a commission paid by the company or entity, whose employee is actively engaging with our product. "Engaging with our product" is defined by an employee sending to NUTRICOUNT at least 1 a month their grocery receipt.

#### Third Party Terms and Conditions

NUTRICOUNT is not a party to or responsible for any third party agreements.

#### Taxes

All Members are solely responsible for determining the applicable tax reporting requirements in connection with the Services, and fulfilling all tax obligations. NUTRICOUNT cannot and does not offer tax-related advice to any Member, nor does NUTRICOUNT pay or withhold any taxes from any fees collected.

#### USER CONDUCT

All visitors, users, and Members of NUTRICOUNT agree to comply with any and all laws, rules and regulations that may apply to the use of the Site, Application, Services and Content. No visitor, user, or Member may:

- use manual or automated software, devices, scripts robots, other means or processes to access, "scrape," "crawl" or "spider" any web pages or other services contained in the Site, Application, Services or Content;
- use the Site, Application or Services for any commercial or other purposes that are not expressly permitted by these Terms;
- copy, store or otherwise access any information contained on the Site, Application, Services or Content for purposes not expressly permitted by these Terms;
- infringe the rights of any person or entity, including but not limited to, their intellectual property, privacy, publicity or contractual rights;
- interfere with or damage our Site, Application or Services, including, without limitation, through the use of viruses, cancel bots, Trojan horses, harmful code, flood pings, denial-of-service attacks, packet or IP spoofing, forged routing or electronic mail address information or similar methods or technology;
- use our Site, Application or Services to transmit, distribute, post or submit any information concerning any other person or entity, including without limitation, photographs of others without their permission, personal contact information or credit, debit, calling card or account numbers;

- use our Site, Application or Services in connection with the distribution of unsolicited commercial e-mail ("spam");
- "stalk" or otherwise harass in any way any other user of our Site, Application, or Services or collect or store any personally identifiable information about any other user other than for purposes of transacting as an NUTRICOUNT Client;
- register for more than one NUTRICOUNT Account or register for an NUTRICOUNT Account on behalf of an individual other than yourself;
- impersonate any person or entity, or falsify or otherwise misrepresent yourself or your affiliation with any person or entity;
- use automated scripts to collect information or otherwise interact with the Site, Application or Services;
- post, upload, publish, submit or transmit any Content that:
  - o infringes, misappropriates or violates a third party's patent, copyright, trademark, trade secret, moral rights or other intellectual property rights, or rights of publicity or privacy;
  - o violates, or encourages any conduct that would violate, any applicable law or regulation or would give rise to civil liability;
  - o is fraudulent, false, misleading or deceptive;
  - o is defamatory, obscene, pornographic, vulgar or offensive;
  - o promotes discrimination, bigotry, racism, hatred, harassment or harm against any individual or group;
  - o is violent or threatening or promotes violence or actions that are threatening to any other person; or
  - o promotes illegal or harmful activities or substances.
- systematically retrieve data or other content from our Site, Application or Services to create or compile, directly or indirectly, in single or multiple downloads, a collection, compilation, database, directory or the like, whether by manual methods, through the use of bots, crawlers, or spiders, or otherwise;
- use, display, mirror or frame the Site or Application, or any individual element within the Site, Services, or Application, NUTRICOUNT's name, any NUTRICOUNT trademark, logo or other proprietary information, or the layout and design of any page or form contained on a page, without NUTRICOUNT's express written consent;
- access, tamper with, or use non-public areas of the Site or Application, NUTRICOUNT's computer systems, or the technical delivery systems of NUTRICOUNT's providers;

- attempt to probe, scan, or test the vulnerability of any NUTRICOUNT system or network or breach any security or authentication measures;
- avoid, bypass, remove, deactivate, impair, descramble, or otherwise circumvent any technological measure implemented by NUTRICOUNT or any of NUTRICOUNT's providers or any other third party (including another user) to protect the Site, Services, Application or Collective Content;
- forge any TCP/IP packet header or any part of the header information in any e-mail or newsgroup posting, or in any way use the Site, Services, Application or Collective Content to send altered, deceptive or false source-identifying information;
- attempt to decipher, decompile, disassemble or reverse engineer any of the software used to provide the Site, Services, Application or Collective Content; or
- advocate, encourage, or assist any third party in doing any of the foregoing.

