

# NUTRITIONAL INFORMATION SOLUTIONS

## Terms and Conditions for Supply of Services ("Conditions") to businesses

### 1. Definitions and Interpretation

**1.1** In these Conditions, the following definitions apply:

"**NIS**" means QIB Extra Limited (trading as **Nutritional Information Solutions**), a company registered in England and Wales with company number 6500711, whose registered office is at James Watson Road, Colney, Norwich, NR4 7UQ;

"**Charges**" means the charges to be paid by Customer for the supply of the Services in accordance with clause 3;

"**Contract**" means the contract between NIS and Customer for the supply of Services in accordance with the Quotation and these Conditions;

"**Customer**" means the person, company or organisation that requests the Services;

"**Recipe**" means each recipe for which the Customer requires Services to be carried out;

"**Recipe Template**" means a worksheet to be completed by Customer for each Recipe;

"**Results**" means the nutritional information values;

"**Services**" means the provision of the following nutritional information values for one of more Recipes (energy, fat, saturated fat, carbohydrates, total sugars, protein and salt) to be provided by NIS further details of which are set out in the "Services" section of the Website;

"**Website**" means [www.nutritionalinformationsolutions.com](http://www.nutritionalinformationsolutions.com)

**1.2** In these Conditions, the following rules apply:

(a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

(b) a reference to a party includes its successors or permitted assigns;

(c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

(d) any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

(e) a reference to **writing** or **written** excludes e-mails.

### 2. Basis of Contract and Services

**2.1** Customer shall download and complete a Recipe Template for each Recipe that it wishes the Services to be carried out on, register its business details online and then submit the Recipe Template(s) to NIS via the Website. Customer accepts these Conditions but submitting a Recipe Template.

**2.2** On receipt of each Recipe Template, NIS shall ensure that sufficient information has been provided and if necessary shall request further information.

**2.3** Once NIS deems (in its sole discretion) that each Recipe Template contains sufficient information, it shall provide Customer with a quotation for the Services ("Quotation") and a request for payment containing a link to an online payment site.

**2.4** NIS shall be permitted to request such other information as it deems necessary in order to provide the Services. In the event that Customer does not provide this information, NIS shall not have an obligation to carry out the Services.

**2.5** The Services shall not commence until payment of the Charges has been made in full, and all requested Recipe Template information has been provided.

**2.6** NIS shall have the right to make any changes to the Services to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services.

**2.7** The Contract constitutes the entire agreement between the parties. Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of NIS which is not set out in the Contract.

**2.8** These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

**2.9** The Quotation shall be valid for a period of thirty (30) days from its date of issue.

**2.10** NIS warrants to Customer that the Services will be provided using reasonable care and skill.

### 3. Charges and Payment

**3.1** Customer shall pay the Charges set out in the Quotation in accordance with NIS's instructions for payment.

**3.2** All Charges are exclusive of value added tax at the prevailing rate unless specified otherwise in the Quotation. An automatic invoice will be generated once payment has been made.

### 4. Delivery of Results

**4.1** NIS shall use reasonable endeavours to ensure that Results are provided in accordance with the timescales for its Services (10 working days) as requested by Customer and confirmed in the Quotation. Results shall be sent to Customer by email. The Services shall be deemed to have commenced from payment in full of the Charges and receipt of all requested Recipe Template information. However,

time shall not be of the essence in respect of NIS providing the Services.

**4.2** In the event that NIS is not able to provide the Results in accordance with the timescale set out in the Quotation, NIS agrees to refund the cost of those particular Results and produce the Results free of charge. NIS will use reasonable endeavours to issue an online refund and accompanying credit note within five working days of NIS being informed by Customer that it has failed to provide the Results in accordance with the expected timescale. For the avoidance of doubt, Services are carried out on Monday to Friday only (but excluding all public holidays) between the hours of 0900 and 1700. Services shall only commence during these periods, and Saturdays, Sundays and public holidays will be excluded when calculating the 10 working day timescale.

**4.3** In the event that a Customer requests that the Services be amended or cancelled, where the Customer has paid the Charges, then where NIS has not already started to provide the Services, NIS will use reasonable endeavours to amend the Services in accordance with Customer's requirements or issue an online refund and accompanying credit note within five working day. Where the Services have already commenced, NIS shall have sole discretion in making any changes to the Services or refunds to Customer (acting reasonable and in good faith).

