

End User License Agreement

THIS END USER LICENSE AGREEMENT (this "Agreement"), including the applicable SaaS Agreement (as defined below), which by this reference is incorporated herein, is a binding agreement between you and Nutrition Matters, Inc., a Wisconsin corporation with offices located at North Barstow Street, Suite I, Eau Claire, Wisconsin 54703 ("Nutrition Matters").

IMPORTANT – READ THIS AGREEMENT CAREFULLY BEFORE CONTINUING.

NUTRITION MATTERS PROVIDES THE SERVICES (AS DEFINED IN **SECTION 1.1** BELOW) SOLELY ON THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT AND ON THE CONDITION THAT YOU ACCEPT AND COMPLY WITH THEM. BY CLICKING THE "ACCEPT" BUTTON YOU (A) ACCEPT THIS AGREEMENT, ON BEHALF OF YOURSELF AND YOUR DEPENDENTS, AND AGREE THAT YOU ARE LEGALLY BOUND BY ITS TERMS; AND (B) REPRESENT AND WARRANT THAT: (I) YOU ARE OF LEGAL AGE TO ENTER INTO A BINDING AGREEMENT; AND (II) IF YOU ARE A CORPORATION, GOVERNMENTAL ORGANIZATION OR OTHER LEGAL ENTITY, YOU HAVE THE RIGHT, POWER AND AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF YOUR AUTHORIZED USERS (AS DEFINED BELOW) AND BIND THEM TO ITS TERMS. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, NUTRITION MATTERS WILL NOT AND DOES NOT LICENSE THE SERVICES TO YOU AND YOU MUST NOT USE THE SERVICES.

THE SERVICES, INCLUDING TEXT, GRAPHICS, IMAGES, AND OTHER MATERIALS CREATED BY NUTRITION MATTERS OR OBTAINED FROM THIRD PARTY LICENSORS OR PERSONS (COLLECTIVELY, "**CONTENT**") ARE FOR INFORMATIONAL PURPOSES ONLY. THE CONTENT IS NOT INTENDED TO BE A SUBSTITUTE FOR PROFESSIONAL MEDICAL ADVICE, DIAGNOSIS, OR TREATMENT. ALWAYS SEEK THE ADVICE OF YOUR PHYSICIAN OR OTHER QUALIFIED HEALTH PROVIDER WITH ANY QUESTIONS YOU MAY HAVE REGARDING A MEDICAL CONDITION. NUTRITION MATTERS DOES NOT RECOMMEND OR ENDORSE ANY SPECIFIC TESTS, PHYSICIANS, PRODUCTS, PROCEDURES, OPINIONS, OR OTHER INFORMATION THAT MAY BE MENTIONED IN THE CONTENT. RELIANCE ON ANY INFORMATION PROVIDED BY NUTRITION MATTERS OR PROVIDED THROUGH THE SERVICES IS SOLELY AT YOUR OWN RISK.

Definitions. Terms not otherwise defined herein shall have the meaning set forth below.

- "**Access Credentials**" means any user name, identification number, password, license or security key, security token, PIN or other security code, method, technology or device used, alone or in combination, to verify an individual's or entity's identity and authorization to access and use the Services.
- "**Authorized User**" means each of the individuals authorized to use the Services pursuant to the applicable SaaS Agreement, or any additional individuals or Persons authorized to use the Services as approved solely by Nutrition Matters.
- "**Contracting User**" means any Person that has purchased access to the Services pursuant to a SaaS Agreement for and on behalf of its Authorized Users.
- "**Customer Data**" means, other than Resultant Data, information, data and other content, in any form or medium, that is collected, downloaded or otherwise received, directly or indirectly, from you or about you, by or through the Services or that incorporates or is derived from the Processing of such information, data or content by or through the Services.