NUTRICOUNT will have the right to investigate and prosecute violations of any of the above to the fullest extent of the law. NUTRICOUNT may involve and cooperate with law enforcement authorities in prosecuting users who violate these Terms. You acknowledge that NUTRICOUNT has no obligation to monitor your access to or use of the Site, Application, Services or Collective Content or to review or edit any Member Content, but has the right to do so for the purpose of operating the Site, Application and Services, to ensure your compliance with these Terms, or to comply with applicable law or the order or requirement of a court, administrative agency or other governmental body. NUTRICOUNT reserves the right, at any time and without prior notice, to remove or disable access to any Collective Content that NUTRICOUNT, at its sole discretion, considers to be objectionable for any reason, in violation of these Terms or otherwise harmful to the Site, Application or Services.

## PRIVACY

See NUTRICOUNT's Privacy Policy at [<http://nutricount.io/privacy>] and for information and notices concerning NUTRICOUNT's collection and use of your personal information.

## OWNERSHIP

The Site, Application, Services, and Collective Content are protected by copyright, trademark, and other laws of the United States and foreign countries. You acknowledge and agree that the Site, Application, Services and Collective Content, including all associated intellectual property rights is the exclusive property of NUTRICOUNT and its licensors. You will not remove, alter or obscure any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying the Site, Application, Services, or Collective Content.

## APPLICATION LICENSE

Subject to your compliance with these Terms, NUTRICOUNT grants you a limited non-exclusive, non-transferable license to download and install a copy of the Application on a single mobile device or computer that you own or control and run such copy of the Application solely for your

own personal use. NUTRICOUNT reserves all rights in the Application not expressly granted to you by these Terms.

## NUTRICOUNT CONTENT AND MEMBER CONTENT LICENSE

Subject to your compliance with the terms and conditions of these Terms, NUTRICOUNT grants you a limited, non-exclusive, non-transferable license, to (i) access and view any NUTRICOUNT Content solely for your personal purposes and (ii) access and view any Member Content to which you are permitted access, solely for your personal purposes. You have no right to sublicense the license rights granted in this section.

You will not use, copy, adapt, modify, prepare derivative works based upon, distribute, license, sell, transfer, publicly display, publicly perform, transmit, broadcast or otherwise exploit the Site, Application, Services, or Collective Content, except as expressly permitted in these Terms. No licenses or rights are granted to you by implication or otherwise under any intellectual property rights owned or controlled by NUTRICOUNT or its licensors, except for the licenses and rights expressly granted in these Terms.

## MEMBER CONTENT

We may, in our sole discretion, permit Members to post, upload, publish, submit or transmit Member Content. By making available any Member Content on or through the Site, Application and Services, you hereby grant to NUTRICOUNT a non-exclusive, transferable, sub-licensable, royalty-free, worldwide license, with the right to sublicense, to use, view, copy, adapt, modify, distribute, license, sell, transfer, publicly display, publicly perform, transmit, stream, broadcast, access, view, and otherwise exploit such Member Content on, through, or by means of the Site, Application and Services. This license ends when you delete your Member Content or your NUTRICOUNT Account unless your content has been shared with others, and they have not deleted it. NUTRICOUNT does not claim any ownership rights in any such Member Content and nothing in these Terms will be deemed to restrict any rights that you may have to use and exploit any such Member Content.

