



NUTRICALC ONLINE SERVICE LICENCE AGREEMENT

Welcome! And thank you for choosing NutriCalc® online software services.

Please note that, If you are accepting on behalf of your employer or another entity, you represent and warrant that: (i) you have full legal authority to bind your employer or such entity to these Terms; (ii) you have read and understand these Terms; and (iii) you agree to these Terms on behalf of the party that you represent. If you do not have the legal authority to bind your employer, or the applicable entity, please do not click "I agree" (or similar button or checkbox) that is presented to you. **please note that if you sign up using an email address from your employer or another entity, then (a) you will be deemed to represent such party, (b) your click to accept will bind your employer or that entity to these terms, and (c) the word "you" in these terms will refer to your employer or that entity.**

These Terms are effective as of the date you first click "I agree" (or similar button or checkbox) or use or access the NutriCalc online services, whichever is earlier (the "Effective Date"). These Terms do not have to be signed in order to be binding. By clicking "I agree" (or similar button or checkbox) at the time you register for a Cloud Product, create a Cloud Product account, or place an Order, you indicate your assent to these Terms. For No-Charge services, you also indicate your assent to these Terms by accessing or using the applicable No-Charge services.

AGREED TERMS

1 LICENCE

- 1.1 This licence agreement ("**Licence**") is a legal agreement between you ("**you**") and NutriCalc Limited of Drapers House, West Buckland, Barnstaple, Devon, EX32 0SF UK ("**us**" or "**we**") for:
- 1.1.1 the NutriCalc online service (in its presently available version from time to time) along with the data and content supplied with the application and the service for connecting to the online service ("**The Service**"); and
 - 1.1.2 the online documentation provided by us to you in order to facilitate your use of The Service (the "**Documentation**").
- 1.2 We license use of the **The Service** and Documentation to you on the basis of this Licence. We do not sell **The Service** or Documentation to you. Save as otherwise stated in this Licence, we remain the owners of **The Service** and Documentation at all times.

2 DEVICE REQUIREMENTS

Use of **The Service** requires your device to meet the following minimum specifications:

Desktop computers running one of the following browsers, and with consideration given to the limitations and advantages of each

:

Google Chrome v63 or higher

Microsoft Edge v35 or higher

Internet Explorer v11 or higher

Mozilla Firefox v58 or higher

Safari v10 or higher

3 GRANT AND SCOPE OF LICENCE

3.1 In consideration of you paying your relevant licence subscription fees and agreeing to abide by the terms of this Licence, we hereby grant to you a non-exclusive, non-transferable licence to use **The Service** and the Documentation on the terms of this Licence until terminated in accordance with this Licence.

3.2 The NutriCalc Online Service is designed for and offered to businesses' and educational institutions' for commercial and educational use only ("**business use**"). Our granting of the Licence to you is conditional upon you being a business or an educational institution and not a consumer. You warrant to us that for the duration of the Licence, you will at all times continue to be a business or educational institution and not a consumer. Your attention is drawn to the relevant termination provision in clause 9.1.

3.3 Your use of the **The Service** is restricted as follows:

3.3.1 if your licence subscription is for a single user licence then only one user on one device may use **The Service** at any one time; and

3.3.2 in all other cases, the maximum number of users and/or devices to have concurrent use of **The Service** is limited to the number (if any) stated in your licence subscription confirmation (as supplemented and amended from time to time by agreement between the parties).

3.4 Should you ever be uncertain about how many users or devices can use **The Service** under the terms of your current licence subscription then please contact us immediately for confirmation at helpdesk@nutricalc.co.uk.

4 UPDATES

4.1 **The Service** may be upgraded or updated by us from time to time. You acknowledge that certain changes or improvements to the way **The Service** operates may necessitate your acceptance of revised licence terms in order to keep using **The Service**.

4.2 You accept that, in certain circumstances, specific functions of **The Service** may cease to work either temporarily or indefinitely for reasons outside of our reasonable control, for example due to changes made by third parties to the software you use to access **The Service** (e.g. web browsers and operating systems). If this happens then we will make commercially reasonable efforts to reinstate **The Service** and any lost functionality but cannot be held accountable for said interruption or loss of functionality.

4.3 A description of our service levels is set out in the Service Level Agreement annexed to this agreement. The Service Level Agreement does not form part of this agreement and is not intended to be contractually binding.