- **"Intellectual Property Rights"** means any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.
- **"Person"** means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association or other entity.
- **"Process"** means to take any action or perform any operation or set of operations that the Services are capable of taking or performing on any data, information or other content. **"Processing"** and **"Processed"** have correlative meanings.
- **"Resultant Data"** means information, data and other content that is derived by or through the Services from Processing Customer Data, and is sufficiently different from such Customer Data that such Customer Data cannot be reverse engineered or otherwise identified from the inspection, analysis or further Processing of such information, data or content.
- **"SaaS Agreement"** means the applicable SaaS Agreement executed by and/or on behalf of you, and accepted by Nutrition Matters, for your (and, as applicable, your Authorized Users) purchase of the license to use the Services granted in this Agreement.

1. License Grant.

1.1 Authorization. Subject to and conditioned on your (or, if applicable, the Contracting User's) payment of the fees and compliance and performance in accordance with all other terms and conditions of this Agreement, Nutrition Matters hereby grants to you, and you hereby accept, a limited, nonexclusive, nontransferable, worldwide right to access and use, solely during the Term, the services described in this Agreement, including Nutrition Matters' hosting, operation and maintenance of its software applications or applications to any third-party software, and all new versions, updates, revisions, improvements and modifications of the foregoing, that Nutrition Matters provides to you for download or remote access and any and all other information, specifications, documentation, materials, content, software and technologies that are provided or used by Nutrition Matters in connection therewith (collectively, the **"Services"**), as Nutrition Matters may supply or make available to you.

2. Services.

2.1 Services. Subject to and conditioned on your compliance and performance in accordance with all the terms and conditions of this Agreement, during the Term (as set forth in **Section 8.1**), Nutrition Matters shall use commercially reasonable efforts to provide to you the Services. Nutrition Matters will endeavor to make the Services available to the you twenty-four (24) hours per day, seven (7) days per week, every day of the year, except for: (i) scheduled downtime for routine maintenance of the Services; (ii) Service downtime or degradation due to an emergency or Force Majeure Event; (iii) any other circumstances beyond Nutrition Matters' reasonable control, including your use of third party materials or use of the Services other than in compliance with the express terms of this Agreement; and (iii) any suspension or termination of your access to or use of the Services as permitted by this Agreement.

2.2 Service Control. Except as otherwise expressly provided in this Agreement, Nutrition Matters has and will retain sole control over the operation, provision, maintenance and management of the Services, including, without limitation, (i) Nutrition Matters' information technology infrastructure and systems, (ii) the location where any of the Services are performed, (iii) the selection, deployment, modification and replacement of the Services, and (iv) performance of Service maintenance, upgrades, corrections and repairs.

2.3 Changes. Nutrition Matters reserves the right, in its sole discretion, to make any changes to the Services that it deems necessary or useful to: (i) maintain or enhance (a) the quality or delivery of Nutrition Matters' services to its customers, (b) the competitive strength of or market of Nutrition Matters' services, or (c) the Service's cost efficiency or performance; or (ii) to comply with applicable law. Without limiting the foregoing, either party may, at any time during the Term, request in writing changes to the Services. The parties shall evaluate and, if agreed, implement all such requested changes. No requested changes will be effective unless and until memorialized in a written change order signed by both parties.

2.4 Suspension or Termination of Services. Nutrition Matters may suspend, terminate or otherwise deny your (or, as applicable, any Authorized Users) access to or use of all or any part of the Services if: (a) Nutrition Matters receives a judicial or other governmental demand or order, subpoena or law enforcement that expressly or by reasonable implication requires Nutrition Matters to do so; or (b) if Nutrition Matters believes, in its good faith and reasonable discretion, that (i) you (or, if applicable, your Contracting User) failed to comply with, any term of this Agreement, or accessed or used the Services beyond the scope of the rights granted or for a purpose not authorized under this Agreement; (ii) you are, have been, or are likely to be involved in any fraudulent, misleading or unlawful activities relating to or in connection with any of the Services; or (iii) this Agreement expires or is terminated. This **Section 2.4** does not limit any of Nutrition Matters' other rights or remedies, whether at law, in equity or under this Agreement. Nutrition Matters is not obligated to publish any information or content on the Service and can remove it with or without notice in Nutrition Matters' sole discretion.

