

Caloricious Terms of Service

Welcome to our Web site, www.caloricious.com, a service dedicated to better eating habits through improving access to and providing tools to compare nutritional information. By using our Web site, you are agreeing to comply with and be bound by the following terms of use. Please review the following terms carefully. If you do not agree to these terms, you should not use this site (the “Services”). The term “Caloricious” or “us” or “we” or “our” refers to Caloricious, Inc. the owner of the Web site. The term “you” refers to the user or member of our Web Site.

This Agreement includes our policy for the acceptable use of the Caloricious.com Services and Content posted on the Caloricious Website, your rights, obligations and restrictions regarding your use of the Caloricious Services and our Privacy Policy. We may modify this Agreement from time to time and such modification shall be effective upon posting by us on the Site. You agree to be bound to any changes to this Agreement when you use our Services after any such modification is posted. It is therefore important that you review this Agreement regularly to ensure you are updated as to any changes.

Acceptance of Agreement.

You agree to the terms and conditions outlined in this Terms of Use Agreement (“Agreement”) with respect to our Web site (the “Site”). This Agreement constitutes the entire and only agreement between us and you, and supersedes all prior or contemporaneous agreements, representations, warranties and understandings with respect to the Site, the content, products or services provided by or through the Site, and the subject matter of this Agreement. This Agreement may be amended at any time by us from time to time without specific notice to you. The latest Agreement will be posted on the Site, and you should review this Agreement prior to using the Site.

Intellectual Property and Licenses.

You transfer to us all ownership and rights, whether intellectual property or otherwise, to any material contributed by you to our Site (“User Material”). All User Material shall be considered part of our Content provided on our Services.

We hereby grant you a non-exclusive, fully-paid up, royalty-free, world-wide license to use our Services and Content for personal and non-commercial purposes only, subject to the terms of this Agreement. Your license to the Content and Services shall terminate upon your violation of any term of this Agreement.

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ing but not limited to intellectual property) rights. The copying, redistribution, use or publication by you of any such matters or any part of the Site, except as allowed by Section 4 below, is strictly prohibited. The posting of information or materials on the Site does not constitute a waiver of any right in such information and materials.

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Limited License; Permitted Uses.

You are granted a non-exclusive, non-transferable, revocable license (a) to access and use the Site strictly in accordance with this Agreement; (b) to use the Site solely for internal, personal, non-commercial purposes; and (c) to print out discrete information from the Site solely for internal, personal, non-commercial purposes and provided that you maintain all copyright and other policies contained therein. No print out or electronic version of any part of the Site or its contents may be used by you in any litigation or arbitration matter whatsoever under any circumstances.

Restrictions and Prohibitions on Use.

Your license for access and use of the Site and any information, materials or documents (collectively defined as “Content”) therein are subject to the following restrictions and prohibitions on use:

You may not

copy, print (except for the express limited purpose permitted by Section 4 above), republish, display, distribute, transmit, sell, rent, lease, loan or otherwise make available in any form or by any means all or any portion of the Site or any Content;

use the Site or any materials obtained from the Site to develop, or as a component of, any information, storage and retrieval system, database, information base, or similar resource (in any media now existing or hereafter developed), that is offered for commercial distribution of any kind, including sale, license, rent, subscription, or any other commercial distribution mechanism;

create compilations or derivative works of any Content from the Site; (d) use any Content from the Site in any manner that may infringe any copyright, intellectual property right, proprietary right, or property right of us or any third parties; (e) remove, change or obscure any copyright notice or other proprietary notice or terms of use contained in the Site; (f) make any portion of the Site available through any timesharing system, service bureau, the Internet or any other technology now existing or developed in the future; (g) remove, decompile, disassemble or reverse engineer any Site software or use any network monitoring or discovery software to determine the Site architecture; (h) use any automatic or manual process to harvest information from the Site; (i) use the Site for the purpose of gathering information for or transmitting (1) unsolicited commercial email; (2) email that makes use of headers, invalid or nonexistent domain names, or other means of deceptive addressing; and (3) unsolicited telephone calls or facsimile transmissions; (j) use the Site in a manner that violates any state or fed-

eral law regulating email, facsimile transmissions or telephone solicitations; and (k) export or re-export the Site or any portion thereof, or any software available on or through the Site, in violation of the export control laws or regulations of the United States.