5 RESTRICTIONS

Except as expressly set out in this Licence or as permitted by any local law, you undertake:

5.1 not to copy **The Service** or Documentation, except where such copying is incidental to normal use of **The Service** or where it is necessary for the purpose of legitimate back-up or operational security;

- 5.2 not to rent, lease, sub-license, loan, translate, merge, adapt, vary, alter or modify, the whole or any part of **The Service** or Documentation nor permit **The Service** or any part of it to be combined with, or become incorporated in, any other programs;
- 5.3 not to disassemble, de-compile, reverse engineer or create derivative works based on the whole or any part of **The Service** nor attempt to do any such things, except to the extent that (by virtue of sections 50B and 296A of the Copyright, Designs and Patents Act 1988) such actions cannot be prohibited because they are necessary to decompile **The Service** to obtain the information necessary to create an independent program that can be operated with **The Service** or with another program ("**Permitted Objective**"), and provided that the information obtained by you during such activities:
 - 5.3.1 is used only for the Permitted Objective;
 - 5.3.2 is not disclosed or communicated without our prior written consent to any third party to whom it is not necessary to disclose or communicate it in order to achieve the Permitted Objective; and
 - 5.3.3 is not used to create any software or application that is substantially similar in its expression to **The Service**;
- 5.4 to include our copyright notice on all entire and partial copies of **The Service** and Documentation in any form;
- 5.5 not to provide, or otherwise make available, **The Service** in any form, in whole or in part (including, but not limited to, program listings, object and source program listings, object code and source code) to any person without prior written consent from us;
- 5.6 to comply with all applicable technology control or export laws and regulations;
- 5.7 to allow only your employees and bona fide representatives to access and use **The Service** using your account credentials;
- 5.8 to keep your means of access to **The Service** (e.g. account credentials and devices) secure and to maintain accurate and up-to-date records of the number and locations of all users and devices which have access to **The Service**;
- 5.9 to procure that all your employees and representatives who access and use **The Service** using your account credentials comply with the terms of this Licence; and
- 5.10 to immediately notify us upon becoming aware of any circumstance whereby an authorised third party has accessed **The Service** or there is a material risk of such unauthorised access occurring.

6 INTELLECTUAL PROPERTY RIGHTS

- 6.1 You acknowledge that, save as provided in clause 6.2, all intellectual property rights in **The Service** and the Documentation throughout the world belong to us, that rights in **The Service** are licensed (not sold) to you, and that you have no intellectual property rights in, or to, **The Service** or the Documentation other than the right to use **The Service** and the Documentation in accordance with the terms of this Licence.
- 6.2 Under certain conditions **The Service** utilises and reproduces data which is licensed to us by the UK National Archive and the United States Department of Agriculture. Nothing in this Licence shall constitute an attempt by us to establish proprietary rights in or over this third-party data to the extent that it would be unlawful for us to do so.
- 6.3 You acknowledge that you have no right to have access to **The Service** in source code form other than as expressly provided in this Licence.

7 PROFESSIONAL USE ONLY

- 7.1 You hereby accept that **The Service** is intended for use by suitably qualified professionals in accordance with the supplied Documentation and guidance. For some food groups and recipes, **The Service** is not a substitute for laboratory analysis and must not be relied on as such.

- 7.2 You are solely responsible for checking the accuracy and suitability of your inputted data and the suitability of any values suggested by **The Service** during its operation. Any suggestions provided by **The Service** are automated and are based on generic usage data. Such suggestions are not personalised recommendations and do not constitute professional advice. They are supplied for your convenience only and we do not warrant or represent the suitability of such suggestions to you.
- 7.3 We cannot accept any responsibility or liability for inaccuracies in outputted data where your inputted data or incorrect use of **The Service** (including inappropriate reliance on any suggested values) is a cause.

8 LIMITATION OF LIABILITY

- 8.1 Nothing in this Licence shall limit or exclude our liability for death or personal injury caused by our negligence or fraud or fraudulent misrepresentation.
- 8.2 Subject to clause 8.1, we shall not be liable to you, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Licence for:
- 8.2.1 loss of profits;
 - 8.2.2 loss of sales or business;
 - 8.2.3 loss of agreements or contracts;
 - 8.2.4 loss of anticipated savings;
 - 8.2.5 loss of or damage to goodwill;
 - 8.2.6 loss of use or corruption of software, data or information; and
 - 8.2.7 any indirect or consequential loss.
- 8.3 Subject to Clause 8.1, our total liability to you, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Licence, **The Service** shall be limited to the sum total licence subscription fees paid by you to us in the 12 month period immediately preceding the date on which the liability arose.
- 8.4 You acknowledge that **The Service** has not been developed to meet your individual requirements, and that it is therefore your responsibility to ensure that the facilities and functions of **The Service** as described in the Documentation, meet your requirements.