You acknowledge and agree that you are solely responsible for all Member Content that you make available through the Site, Application and Services. Accordingly, you represent and warrant that: (i) you either are the sole and exclusive owner of all Member Content that you make available through the Site, Application and Services or you have all rights, licenses, consents and releases that are necessary to grant to NUTRICOUNT the rights in such Member Content, as contemplated under these Terms; and (ii) neither the Member Content nor your posting, uploading, publication, submission or transmittal of the Member Content or NUTRICOUNT's use of the Member Content (or any portion thereof) on, through or by means of the Site, Application and the Services will infringe, misappropriate or violate a third party's patent, copyright, trademark, trade secret, moral rights or other proprietary or intellectual property rights, or rights of publicity or privacy, or result in the violation of any applicable law or regulation.

## LINKS

The Site, Application and Services may contain links to third-party websites or resources. You acknowledge and agree that NUTRICOUNT is not responsible or liable for: (i) the availability or



accuracy of such websites or resources; or (ii) the content, products, or services on or available from such websites or resources. Links to such websites or resources do not imply any endorsement by NUTRICOUNT of such websites or resources or the content, products, or services available from such websites or resources. You acknowledge sole responsibility for and assume all risk arising from your use of any such websites or resources or the Content, products or services on or available from such websites or resources.

## OUTSIDE VENDORS

NUTRICOUNT may, at its sole discretion, contract with outside vendors for provision of any part of the Site, Application, or Services, including, but not limited to, processing of payments and hosting of the Site. If you are directed to a part of the Site, Application, or Service provided by an outside vendor, you may be subject to terms and conditions governing use of that outside vendor's service and that outside vendor's personal information collection practices. Please review such terms and conditions and privacy policy before using the services provided by any outside vendor.

## PROPRIETARY RIGHTS NOTICES

All trademarks, service marks, logos, trade names and any other proprietary designations of NUTRICOUNT used herein are trademarks or registered trademarks of NUTRICOUNT. Any other trademarks, service marks, logos, trade names and any other proprietary designations are the trademarks or registered trademarks of their respective parties.

## FEEDBACK

We welcome and encourage you to provide feedback, comments and suggestions for improvements to the Site, Application and Services ("Feedback"). You may submit Feedback by e-mailing us at [info@nutricount.io You acknowledge and agree that all Feedback will be the sole and exclusive property of NUTRICOUNT and you hereby irrevocably assign to NUTRICOUNT all of your right, title, and interest to all Feedback, including without limitation all worldwide patent, copyright, trade secret, moral and other proprietary or intellectual property rights therein. At NUTRICOUNT's request and expense, you will execute documents and take such further acts as NUTRICOUNT may reasonably request to assist NUTRICOUNT to acquire, perfect, and maintain its intellectual property rights and other legal protections for the Feedback.

## COPYRIGHT POLICY

NUTRICOUNT respects copyright law and expects its users to do the same. It is NUTRICOUNT's policy to terminate the NUTRICOUNT Accounts of Members or other account holders who repeatedly infringe or are believed to be repeatedly infringing the rights of copyright holders.

## TERMINATION AND NUTRICOUNT ACCOUNT CANCELLATION

At any time, in our discretion, without cause, prior notice or liability to you, we may: (a) terminate these Terms or your access to our Site, Application and Services, and (b) deactivate or cancel your NUTRICOUNT Account. Upon termination, we will pay you any amounts we reasonably determine we owe you, in our discretion. In the event NUTRICOUNT terminates these Terms, or

your access to our Site, Application and Services or deactivates or cancels your NUTRICOUNT Account, you will remain liable for all amounts due hereunder. You may cancel your NUTRICOUNT Account at any time by sending an e-mail to [info@nutricount.io]. Please note that if your NUTRICOUNT Account is cancelled, we do not have an obligation to delete or return to you any Content you have posted to the Site, Application and Services, including, but not limited to, any reviews or Feedback.

## DISCLAIMERS

IF YOU CHOOSE TO USE THE SITE, APPLICATION, OR SERVICES, YOU DO SO AT YOUR SOLE RISK. YOU ACKNOWLEDGE AND AGREE THAT NUTRICOUNT DOES NOT PROVIDE MEDICAL ADVICE. NONE OF THE NUTRITIONAL ADVICE, REPORTS, AND INFORMATION IS NOT INTENDED TO PROVIDE SPECIFIC PHYSICAL OR MENTAL HEALTH ADVICE.