3. Restrictions.

3.1 Authorization Limitations and Restrictions. You shall not, and shall not permit any other Person to, access or use the Services except as expressly permitted by this Agreement. For purposes of clarity and without limiting the generality of the foregoing, you shall not, except as this Agreement expressly permits:

1. copy, modify or create derivative works or improvements of the Services;
2. rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available any Services to any Person, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud or other technology or service;
3. reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive or gain access to the source code of the Services, in whole or in part;
4. bypass or breach any security device or protection used by the Services or access or use the Services other than by your use of his, her or its own then valid Access Credentials;
5. input, upload, transmit or otherwise provide to or through the Services any information or materials that are unlawful or injurious, or contain, transmit or activate any harmful virus, worm, malware or other malicious computer code;
6. damage, destroy, disrupt, disable, impair, interfere with or otherwise impede or harm in any manner the Services or Nutrition Matters' provision of services to any third party, in whole or in part;
7. access or use the Services in any manner or for any purpose that infringes, misappropriates or otherwise violates any Intellectual Property Right or other right of any third party (including by any unauthorized access to, misappropriation, use, alteration, destruction or disclosure of the data of any other Nutrition Matters customer), or that violates any applicable law;
8. access or use the Services for purposes of competitive analysis of the Services, the development, provision or use of a competing software service or product or any other purpose that is to the Nutrition Matters' detriment or commercial disadvantage; or
9. otherwise access or use the Services beyond the scope of the authorization granted under **Section 1.1** of this Agreement.

3.2 Ownership of Improvements. All improvements, systems, programs, operating instructions and other documentation, rights in patentable inventions, trade secrets and know how, database interests and copyrights associated therewith related to the Services, which are conceived, prepared, developed or delivered during the Term of this Agreement (whether developed by you alone or with others, and whether independent of or in connection with performance hereunder), shall be and remain the sole property of Nutrition Matters. You agree to cooperate with Nutrition Matters and execute, or cause its personnel to execute, such further acknowledgments and instruments as may be necessary to establish such ownership.

3.3 Third-Party Materials. The Services may include content, data, or other materials, including related documentation, that are owned by Persons other than Nutrition Matters and that are provided to you on licensee terms that are in addition to and/or different from those contained in this Agreement ("**Third-Party Licenses**"). You are bound by and shall comply with all Third-Party Licenses. A breach of any Third-Party License is also a breach of this Agreement.

4. Security.

4.1 Security Obligations. The Services operate on Amazon Web Services (AWS) Elastic Beanstalk managed platform that meets the criteria for ISO, PCI, SOC 1, SOC 2, and SOC 3 compliance. Nutrition Matters will employ security measures in accordance its Privacy Policy, and you consent to all actions we take with respect to your information consistent with the Privacy Policy.

4.2 Your Control and Responsibility. You have and will retain sole responsibility for: (a) all Customer Data, including its content and use; (b) all information, instructions and materials provided by or on behalf of you in connection with the Services; (c) your information technology infrastructure, including computers, software, databases, electronic systems (including database management systems) and networks, whether operated directly by you or through the use of third-party services ("**Your Systems**"); (d) the security and use of your Access Credentials; and (e) all access to and use of the Services directly or indirectly by or through Your Systems or its or your Access Credentials, with or without your knowledge or consent, including all results obtained from, and all conclusions, decisions and actions based on, such access or use.

5. Fees; Payment Terms.

5.1 Fees. You (or, if applicable, your Contracting User) shall pay Nutrition Matters the fees for the Services on or prior to the date due, which shall be payable to Nutrition Matters in US dollars in the amount and pursuant to the payment schedule set forth the applicable SaaS Agreement. Such fees may be increased during the Term by Nutrition Matters' advanced written notice of at least thirty (30) days to you.