9 TERMINATION

- 9.1 If at any time whilst this Licence is in effect, you cease to be a business or educational institution, or you use **The Service** otherwise than for business use then this Licence will immediately terminate.
- 9.2 We may terminate this Licence immediately by written notice to you if you commit a material or persistent breach of this Licence which you fail to remedy (if remediable) within 14 days after the service of written notice requiring you to do so.
- 9.3 This Licence will automatically terminate:
- 9.3.1 upon you discontinuing your (relevant) licence subscription(s) for **The Service**; and
 - 9.3.2 should you at any time fail to pay your licence subscription fee(s) in accordance with the payment terms agreed between us.
- 9.4 Upon termination for any reason:
- 9.4.1 all rights granted to you under this Licence shall cease;
 - 9.4.2 you must cease all activities authorised by this Licence; and
 - 9.4.3 you must immediately delete or remove **The Service** from all computer equipment in your possession and immediately destroy or return to us (at our option) all copies of **The**

Service then in your possession, custody or control and, in the case of destruction, certify to us that you have done so.

10 COMMUNICATIONS BETWEEN US

- 10.1 If you wish to contact us in writing, or if any condition in this Licence requires you to give us notice in writing, you can send this to us by email to enquiries@nutricalc.co.uk or by pre-paid post to NutriCalc Limited, Drapers House, West Buckland, Barnstaple, Devon, EX32 0SF.
- 10.2 If we have to contact you or give you notice in writing, we will do so by email or by pre-paid post to the address you provide or confirm to us or (as applicable) your registered address.

11 OTHER IMPORTANT TERMS

- 11.1 We may assign, mortgage, charge, declare a trust over or deal in any other manner with any or all of our rights under this Licence. You may only transfer your rights or your obligations under this Licence to another person if we agree in writing (excluding email).
- 11.2 For the duration of this Licence and for a period of 3 months after termination, you shall not without our prior written consent, solicit or entice away from us or employ or attempt to employ any person who is, or has been, engaged as an employee by us or our group companies.
- 11.3 This Licence does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.
- 11.4 Each of the paragraphs of these terms operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining paragraphs will remain in full force and effect.
- 11.5 If we do not insist immediately that you do anything you are required to do under these terms, or if we delay in taking steps against you in respect of your breaching this Licence, that will not mean that you do not have to do those things and it will not prevent us taking steps against you at a later date.
- 11.6 We reserve the right to update the terms of this Licence upon notice to you of the same. You agree to accept such revised terms as a condition of your continued use of **The Service**.

These terms are governed by English law. The courts of England and Wales shall have exclusive jurisdiction to settle any claim or dispute (including non-contractual claims or disputes) arising out of or in connection with this Licence on its subject matter or formation.

Annex I.0: Service Level Agreement

Service Level Agreement between NutriCalc[®] Ltd
And
NutriCalc[®] Online Service users
January 8, 2019

Overview

NutriCalc Ltd provide SAAS (Software as A Service) based online services that are designed to be highly available and accessed with modern browsers.

This document describes a Service Level Agreement (SLA) between NutriCalc Ltd and NutriCalc Online Service subscribers [users]. It outlines the services offered by NutriCalc Ltd to NutriCalc Online Service subscribers. This SLA does not supersede any of the general NutriCalc Ltd policies or procedures. This SLA is a living document and may be revised at any time at the discretion of NutriCalc Ltd.

SLA purpose and scope

The purpose of this document is to inform NutriCalc Online Service users that processes are in place to provide high quality services and support to NutriCalc Online Service users.

This SLA provides clear description of service ownership, roles and responsibilities, service quality metrics, and available support. The SLA's scope is limited to services offered by NutriCalc Ltd to subscribers to the NutriCalc Online Service application. By definition, an SLA is an agreement and by using the NutriCalc Online Service, users are accepting our service level terms. It is understood, that while diligent effort will be made to fulfil this SLA by stakeholders, there may be exceptional circumstances when the SLA will not be realised. Please note that this SLA is intended purely for NutriCalc Online Service users and does not apply to users of the NutriCalc desktop application.

SLA Roles and responsibilities for supporting NutriCalc Online Service users

NutriCalc Online Service users shall be responsible for:

- using the software within the terms set out in the end user licence agreement (EULA)
- consuming services offered in a non-malicious manner and promptly reporting encountered issues.
- handling issues related to their hardware maintenance and failure.
- handling issues related to server software maintenance and failure (server operating systems and web servers, etc.)

NutriCalc Ltd will be responsible for the handling of issues due to failures of the underlying service.

Availability of services offered

We take service availability very seriously and aim to minimise downtime where possible and within our reasonable control. We will make commercially reasonable efforts to ensure that our service is available 24 hours a day 7 days a week with the following exceptions:

- (i) planned maintenance windows for planned events which we shall reasonably endeavour to give you advanced notice about; these outages will not count towards 'downtime' figures and will be scheduled at such times as to cause the least inconvenience to users. Notification of these events will also be published in a banner at the top of the App.
- (ii) unavailability due to circumstances beyond our control (unplanned 'outages') which may include but are not limited to acts of God (Floods, Fires, Earthquakes), civil unrest, acts of terror etc. Service interruptions for emergency fixes and unscheduled outages will be resolved as a matter of urgency and will follow our internal procedures.