THE SITE, APPLICATION, SERVICES, AND COLLECTIVE CONTENT ARE PROVIDED "AS IS", WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED. WITHOUT LIMITING THE FOREGOING, NUTRICOUNT EXPLICITLY DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT OR NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. NUTRICOUNT MAKES NO WARRANTY THAT THE SITE, APPLICATION, SERVICES, OR COLLECTIVE CONTENT WILL MEET YOUR REQUIREMENTS OR BE AVAILABLE ON AN UNINTERRUPTED, SECURE, OR ERROR-FREE BASIS. NUTRICOUNT MAKES NO WARRANTY REGARDING THE QUALITY OF THE SERVICES OR COLLECTIVE CONTENT OR THE ACCURACY, TIMELINESS, TRUTHFULNESS, COMPLETENESS OR RELIABILITY OF ANY COLLECTIVE CONTENT OBTAINED THROUGH THE SITE, APPLICATION, OR SERVICES.

YOU ARE SOLELY RESPONSIBLE FOR ALL OF YOUR COMMUNICATIONS AND INTERACTIONS WITH OTHER USERS OF THE SITE, APPLICATION OR SERVICES AND WITH OTHER PERSONS WITH WHOM YOU COMMUNICATE OR INTERACT AS A RESULT OF YOUR USE OF THE SITE, APPLICATION OR SERVICES. YOU UNDERSTAND THAT NUTRICOUNT DOES NOT MAKE ANY ATTEMPT TO VERIFY THE STATEMENTS OF NUTRITION CONTENT OF THE SITE, APPLICATION OR SERVICES. NUTRICOUNT MAKES NO REPRESENTATIONS OR WARRANTIES AS TO THE CONDUCT OF USERS OF THE SITE, APPLICATION OR SERVICES OR THEIR COMPATIBILITY WITH ANY CURRENT OR FUTURE USERS OF THE SITE, APPLICATION OR SERVICES.

## LIMITATION OF LIABILITY

YOU ACKNOWLEDGE AND AGREE THAT, TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE ENTIRE RISK ARISING OUT OF YOUR ACCESS TO AND USE OF THE SITE, APPLICATION, SERVICES AND COLLECTIVE CONTENT, YOUR NUTRITION SUMMARY OR REPORTS, AND ANY CONTACT YOU HAVE WITH OTHER USERS OF NUTRICOUNT WHETHER IN PERSON OR ONLINE REMAINS WITH YOU. NEITHER NUTRICOUNT NOR ANY OTHER PARTY INVOLVED IN CREATING, PRODUCING, OR DELIVERING THE SITE, APPLICATION, SERVICES, COLLECTIVE CONTENT OR WILL BE LIABLE FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, LOSS OF DATA OR LOSS OF GOODWILL, SERVICE INTERRUPTION, COMPUTER DAMAGE OR SYSTEM FAILURE OR THE COST OF SUBSTITUTE PRODUCTS

OR SERVICES, OR FOR ANY DAMAGES FOR PERSONAL OR BODILY INJURY OR EMOTIONAL DISTRESS ARISING OUT OF OR IN CONNECTION WITH THESE TERMS, FROM THE USE OF OR INABILITY TO USE THE SITE, APPLICATION, SERVICES OR COLLECTIVE CONTENT, FROM ANY COMMUNICATIONS, INTERACTIONS OR MEETINGS WITH OTHER USERS OF THE SITE, APPLICATION, OR SERVICES OR OTHER PERSONS WITH WHOM YOU COMMUNICATE OR INTERACT AS A RESULT OF YOUR USE OF THE SITE, APPLICATION, SERVICES, , WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT NUTRICOUNT HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, EVEN IF A LIMITED REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

