

## MY INTAKE BY NUTRITION IN MIND TERMS AND CONDITIONS

### 1 About

- 1.1 The My intake service and website at [www.nutritioninmind.com.au](http://www.nutritioninmind.com.au) (**Website**) are owned and operated by Katie Dalton ABN 67 347 447 833 ('**Nutrition in Mind**', '**we**', '**our**', or '**us**').
- 1.2 The My intake service offered by Nutrition in Mind (**Service**) comprises the following steps:
- (a) you register and pay for the Service through the Website and in doing so provide Nutrition in Mind with the information requested which will include your age, height, weight, gender, pregnancy status, activity level and any nutritional supplements being taken by you;
  - (b) you download the Xyris Software (Australia) Pty Ltd "Easy Diet Diary APP" (**Easy Diet Diary APP**) onto your mobile device (this is a free APP available through the Apple APP Store) and create a profile through the Easy Diet Diary APP and enter no less than 3 but no more than 7 days of accurate dietary intake information into the Easy Diet Diary APP. If you complete less than 3 days of entries we will contact you by email to ask you to complete additional days. If you complete more than 7 days of entries we will only analyse the last seven days of entries;
  - (c) you share the information in your Easy Diet Diary APP with Nutrition in Mind using the functionality in the Easy Diet Diary APP (following the guide instructing you how to do this which will be provided to you by Nutrition in Mind) or by email to [myintake@nutritioninmind.com.au](mailto:myintake@nutritioninmind.com.au);
  - (d) Nutrition in Mind will use the information contained in your Easy Diet APP to produce a report through the FoodWorks, Xyris Software (Australia) Pty Ltd software (**My intake Report**) which will provide information on your nutritional intake for the period recorded and sent to us through the Easy Diet APP in comparison to your daily recommended intakes; and
  - (e) Nutrition in Mind will email your My intake Report to you using the email address provided when you register and will endeavour to do so within 5 Business Days of you sending your Easy Diet Diary to us.
- 1.3 The My intake Report will only be as accurate as your records of intake information entered into the Easy Diet Diary APP.
- 1.4 The My intake Report will provide you with:
- (a) general information regarding your nutritional intake during the relevant period as compared to the Australian Guide To Healthy Eating, Australian Nutrient Reference Values, and other Australian Government recommendations from time to time; and
  - (b) general recommendations regarding changes which you could make to your dietary intake to better meet your nutritional requirements.
- 1.5 If you register for the Service but fail to submit your Easy Diet Diary APP to us we will not be responsible for notifying you of this or for chasing submission of your nutritional information.

- 1.6 You must ensure that all of the information you enter into the Easy Diet Diary APP is accurate as no corrections can be made by Nutrition in Mind during the diet analysis.
- 1.7 If you experience difficulty entering your intake into the Easy Diet Diary APP (for example, because a particular food you have consumed is not appearing in the Easy Diet Diary APP database) then you should email us with an explanation at [myintake@nutritioninmind.com.au](mailto:myintake@nutritioninmind.com.au).
- 1.8 The My Intake Reports provided by Nutrition in Mind are generic reports based on the information provided to us through the Easy Diet Diary APP and limited personal information about you which you provide when you register. They are general guides to nutrition management and are not a substitute for face to face consultation with an accredited practicing dietician and nutritionist.
- 1.9 The My intake Reports do not take into consideration your medical conditions or any other health or medical issues individual to you. However, they can be provided to your other health professionals such as your medical practitioner in order to assist them with their assessment and treatment for you.
- 1.10 The My intake Reports are only intended for healthy individuals who do not have a medical condition of any kind. This Service is not suitable for your use, without medical supervision, if you have an eating disorder or prone to developing an eating disorder, have a serious health condition or possess a physical disability;
- 1.11 Nutrition in Mind does not guarantee any particular outcome as a result of your use of the My intake Report.
- 1.12 If you suffer from, or may suffer from, a medical condition or health concern, or if you are pregnant or breastfeeding, then it is especially important that you consult your medical practitioner before taking any particular course of action based upon your My intake Report.
- 1.13 The Service is only intended for people living in Australia and New Zealand as nutritional information about food differs according to where people reside.
- 1.14 You acknowledge and agree that the nutritional information provided in the Easy Diet Diary APP and the My intake Reports is based on current nutritional information about foods but that it is general only, and that it is not possible for the exact nutritional content of your particular dietary intake to be measured.
- 1.15 You acknowledge and agree that there may be technical or administrative errors in the information provided via the Service.
- 1.16 We reserve the right to do any of the following, at our absolute discretion, without notice:
  - (a) correct any errors in the Service; or
  - (b) update the Service.