5.2 Taxes. All fees and other amounts payable by you under this Agreement are exclusive of taxes and similar assessments. Subject to the applicable law, you are responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental or regulatory authority on any amounts payable by you hereunder, other than any taxes imposed on Nutrition Matters' income.

5.3 Late Payment. If you (or, if applicable, your Contracting User) fail to make any payment when due, then a 3.00% charge (or the applicable amount allowed by law, whichever is less) shall be assessed on any amount past due. Furthermore, should you (or, if applicable, your Contracting User) fail to settle amounts past due within thirty (30) days of your invoice receipt, Nutrition Matters may, without notice, (i) suspend performance of the Services for you

(and, if applicable, your Authorized Users) until all past due amounts and interest thereon have been paid, or (ii) terminate this Agreement. You shall reimburse Nutrition Matters for all costs in collecting any late payments or interest, including attorneys' fees, court costs and collection agency fees.

5.4 No Deductions or Setoffs. All amounts payable to Nutrition Matters under this Agreement shall be paid by you to Nutrition Matters in full without any setoff, recoupment, counterclaim, deduction, debit or withholding for any reason (other than any deduction or withholding of tax as may be required by applicable law).

6. Intellectual Property Rights.

6.1 Services. All right, title and interest in and to the Services, including all Intellectual Property Rights therein, are and will remain with Nutrition Matters. You have no right, license or authorization with respect to any of the Services except as expressly set forth in **Section 1.1**. All other rights in and to the Services are expressly reserved by Nutrition Matters and the respective third-party licensors. In furtherance of the foregoing, you hereby unconditionally and irrevocably grant to Nutrition Matters an assignment of all right, title and interest in and to the Resultant Data, including all Intellectual Property Rights relating thereto.

6.2 Customer Data. As between you and Nutrition Matters, you are and will remain the sole and exclusive owner of all right, title and interest in and to all Customer Data, including all Intellectual Property Rights relating thereto, subject to the rights and permissions granted in **Section 6.3** and **Section 6.4**.

6.3 Consent to Use Customer Data. You hereby grant all rights and permissions for Nutrition Matters, its subcontractors, vendors, and partners, to use and reproduce Customer Data as necessary or useful to perform the Services or exercise its rights. Where Nutrition Matters has made settings available, Nutrition Matters will honor the choices you make about who can see Customer Data.

6.4 Consent to Disclosure by Contracting User. Without limiting **Section 6.3**, you hereby grant all rights and permissions for the Contracting User to disclose to Nutrition Matters, its subcontractors, vendors, and partners, and for Nutrition Matters, its subcontractors, vendors, and partners, to use and reproduce, your personally identifiable information, name, birth date, postal address, e-mail address, telephone number, agency affiliation, government program number, and any other identifier, as necessary or useful to perform the Services or exercise its rights. Where Nutrition Matters has made settings available, Nutrition Matters will honor the choices you make about who can see such information.

7. Confidentiality.

7.1 Confidential Information. Each of the parties hereto agrees to protect and maintain as secret all information designated as confidential by the other party, including, without limitation, the terms of this Agreement, source code, technical specifications, capabilities, and logic and function of the Services ("**Confidential Information**"), by (i) treating the Confidential Information of the other party with at least the same care and protection accorded its own Confidential Information, but in no event exercising less than reasonable care; (ii) using care in the assignment of personnel who receive Confidential Information of the other party, and instructing such personnel to take all reasonable precautions to prevent unauthorized use or disclosure thereof; and (iii) not using or disclosing such Confidential Information except as necessary to fulfill the terms of this Agreement or as otherwise authorized by this Agreement or the party disclosing the Confidential Information ("**Disclosing Party**"). However, neither party shall have an obligation of confidentiality with regard to any information that: (a) is known to such party prior to disclosure;

(b) is or becomes publicly available other than as a result of a breach of this Agreement; or (c) is disclosed to such party by a third party not subject to an obligation of confidentiality. The parties agree to treat as Confidential Information at least any information that (A) is marked as confidential; or (B) is or reasonably should be known to be confidential.