IN NO EVENT WILL NUTRICOUNT'S AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THESE TERMS AND YOUR USE OF THE SITE, APPLICATION AND SERVICES INCLUDING, BUT NOT LIMITED TO, NUTRITION REPORTS AND RECOMMENDATIONS, OR FROM THE USE OF OR INABILITY TO USE THE SITE, APPLICATION, SERVICES, OR COLLECTIVE CONTENT, AND IN CONNECTION WITH ANY SERVICES OR INTERACTIONS WITH ANY OTHER MEMBERS, EXCEED THE AMOUNTS THE LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN NUTRICOUNT AND YOU. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

#### INDEMNIFICATION

You agree to release, defend, indemnify, and hold NUTRICOUNT and its affiliates and subsidiaries, and their officers, directors, employees and agents, harmless from and against any claims, liabilities, damages, losses, and expenses, including, without limitation, reasonable legal and accounting fees, arising out of or in any way connected with (a) your access to or use of the Site, Application, Services, or Collective Content or your violation of these Terms; (b) your Member Content; and (c) your (i) interaction with any Member, (ii) nutrition reports and recommendations, or (iii) nutrition information display, including, but not limited to any injuries, losses, or damages (compensatory, direct, incidental, consequential or otherwise) of any kind arising in connection with or as a result of a use of a Service.

#### EXPORT CONTROL AND RESTRICTED COUNTRIES

You may not use, export, re-export, import, or transfer the Application except as authorized by United States law, the laws of the jurisdiction in which you obtained the Application, and any other applicable laws. By using the Site, Application and Services, you represent and warrant that (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties. You also will not use the Site, Application and Services for any purpose prohibited by U.S. law.

#### REPORTING MISCONDUCT

If as a Member, you interact with another Member in connection with the Services, and you feel that the other Member has acted inappropriately, including but not limited to, anyone who (i)

engages in offensive, violent or sexually inappropriate behavior, (ii) you suspect of stealing from you, or (iii) engages in any other disturbing conduct, you should immediately report such person to the appropriate authorities and then to NUTRICOUNT by contacting us with your police station and report number at [info@nutricount.io](mailto:info@nutricount.io)]; provided that your report will not obligate us to take any action beyond that required by law (if any) or cause us to incur any liability to you.

## ENTIRE AGREEMENT

These Terms constitute the entire and exclusive agreement between NUTRICOUNT and you, subject to modification by any subsequent written agreements between NUTRICOUNT and you. These Terms supersede and replace any and all prior oral or written understandings or agreements between NUTRICOUNT and you.

## ASSIGNMENT

You may not assign or transfer these Terms, by operation of law or otherwise, without NUTRICOUNT's prior written consent. NUTRICOUNT may assign or transfer these Terms, at its sole discretion, without restriction. Subject to the foregoing, these Terms will bind and inure to the benefit of the parties, their successors and permitted assigns.

## NOTICES

Any notices or other communications permitted or required hereunder, including those regarding modifications to these Terms, will be in writing and given by NUTRICOUNT (i) via e-mail (in each case to the address that you provide) or (ii) by posting to the Site or via the Application. For notices made by e-mail, the date of receipt will be deemed the date on which such notice is transmitted.

## CONTROLLING LAW AND JURISDICTION

These Terms will be interpreted in accordance with the laws of the Commonwealth of Massachusetts and the United States of America, without regard to its conflict-of-law provisions. You and we agree to submit to the personal jurisdiction of a state court located in Suffolk County, Massachusetts or a United States District Court, District of Massachusetts, for any actions for which the parties retain the right to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation or violation of a party's copyrights, trademarks, trade secrets, patents, or other intellectual property rights, as set forth in the Dispute Resolution provision below.

## DISPUTE RESOLUTION

Arbitration Rules and Governing Law. The arbitration will be administered by the American Arbitration Association ("AAA") in accordance with the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (the "AAA Rules") then in effect, except as modified by this "Dispute Resolution" section. (The AAA Rules are available at [www.adr.org/arb\\_med](http://www.adr.org/arb_med) or by calling the AAA at 1-800-778-7879.) The Federal Arbitration Act will govern the interpretation and enforcement of this section.