## **2 Terms of Use**

- 2.1 By registering for the Service through the Website you will be acknowledging and agreeing that you:
  - (a) have read and understood these terms and conditions and agree to be bound by them;

- (b) consent to the use of your personal information for the purposes set out in these terms including by electronically transferring the information in your registration and your Easy Diet Diary APP to licensed FoodWorks software; and
  - (c) consent to receiving communications from us as outlined in paragraph 5 of these terms.
- 2.2 Nutrition in Mind may amend its terms and conditions from time to time and will post its amended terms on the Website. The date of posting the amended terms on the Website will be the date the new terms come into effect and apply to you. Your continued use of the Website and the Service after posting of the amended terms will indicate your acceptance of the amended terms.

### **3 Registration for Service and licence**

- 3.1 Customers must be at least 18 years old in order to register for the Service. Customers under the age of 18 years should be supervised by a guardian when registering for the Service.
- 3.2 Purchase of the Service is for you as a single customer only, or is purchased for the single use of a dependant under the age of 18 years.
- 3.3 On registration for the Service, Nutrition in Mind grants you a limited non-exclusive, non-sublicensable, non-transferable and revocable licence to use the materials provided with the My intake Report in accordance with these terms and conditions and solely for your personal use.

### **4 Paying for Programs and refunds**

- 4.1 Customers must pay for Services through the Website at the time of registration using the secure Stripe payment facility or other payment facility from time to time in the Website.
- 4.2 Customers with a valid discount code from Nutrition in Mind are eligible to receive a percentage discount off the price of the Service (as advertised from time to time on the Website) according to the level of discount attributable to the discount code at the time of registration. If you are found by us to be using a discount code you are not entitled to use then you will be liable to immediately pay the full fee for the Service from time to time. If the full fee is not immediately paid we will be entitled to cancel the provision of the Service to you and if you have already submitted your Easy Diet Diary APP to us at the time of cancellation you will receive an 80% refund of the fee paid and we will retain 20% of the fee paid to account for processing and other charges and costs we incur in taking your registration and order for the Service (**Processing Charge**). If you have already submitted your Easy Diet Diary APP to us at the time of cancellation under this clause then you must immediately pay the full fee for the Service to us.
- 4.3 If you wish to cancel your registration for the Service we will accept a cancellation before you have submitted your intake information through the Easy Diet Diary APP and we will refund 80% of the fee paid and we will be entitled to retain the remaining Processing Charge.
- 4.4 If you wish to cancel your registration for the Service after you have submitted your intake information through the East Diet Diary APP then we will not be bound to accept your cancellation or to offer you a refund but you should contact us immediately on [myintake@nutritioninmind.com.au](mailto:myintake@nutritioninmind.com.au) to request a cancellation. If your intake information has not been processed by the time we deal with your request for cancellation then we will refund 80% of the fee paid and we will be entitled to retain the Processing Charge.

4.5 No other refunds are available in respect of the Service.

## **5 Privacy**

5.1 Nutrition in Mind is committed to protecting your privacy.

5.2 When you register for the Service, we will have access to personal information about you, such as information relating to your finances and potentially sensitive information about your health. We will protect this information and only use, disclose or deal with this information in accordance with our Privacy Policy.

5.3 Any personal information you provide to us will be collected for the primary purpose of providing you with access to and use of the Website and receipt of the Service.

5.4 If we are required by law or if necessary for debt collection reasons, your personal information may be disclosed to a third party.

5.5 Nutrition in Mind conducts its business across Australia and New Zealand and may need to share personal information with third parties (including FoodWorks Xyris Software (Australia) Pty Ltd) for the purposes of providing the Service and conducting its business (**Purposes**).

5.6 Customers consent to the disclosure of their personal information for the Purposes including to overseas recipients.

5.7 Overseas recipients may include entities providing services to us (including computer servers) based worldwide.

5.8 We may use SMS and/or email to communicate with you. From time to time, we may send you information about Nutrition in Mind by post, email, telephone call or SMS.

5.9 We may need to contact you to:

- (a) administer accounts and process payments;
- (b) communicate with you regarding any issues affecting your registration for the Service;
- (c) provide information on services and benefits available to you from us;
- (d) provide you with our periodic newsletters and updates about our services or special offers available to you; and
- (e) conduct market research or surveys to improve the services provided by Nutrition in Mind.

5.10 If you do not wish to receive any communications or SMS reminders from us, please advise us or alternatively follow the 'unsubscribe' instructions provided in the communication.

5.11 Nutrition in Mind may disclose your personal information (including your contact details) to its professional advisers, a claims processor or an insurer if there is a Claim, a dispute, an investigation by any police authority or any governmental body or similar agency.