7.2 Residual Works. In addition to other rights and provision in this Agreement, Nutrition Matters shall be free to use for any purpose the Resultant Data resulting from access to or work with the Confidential Information or any information or ideas provided by the party receiving the information ("**Receiving Party**") with respect to the Services.

7.3 Feedback. You may from time to time provide suggestions, comments or other feedback ("**Feedback**") to Nutrition Matters with respect to the Services. Both parties agree that all Feedback is and shall be given entirely voluntarily. Feedback, even if designated as confidential by the party offering the Feedback, shall not, absent a separate written agreement, create any confidentiality obligation for the receiver of the Feedback. Receiving Party will not give Feedback that is subject to license terms that seek to require any Nutrition Matters Services to be licensed or otherwise shared with any third party. Furthermore, except as otherwise provided herein or in a separate subsequent written agreement between the parties, you hereby unconditionally and irrevocably grant to Nutrition Matters an assignment of all right, title and interest in and to the Feedback, and Nutrition Matters will own the Feedback and shall be free to use, disclose, protect (e.g., patent, copyright, trademark, trade secret, etc.), reproduce, license or otherwise distribute, and exploit the Feedback provided to it as it sees fit, entirely without obligation or restriction of any kind on account of intellectual property rights or otherwise.

7.4 Compelled Disclosures. If the Receiving Party or any of its representatives is compelled by applicable law to disclose any Confidential Information then, to the extent permitted by applicable law, the Receiving Party shall: (a) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy or waive its rights under **Section 7.1**; and (b) provide reasonable assistance to the Disclosing Party in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this **Section 7.4**, the Receiving Party remains required by law to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that the Receiving Party is legally required to disclose.

8. Term and Termination.

8.1 Term. This Agreement and the license granted hereunder shall remain in effective for the term set forth on the applicable SaaS Agreement or until terminated as set forth herein (the "**Term**").

8.2 Termination. In addition to any other express termination right set forth elsewhere in this Agreement:

1. Nutrition Matters may terminate this Agreement, effective immediately, if you (or, as applicable, your Contracting User): (i) fails to pay any amount when due hereunder, and such failure continues more than thirty (30) days after the date such amounts are due; or (ii) breaches any of its obligations under **Section 3.1** (Use Limitations and Restrictions), or **Section 7** (Confidentiality).
2. either party may terminate this Agreement, effective immediately upon written notice to the other party, if the other party: (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency Law; (iii) makes or seeks to make a general assignment for the benefit of its creditors; or (iv)

applies for or has appointed a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business; and

3. either party may terminate this Agreement, for any or no reason, upon thirty (30) days' advanced written notice to the other party.

8.3 Effect of Expiration or Termination. Upon any expiration or termination of this Agreement, except as expressly otherwise provided in this Agreement:

1. all rights, licenses, consents and authorizations granted by either party to the other hereunder will immediately terminate;
2. You shall immediately cease all use of any Services and (i) promptly return to Nutrition Matters, or at Nutrition Matters' written request destroy, all documents and tangible materials containing, reflecting, incorporating or based on Nutrition Matters' Confidential Information; and (ii) permanently erase Nutrition Matters' Confidential Information from all systems you directly or indirectly controls; except to the extent and for so long as required by applicable law and all such information and materials will remain subject to all confidentiality requirements of this Agreement;
3. Nutrition Matters may disable all your (and, as applicable, your Authorized Users') access to the Services; and
4. if either party terminates this Agreement pursuant to **Section 8.2**, you will be relieved of any obligation to pay any fees attributable to the period after the effective date of such termination and Nutrition Matters will refund to you fees paid in advance for Services that Nutrition Matters has not performed as of the effective date of termination.