**4.4** NIS may deduct any monies owed to the Customer under clause 4.2 from any outstanding sums owed to NIS by Customer.

### 5. Customer's Obligations

**5.1** Customer shall:

(a) co-operate with NIS in all matters relating to the Services;

(b) provide NIS with such information as NIS may reasonably require in order to provide the Services, and ensure that such information is complete and accurate in all material respects.

**5.2** Customer warrants that the Recipe information provided in each Recipe Template is a true and fair representation of the ingredients within the product they intend to produce.

### 6. Intellectual Property, Confidentiality and Data Protection

**6.1** All intellectual property rights in the provision of the Services shall remain with NIS.

**6.2** NIS acknowledges that the information provided by Customer in the Recipe Template and the Results are the confidential and proprietary information of Customer ("Customer Information"). NIS shall claim no right, title or interest in such Customer Information, and shall use reasonable endeavours to keep it confidential.

**6.3** NIS may disclose Customer Information to those of its employees,

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agents and subcontractors who need to know it for the purpose of discharging NIS's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the confidentiality obligations set out in this clause.

**6.4** NIS may also disclose such of the Customer Information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction processes any personal data of Customer it shall comply with its obligations as data controller in accordance with the Data Protection Act 1996.

**6.6** This clause 6 shall survive termination of the Contract.

### 7. Limitation of Liability

**7.1** CUSTOMER ACKNOWLEDGES AND AGREES THAT NIS HAS SOLELY AGREED TO PROVIDE NUTRITIONAL INFORMATION AND **WILL NOT BE PROVIDING ANY ALLERGEN OR OTHER INFORMATION** IN CONNECTION WITH THE SERVICES. IT IS FOR CUSTOMER TO ENSURE THAT ITS LABELLING AND OTHER INFORMATION RELATING TO ITS RECIPES AND THE LABELLING OF FOOD COMPLIES WITH ANY AND ALL APPLICABLE LEGISLATION AND GUIDELINES WHETHER RELATING TO ALLERGEN OR OTHER INFORMATION.

**7.2** NIS shall under no circumstances be liable to Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or for any indirect or consequential losses arising under or in connection with the Contract.

**7.3 Subject to clause 7.4**, NIS's total liability to Customer in respect of all other losses arising under or in connection with this Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed four times value of the Contract.

**7.4** Nothing in this Contract shall limit or exclude a party's liability for anything that by law cannot be limited or excluded, including death or personal injury caused by its negligence, fraud or fraudulent misrepresentation.

**7.5** The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

**7.6** This clause 7 shall survive termination of the Contract.

### 8. Termination

**8.1** Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

**(a)** the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within fourteen (14) days of that party be notified in writing to do so;

**(b)** the other party makes an application to court for the appointment of an administrator or in connection with its winding up, or takes steps towards bankruptcy, or makes any arrangement with its creditors (other than for a solvent amalgamation or reconstruction, or undergoes any other analogous insolvency event.

**8.2** Without limiting its other rights or remedies, NIS may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amounts due under this Contract within fourteen (14) days of being notified in writing to do so.

**8.3** Clauses which expressly or by implication survive termination shall continue in full force and effect.

**8.4** The accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

### 9. Force Majeure

**9.1** For the purposes of this Contract, "Force Majeure Event" means an event beyond the reasonable control of NIS including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of NIS or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

**9.2** NIS shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

**9.3** If the Force Majeure Event prevents NIS from providing any of the Services for more than four (4) weeks, NIS shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

### 10. General

#### 10.1 Assignment and other dealings.

**(a)** NIS may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

**(b)** The Customer shall not, without the prior written consent of NIS, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

#### 10.2 Notices.

Any notice or other communication given to a party under or in connection with the

Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered by signed for postal delivery or reputable courier.

#### 10.3 Severance

**(a)** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

**(b)** Where any provision or part-provision of this Contract is found to be invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

#### 10.4 Waiver

A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

#### 10.5 No partnership of agency

Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

#### 10.6 Third parties

A person who is not a party to the Contract shall not have any rights to enforce its terms.

#### 10.7 Variation

Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by NIS.

#### 10.8 Governing law

This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in

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accordance with the law of England and Wales.

### **10.9 Jurisdiction**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).