## **6 Nutrition in Mind Rules for use of Website**

6.1 You must:

- (a) not use the Website or the My intake Report, both the electronic copy and print copy, for any illegal purpose;
  - (b) not undertake any activity which uses, exploits or affects the Brand or the Nutrition in Mind Intellectual Property except for the purposes of your personal participation in a Program or personal use of any goods or services purchased through the Website;
  - (c) not interfere with the enjoyment of another Customer;
  - (d) not perform any fraudulent activity in connection with the Service or the Website;
  - (e) not knowingly introduce viruses, trojans, worms, logic bombs or other material which is malicious or potentially damaging to our technology.
- 6.2 Customers are responsible for obtaining and maintaining the data network access to use the Website and email communications. Customers are also responsible for updating their devices to enable use of the Website and any updates to the Website.

## **7 Suspension or termination of your registration for the Service**

- 7.1 Nutrition in Mind may suspend or terminate your registration for the Service at any time should it consider that you have breached these terms and conditions or it is otherwise appropriate to do so.
- 7.2 Nutrition in Mind will suspend or terminate your registration for the Service by written notice to you (which will include notice by email).
- 7.3 Customers may stop using the Service and the Website at any time.

## **8 Complaints**

- 8.1 Customers may make a complaint about any goods or services supplied by Nutrition in Mind or any other matter concerning Nutrition in Mind by email to [myintake@nutritioninmind.com.au](mailto:myintake@nutritioninmind.com.au).
- 8.2 Customers must use the subject line 'Complaint' on the email and must outline the complaint in detail including the nature of the complaint, and attach copies of any documentation which supports the complaint.
- 8.3 Nutrition in Mind will investigate the complaint and endeavour to respond within 14 Business Days.

## **9 Disclaimers**

- 9.1 Nutrition in Mind does not guarantee that the Website or the Easy Diet Diary APP will function on any particular device and Customers acknowledge and agree that the Website and the Easy Diet Diary APP may suffer from malfunction or delays from time to time and that this is an inherent risk of such internet and electronic based systems.

## **10 Our liability to Customers**

- 10.1 Please note that nothing in this agreement excludes, restricts or modifies any term, condition, warranty, guarantee, right or remedy (including under a statutory guarantee) which cannot be lawfully excluded, restricted or modified.

- 10.2 Otherwise, and except as expressly included in this agreement, all implied terms, conditions, warranties, rights or other additional obligations that can be lawfully excluded are excluded from this agreement. In particular, but subject to the preceding paragraph, we are not liable for:
- (a) negligence;
  - (b) breach of terms implied that services will be provided with reasonable care and skill at common law that in either case results in your death or injury in connection with or under this agreement.
- 10.3 Nutrition in Mind will not be liable for any loss or injury attributable to:
- (a) your fault;
  - (b) a third party's fault (such as the owner of the Easy Diet Diary APP or the FoodWorks software);
  - (c) any loss or damage caused by a distributed denial of service attack, viruses or other technologically harmful material that may infect your computer equipment, device, programs, data or other material due to your use of the Website or the Easy Diet Diary APP or other material on the Website, or any website linked to it;
  - (d) the conduct or actions of Customers online or offline or their use of the Website;
  - (e) any website links contained on the Website or an APP to external organisations or advertisements or the use of such an external organisation's website or App. Parent; or
  - (f) events which neither we, nor our suppliers or agents could have foreseen or forestalled, even if we had taken reasonable care.
- 10.4 We are not liable if you ignore our requirement set out in these terms, or at any other time, to seek medical or other professional advice.

## **11 Warranties (by Customers)**

- 11.1 You represent and warrant to Nutrition in Mind that:
- (a) you are 18 years old or over, or are under the supervision of a parent or guardian;
  - (b) all information and documentation provided to Nutrition in Mind from time to time is true and accurate and not misleading in any respect; and
  - (c) you will abide by these terms and conditions at all times.

## **12 Limitation/exclusion of liability**

- 12.1 Customers acknowledge and agree that Nutrition in Mind excludes all liability to Customers to the maximum extent permitted by law including the Australian Consumer Law contained in the Competition and Consumer Act 2010.
- 12.2 All implied terms, conditions, warranties, rights or other additional obligations that can be lawfully excluded are excluded from this agreement. In particular, we are not liable for:
- (a) negligence or fault of Customers;

- (b) the acts or omissions of a third party unconnected with the provision of goods or services by Nutrition in Mind;
- (c) any defect in or complaint about the quality, suitability or availability of a My intake Report;
- (d) delays in the functionality of, or inability to access the Website or the Easy Diet Diary APP (and to this end Nutrition in Mind does not guarantee or warrant that the Website or the Easy Diet Diary APP will be uninterrupted or error free); and
- (e) any behaviour by a Customer towards another Customer or third parties which is defamatory, libellous, unlawful or offensive way towards other Customers or third parties.