8.4 Surviving Terms. The provisions set forth in the following sections, and any other right or obligation of the parties in this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: **Section 3.1, Section 7, Section 8.3, this Section 8.4, Section 9, Section 10, Section 11 and Section 13.**

9. Representations and Warranties.

9.1 Representations and Warranties. You represents and warrants to Nutrition Matters that you has the full right, power and authority to enter into and perform its obligations and grant the rights, licenses, consents and authorizations it grants or is required to grant under this Agreement; and you own or otherwise have and will have the necessary rights and consents in and relating to the Customer Data so that, as received by Nutrition Matters and Processed in accordance with this Agreement, they do not and will not infringe, misappropriate or otherwise violate any Intellectual Property Rights, or any privacy, publicity or other rights of any third party or violate any applicable law. The Services may be subject to US export control laws, including the Export Control Reform Act and its associated regulations. You shall not, directly or indirectly, export, re-export, or release the Services, or make the Services accessible from, any jurisdiction or country to which export, re-export, or release is prohibited by law, rule, or regulation. You shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing, or otherwise making the Services available outside the US.

9.2 DISCLAIMER OF WARRANTIES. ALL SERVICES ARE PROVIDED "AS IS" AND NUTRITION MATTERS HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER, AND NUTRITION MATTERS SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. WITHOUT

LIMITING THE FOREGOING, NUTRITION MATTERS MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET YOUR OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERROR FREE. ANY THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD-PARTY MATERIALS IS STRICTLY BETWEEN YOU AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.

10. Indemnification.

10.1 Indemnification. You shall indemnify, hold harmless and defend Nutrition Matters and its affiliates from and against any and all liability, damages, costs, and expenses, arising from or related to your (and/or, if applicable, any Authorized Users) use of the Services under this Agreement, including, but not limited to, defense costs and attorneys' fees, for or by reason of (i) any actual or alleged infringement of any third party's Intellectual Property Rights, privacy, publicity or other proprietary rights; (ii) any act or omission by you (or, if applicable, any Authorized Users) in connection with use of the Services; (iii) your (or, if applicable, any Authorized User's) use of the Services other than as expressly allowed by this Agreement; (iv) your (or, if applicable, any Authorized User's) breach of this Agreement; or (v) any infringement resulting from your (or, if applicable, any Authorized User's) modifications and/or combinations resulting in infringement. You shall inform Nutrition Matters as soon as practicable of any claim or action alleging such infringement or unauthorized disclosure, and shall support Nutrition Matters' defense and settlement thereof.

11. Limitations of Liability.

11.1 EXCLUSION OF DAMAGES. EXCEPT AS OTHERWISE PROVIDED IN **SECTION 11.3**, IN NO EVENT WILL NUTRITION MATTERS OR ANY OF ITS LICENSORS, SERVICE PROVIDERS OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE OR PROFIT OR DIMINUTION IN VALUE; (b) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF THE SERVICES, (c) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY, OR (d) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

11.2 CAP ON MONETARY LIABILITY. IN NO EVENT WILL THE COLLECTIVE AGGREGATE LIABILITY OF NUTRITION MATTERS AND ITS LICENSORS, SERVICE PROVIDERS AND SUPPLIERS UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, EXCEED THE FEES RECEIVED BY NUTRITION MATTERS PURSUANT TO THIS AGREEMENT AND THE APPLICABLE SAAS AGREEMENT IN THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO THE LIABILITY. THE FOREGOING LIMITATION APPLIES NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

11.3 Exceptions. The exclusions and limitations in **Section 11.1** and **Section 11.2** do not apply to Nutrition Matters' liability for Nutrition Matters' willful misconduct.