post any obscene, lewd, excessively violent, harassing, sexually explicit, offensive, threaten or harm the safety of a third party, illegal or violate any other rights or otherwise objectionable subject matter. We reserve the right to remove any such Content but have no control over, and in no way assume responsibility for the Content on our Site. User Materials are not reviewed prior to postings and do not reflect opinions or policies of Caloricious. violate the rights of any user or third party (including rights of privacy and publicity) or abuse, defame, misrepresent, harass, stalk or threaten another.

disrupt or interfere with the security of, or otherwise cause harm to, the Site, or any Services, servers or networks connected to or accessible through the Site.

Transmit spam, chain letters, pyramid schemes or any other unsolicited or bulk communications to any User or to any orgdomain e-mail address.

post or otherwise submit or any software, programs or files that are harmful or disruptive of another's equipment, software or other property, including any corrupted files, time bombs, Trojan horses, viruses and worms. You agree that you will not use any robot, spider, other automatic device, or manual process to monitor, access, collect information or copy our Web pages or the content contained thereon or for any other unauthorized purpose without our prior expressed written permission.

disrupt, interfere or inhibit any other user from using and enjoying the Site, Materials or Services.

charge, require payment or consideration for any advice given or your use of the website.

take any action that may undermine the feedback or ratings systems (such as displaying, importing or exporting feedback information off of the Site or for using it for purposes unrelated to this Site).

No Medical Advice.

Information contained on or made available through the Site is not intended to and does not constitute medical or nutritional advice or counseling. Your use of information on the Site or materials linked to the Site is entirely at your own risk.

Our Services include aggregating nutritional data about foods and products from third parties. We are not responsible or liable for any Content and we do not warrant or guarantee the accurateness, completeness, adequacy or currency of the information that is provided, contained in or linked to the Site.

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You may provide links to the Site, provided (a) that you do not remove or obscure, by framing or otherwise, advertisements, the copyright notice, or other notices on the Site, (b) your site does not engage in illegal or pornographic activities, and (c) you discontinue providing links to the Site immediately upon request by us.

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Certain sections of, or offerings from, the Site may require you to register. If registration is requested, you agree to provide us with accurate, complete registration information. Your registration must be done with a valid email address. Each registration is for your personal use only and not on behalf of any other person or entity. We do not permit (a) any other person using the registered sections under your name; or (b) access through a single name being made available to multiple users on a network. You are responsible for preventing such unauthorized use.

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We do not represent or warrant that the Site will be error-free, free of viruses or other harmful components, or that defects will be corrected. We do not represent or warrant that the information available on or through the Site will be correct, accurate, timely, reliable or suitable for your needs or any particular purpose. We may make changes to the features, functionality or content of the Site at any time. We reserve the right in our sole discretion to edit or delete any documents, information or other content appearing on the Site.

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Unlawful Activity.

We reserve the right to investigate complaints or reported violations of this Agreement and to take any action we deem appropriate, including but not limited to reporting any suspected unlawful activity to law enforcement officials, regulators, or other third parties, disclosing any information necessary or appropriate to such persons or entities relating to your profile, email addresses, usage history, posted materials, IP addresses and traffic information and removing your access to the Services.

Indemnification.

You agree to indemnify, defend and hold us and our partners, agents, officers, directors, employees, subcontractors, successors, assigns, third party suppliers of information and documents, attorneys, advertisers, product and service providers, and affiliates (collectively, "Affiliated Parties") harmless from any liability, loss, claim and expense, including reasonable attorney's fees, related to your violation of this Agreement or use of the Site.
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(a) We and any Affiliated Party shall not be liable for any loss, injury, claim, liability, or damage of any kind resulting in any way from (a) any errors in or omissions from the Site or any services or products obtainable therefrom, (b) the unavailability or interruption of the Site or any features thereof, (c) your use of the Site, (d) the content contained on the Site, or (e) any delay or failure in performance beyond the control of a Covered Party.

(b) THE AGGREGATE LIABILITY OF US AND THE AFFILIATED PARTIES IN CONNECTION WITH ANY CLAIM ARISING OUT OF OR RELATING TO THE SITE AND/OR THE PRODUCTS, INFORMATION, DOCUMENTS AND SERVICES PROVIDED HEREIN OR HEREBY SHALL NOT EXCEED \$100 AND THAT AMOUNT SHALL BE IN LIEU OF ALL OTHER REMEDIES WHICH YOU MAY HAVE AGAINST US AND ANY AFFILIATED PARTY.