Arbitration Process. A party who desires to initiate arbitration must provide the other party with a written Demand for Arbitration as specified in the AAA Rules. (The AAA provides a form Demand for Arbitration at [www.adr.org/aaa/ShowPDF?doc=ADRSTG\\_004175](http://www.adr.org/aaa/ShowPDF?doc=ADRSTG_004175) and a separate form for California residents at [adr.org/aaa/ShowPDF?doc=ADRSTG\\_004314](http://adr.org/aaa/ShowPDF?doc=ADRSTG_004314).) The arbitrator will be either a retired judge or an attorney licensed to practice law in the state of California and will be selected by the parties from the AAA's roster of consumer dispute arbitrators. If the parties are unable to agree upon an arbitrator within seven (7) days of delivery of the Demand for Arbitration, then the AAA will appoint the arbitrator in accordance with the AAA Rules.

Arbitration Location and Procedure. Unless you and NUTRICOUNT otherwise agree, the arbitration will be conducted in the county where you reside. If your claim does not exceed \$10,000, then the arbitration will be conducted solely on the basis of documents you and NUTRICOUNT submit to the arbitrator, unless you request a hearing or the arbitrator determines that a hearing is necessary. If your claim exceeds \$10,000, your right to a hearing will be determined by the AAA Rules. Subject to the AAA Rules, the arbitrator will have the discretion to direct a reasonable exchange of information by the parties, consistent with the expedited nature of the arbitration.

Arbitrator's Decision. The arbitrator will render an award within the time frame specified in the AAA Rules. The arbitrator's decision will include the essential findings and conclusions upon which the arbitrator based the award. Judgment on the arbitration award may be entered in any court having jurisdiction thereof. The arbitrator's award damages must be consistent with the terms of the "Limitation of Liability" section above as to the types and the amounts of damages for which a party may be held liable. The arbitrator may award declaratory or injunctive relief only in favor of the claimant and only to the extent necessary to provide relief warranted by the claimant's individual claim. If you prevail in arbitration you will be entitled to an award of attorneys' fees and expenses, to the extent provided under applicable law. NUTRICOUNT will not seek, and hereby waives all rights it may have under applicable law to recover, attorneys' fees and expenses if it prevails in arbitration.

Fees. Your responsibility to pay any AAA filing, administrative and arbitrator fees will be solely as set forth in the AAA Rules. However, if your claim for damages does not exceed \$75,000, NUTRICOUNT will pay all such fees unless the arbitrator finds that either the substance of your claim or the relief sought in your Demand for Arbitration was frivolous or was brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)).

Changes. Notwithstanding the provisions of the "Modification" section above, if NUTRICOUNT changes this "Dispute Resolution" section after the date you first accepted these Terms (or accepted any subsequent changes to these Terms), you may reject any such change by sending us written notice (including by e-mail to [info@nutricount.io](mailto:info@nutricount.io) within 30 days of the date such change became effective, as indicated in the "Last Updated Date" above or in the date of NUTRICOUNT's e-mail to you notifying you of such change. By rejecting any change, you are agreeing that you will arbitrate any Dispute between you and NUTRICOUNT in accordance with the provisions of this "Dispute Resolution" section as of the date you first accepted these Terms (or accepted any subsequent changes to these Terms).

GENERAL

The failure of NUTRICOUNT to enforce any right or provision of these Terms will not constitute a waiver of future enforcement of that right or provision. The waiver of any such right or provision will be effective only if in writing and signed by a duly authorized representative of NUTRICOUNT. Except as expressly set forth in these Terms, the exercise by either party of any of its remedies under these Terms will be without prejudice to its other remedies under these Terms or otherwise. If for any reason an arbitrator or a court of competent jurisdiction finds any provision of these Terms invalid or unenforceable, that provision will be enforced to the maximum extent permissible and the other provisions of these Terms will remain in full force and effect.

#### CONTACTING NUTRICOUNT

If you have any questions about these Terms or any App Store Sourced Application, please contact NUTRICOUNT at [info@nutricount.io](mailto:info@nutricount.io)