12. Force Majeure.

12.1 No Breach or Default. In no event will Nutrition Matters be liable or responsible to you, or be deemed to have breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by any circumstances beyond Nutrition Matters' reasonable control (a "**Force Majeure Event**"), including, but not limited to, failures or interruptions of communications facilities or equipment of third parties, labor strikes or slowdowns, shortages of resources or materials, acts of God, natural disasters, pandemics, world events, delay or disruption of shipment or delivery, trespass or interference of third parties, or similar events or circumstances outside Nutrition Matters' reasonable control, whether or not otherwise enumerated. Either party may terminate this Agreement if a Force Majeure Event continues substantially uninterrupted for a period of thirty (30) days or more.

13. Miscellaneous

13.1 Further Assurances. Upon a party's reasonable request, the other party shall, at the requesting party's sole cost and expense, execute and deliver all such documents and instruments, and take all such further actions, necessary to give full effect to this Agreement.

13.2 No Agency. Nothing in this Agreement shall be construed to create a partnership, joint venture or agency relationship between the parties. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer on any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

13.3 Notices. All notices, requests, claims, demands and other communications hereunder shall be in writing. Such notices shall be given (i) by delivery in person (ii) by a nationally recognized next day courier service, (iii) by first class, registered or certified mail, postage prepaid, (iv) by facsimile or (v) by electronic mail to the address of the party specified in this Agreement or such other address as either party may specify in writing. Notices so given shall be effective upon (a) receipt by the party to which notice is given, or (b) on the day following mailing, whichever occurs first. All communications under this Agreement to Nutrition Matters shall be addressed to the party as follows (or to such other address or such other person that such party may designate from time to time):

Nutrition Matters, Inc.

North Barstow Street, Suite I

Eau Claire, Wisconsin 54703

Attn: Bob Yarrington

Email: info@numatters.com

13.4 Headings. The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

13.5 Entire Agreement. This Agreement, together with the applicable SaaS Agreement and the Privacy Policy, constitute the sole and entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements made in the body of this Agreement and the other documents incorporated herein by reference, the following order of precedence governs: (a) first, this Agreement (including the applicable SaaS Agreement), including its exhibits, schedules, attachments and appendices; and (b) any other documents incorporated herein by reference.

13.6 Assignment. You shall not assign or otherwise transfer any of your rights or obligations under this Agreement without Nutrition Matters' prior written consent, which consent Nutrition Matters may give or withhold in its sole discretion. For purposes of the preceding sentence, and without limiting its generality, any merger, change of control, consolidation or reorganization involving you will be deemed to be a transfer of rights or obligations under this Agreement for which Nutrition Matters' prior written consent is required. No delegation or other transfer will relieve you of any of your obligations or performance under this Agreement. Any purported assignment, delegation or transfer in violation of this **Section 13.6** is void. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

13.7 Amendment and Modification; Waiver. No amendment to or modification of this Agreement is effective unless it is in writing and signed by each party; provided, however, that the applicable SaaS Agreement may only be amended or modified if such amendment or modification is in writing and signed by Nutrition Matters and the applicable Contracting User. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving.

13.8 Severability. If any provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

13.9 Governing Law; Venue. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Wisconsin. The parties submit all of their disputes arising out of or in connection with this Agreement to the exclusive jurisdiction of the state and/or federal courts located in the State of Wisconsin.

13.10 Waiver of Jury Trial. Each party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement or the transactions contemplated hereby.

13.11 Equitable Relief. You acknowledge and agree that a breach or threatened breach by you of any of your obligations under **Section 3.1** or **Section 7** may cause Nutrition Matters irreparable harm for which monetary damages may not be an adequate remedy and agrees that, in the event of such breach or threatened breach, Nutrition Matters will be entitled to seek equitable relief, without any requirement to post a bond. Such remedies are in addition to all other remedies that may be available at law, in equity or otherwise.

13.12 US Government Rights. The Services are a commercial computer software, as such term is defined in 48 C.F.R. §2.101. Accordingly, if you are the US Government or any contractor therefor, you shall receive only those rights with respect to the Services as are granted to all other end users under license, in accordance with (a) 48 C.F.R. §227.7201 through 48 C.F.R. §227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. §12.212, with respect to all other US Government licensees and their contractors.