12.3 Customers agree and accept that the entire risk arising out of your use of the Website and use of the My intake Report and any other services purchased through the Website remains solely with Customers to the maximum extent permitted by law.

12.4 Nutrition in Mind will not be liable for an indirect, incidental or consequential damage including loss of profits, lost data, personal injury, death or property damage in connection with or referable to a Customer's use of the Website or the Easy Diet Diary APP or other goods or services provided in connection with or referable to the Website and any My intake Report.

### **13 Indemnity**

13.1 Customers agree to indemnify and hold Nutrition in Mind and its officers, directors, employees and agents harmless from any and all Claims arising out of or in connection with:

- (a) a Customer's use of the Service, a My intake Report produced by us or the Easy Diet Diary APP; or
- (b) a Customer's breach of these terms and conditions.

### **14 Notice**

14.1 We may give notice to you by email to your email address used to register for the Service or by written communication to your address as notified to us, Customers may give notice to us by email to [myintake@nutritioninmind.com.au](mailto:myintake@nutritioninmind.com.au).

### **15 Assignment**

15.1 Nutrition in Mind may assign or transfer the rights and benefits under this agreement and sub-contract our obligations under this agreement to a third party in whole or in part at any time without the approval of the Customer.

15.2 Nutrition in Mind may transfer ownership of the Website at any time without the consent of the Customer and the Customer hereby consents to the transfer and disclosure of his or her personal and sensitive information (including health and financial information) to any purchaser of Nutrition in Mind or its business and assets.

### **16 Severance**

16.1 If any provision of these terms is found to be illegal, invalid or unenforceable, in whole or in part, under any law, then such provision or part of it will be deemed not to form part of

these terms and the legality and enforceability of the other provisions of these terms will remain unaffected and enforceable.

## **17 Entire Agreement**

- 17.1 These terms constitute the entire agreement between Nutrition in Mind and Customers and replaces and supersedes all other prior agreements or undertakings between the parties.

## **18 Intellectual Property and Ownership**

- 18.1 The Website, the Nutrition in Mind logo and trademarks (whether registered or unregistered), the Brand and these terms and conditions, the content of the My intake Report and any materials we provide to you in connection with the Service (**Nutrition in Mind Intellectual Property**), will at all times remain our property and are subject to copyright and other intellectual property rights under Australian law, international conventions and other laws.
- 18.2 You undertake not to copy, publish or reproduce in whole or in part, the Nutrition in Mind Intellectual Property except as is expressly permitted by these terms and conditions.

## **19 Governing laws**

- 19.1 These terms and conditions will be governed by and construed in accordance with the laws of the state of New South Wales, Australia.
- 19.2 All parties hereby submit to the jurisdiction of the Courts of New South Wales, Australia.

## **20 Your acknowledgements and consents**

- 20.1 By registering for the Service you acknowledge and agree that:
- (a) you have read and understood these terms and conditions and agree to be bound by them;
  - (b) you are responsible for all costs incurred by you with respect to your usage of the Website, the Easy Diet Diary APP on a device including data usage fees and other telecommunications fees;
  - (c) you give permission for Nutrition in Mind to collect, use and disclose your personal information in accordance with these terms and conditions;
  - (d) you understand that the Easy Diet Diary APP is not owned or operated by Nutrition in Mind and that ongoing access to this APP cannot be guaranteed by us; and
  - (e) you consent to receiving any communications from us as outlined in section 5 above however you may opt out at any time.

## **21 Definitions**

- 21.1 In these terms and conditions the following words have the following meanings:
- (a) **Brand** means the distinctive appearance, image, goodwill and reputation that attaches to the Website, and all other materials supplied through the Website, the Nutrition in Mind trademarks and the application of the trademarks and the Nutrition in Mind Intellectual Property to goods, services and premises and



includes the distinctive image, Brand positioning and customer appeal created by the appearance, layout, general ambience and presentation of the Website, and the goods and services provided through the Website;

- (b) **Business Days** means any day (excluding Saturdays and Sundays and public holidays) on which banks are open for business in Sydney, Australia;
- (c) **Claim** means all claims, liabilities, debts, costs, expenses or obligations, whether actual or contingent, present or future, quantified or unquantified, damages, demands, suits, actions and causes of actions, including legal fees on a solicitor and own client basis, other professionals' and experts' fees, and court or dispute resolution costs;
- (d) **Customer** means any person who registers for the Service on the Website;
- (e) **Nutrition in Mind Intellectual Property** has the meaning given to it in clause 18.1 above;
- (f) **Privacy Policy** means the Nutrition in Mind privacy policy displayed on the Website from time to time.