Available support and means of reporting issues

For our standard support service, our support team are available from Monday through to Friday between 9am and 5pm UK time. For anything other than categories deemed as 'critical'; urgent support outside of these hours is available at a charge of £250 (+VAT where applicable) per hour.

Available user support for application usage will include:

- Self-service via the Support Centre within the app
- Knowledge base articles, and online video tutorials
- Telephone support is available to Premium plan subscribers*.
- Email support will also be available for all users with a recognised email address via the Support Centre, enabling users to raise a support ticket. Tickets shall be closed either; when the user has confirmed that the issue has been resolved for them; they have been given a workaround; or they have failed to respond to a 'solved' ticket for 4 days.

Emails received outside of office hours will be collected, however no action can be guaranteed until the next working day.

*NutriCalc Ltd are not able to provide any form of telephone support to subscribers of the Professional/Professional Plus plans. Under some circumstances it may be necessary for NutriCalc Ltd staff to contact a subscriber via the telephone in order to resolve their issue in a timely manner.

Service Interruptions – **users do not need to report issues related to service outages.** The system will be monitored with automated tools/processes and we will notify all users as soon as possible if any outages occur. On receipt of a report of system issues, the designated officer on duty will analyse the reported issues and send them to an appropriate party (service development team, IT staff, etc). All significant outages will be reported via a status page on the NutriCalc website, which users are encouraged to check as a first port of call if an outage is suspected.

User support for resolving service issues such as service interruptions, application response times, software "bugs", etc. will be categorised as follows:

NutriCalc Online Service Issue Response Times

Priority	Severity	Examples	Maximum Response times
1 – Critical	Service Level Outage or a system level outage affecting all users. Major NutriCalc Online services are disrupted.	Service is not available; Application reports issues during use.	2 hours
2 – High	Large number of users are impacted, and no work around exists	Slow application response time, session timeouts, some application area(s) are malfunctioning	24 hours
3 – Medium	Minimal impact to users of the services. The users are still able to use the services although minor disruptions are possible.	Users running a supported browser are affected but can use an alternative browser. Some minor application functionality is malfunctioning, but work arounds exist to bypass the issues.	72 hours
4 – Low	No impact on users. The issue reported of minor severity and does not restrict users' access to the services.	A request for a new feature. A minor issue is reported to the user experience such as incorrect spelling.	5 days

Performance of services offered

The NutriCalc Online Service is a web-based application. Provided that the user is using a supported browser, version and screen size and has a reliable broadband connection that is not experiencing network related delays connecting to the server, NutriCalc Ltd would expect that the application screen load and response time should happen within seconds. Should this not be what you normally experience with the NutriCalc Online Service, please contact the helpdesk.

An estimate of the resolution time will be supplied as part of the response to the support. Over the course of issue investigation, priority may be changed. If it is determined that an issue affects more users than initially estimated, the severity will be increased, and more effort spent on finding a solution. Likewise, if it is determined that a work around, such as using an alternative browser is available, the severity may be lowered. The team working on the issue will be responsible for changing the severity level. The team will communicate with the user/s to keep them updated.

Quality metrics for services offered

Quality metrics shall be used to evaluate the state/performance of the services offered and to determine when a change in strategy is required or additional resources are needed.

Please note that uptime will be determined based on data reported by our quality metrics. Downtime due to announced maintenance will not be used in uptime calculations. Reports of downtime submitted by users will be investigated, but won't necessarily be used to calculate downtime, since downtime experienced by users can be related to network issues on the user hardware/network. Uptime will be measured automatically by quality metrics monitoring the performance/status of the Online Services.

Changes to SLA

This SLA will be reviewed no less frequently than annually. An SLA is a living document and may be revised after review by the NutriCalc Ltd team. Updates to the SLA will be necessary from time to time and advanced notice of changes will be published in a timely manner.

Appendix A – Definitions

SLA = Service Level Agreement

Users = NutriCalc Ltd Online Service subscribers for whom we have a recognised email address

Ticket = A service request from a user received by NutriCalc's ticketing system.

Event = Planned maintenance during which the application is taken offline

Incident = Unplanned downtime

Outage = Application is offline outside of planned maintenance Events

SAAS = Software As A Service

Services = Systems that NutriCalc Ltd provides to its subscribers

Revision No:	Last Reviewed	Review notes
1.0	June 17, 2019	