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We reserve the right, and you authorize us, to the use and assignment of all information regarding Site uses by you and all information provided by you in any manner consistent with our Privacy Policy. All remarks, suggestions, ideas, graphics, or other information communicated by you to us (collectively, a “Submission”) will forever be our property. We will not be required to treat any Submission as confidential, and will not be liable for any ideas (including without limitation, product, service or advertising ideas) and will not incur any liability as a result of any similarities that may appear in our future products, services or operations. Without limitation, we will have exclusive ownership of all present and future existing rights to the Submission of every kind and nature everywhere. We will be entitled to use the Submission for any commercial or other purpose whatsoever,

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Third-Party Services.

We may allow access to or advertise certain third-party product or service providers (“Merchants”) from which you may purchase certain goods or services. You understand that we do not operate or control the products or services offered by Merchants. Merchants are responsible for all aspects of order processing, fulfillment, billing and customer service. We are not a party to the transactions entered into between you and Merchants. You agree that use of or purchase from such Merchants is AT YOUR SOLE RISK AND IS WITHOUT WARRANTIES OF ANY KIND BY US, EXPRESSED, IMPLIED OR OTHERWISE INCLUDING WARRANTIES OF TITLE, FITNESS FOR PURPOSE, MERCHANTABILITY OR NON-INFRINGEMENT. UNDER NO CIRCUMSTANCES ARE WE LIABLE FOR ANY DAMAGES ARISING FROM THE TRANSACTIONS BETWEEN YOU AND MERCHANTS OR FOR ANY INFORMATION APPEARING ON MERCHANT SITES OR ANY OTHER SITE LINKED TO OUR SITE.

Off-line Conduct

Although we cannot monitor the conduct of its users off the Site, it is a violation of these rules to use any information obtained from this Site in order to harass, abuse, or harm another person, or in order to contact, advertise to, solicit, or sell to any user without his/her prior explicit consent.

Privacy Policy.

Our Privacy Policy, as it may change from time to time, is a part of this Agreement. You must review this Privacy Policy by clicking on this link.

Links to other Web Sites.

The Site contains links to other Web sites. We are not responsible for the content, accuracy or opinions expressed in such Web sites, and such Web sites are not investigated, monitored or checked for accuracy or completeness by us. Inclusion of any linked Web site on our Site does not imply approval or endorsement of the linked Web site by us. If you decide to leave our Site and access these third-party sites, you do so at your own risk.

Copyrights and Copyright Agents.

We respect the intellectual property of others, and we ask you to do the same. If you are a copyright owner or an agent thereof and you believe that your copyrighted materials have been used in a way that constitutes copyright infringement you may submit a notification pursuant to the Digital Millennium Copyright Act (“DMCA”) by providing our designated agent with the following information in writing (see 17 U.S.C 512(c)(3) for further detail):

An electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest;

A description of the copyrighted work that you claim has been infringed;

A description of where the material that you claim is infringing is located on the Site;

Your address, telephone number, and email address;

A statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; and

A statement by you, made under penalty of perjury, that the above information in your Notice is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf.

If your notice does not include the above items, your DMCA notice may not be valid. Our Copyright Agent for Notice of claims of copyright infringement on the Site can be reached by directing an e-mail to the Copyright Agent at Email: guna@caloricious.com or mail to 2225, E.Bayshore Rd, Suite 200, Palo Alto, CA 94303.

Information and Press Releases.

The Site contains information and press releases about us. We disclaim any duty or obligation to update this information or any press releases. Information about companies other than ours contained in the press release or otherwise, should not be relied upon as being provided or endorsed by us.

Legal Compliance.

You agree to comply with all applicable domestic and international laws, statutes, ordinances and regulations regarding your use of the Site and the Content provided therein.

Miscellaneous.

This Agreement shall be treated as though it were executed and performed in Palo Alto, California, and shall be governed by and construed in accordance with the laws of the State of California (without regard to conflict of law principles). Any cause of action by you with respect to the Site (and/or any information, Documents, products or services related thereto) must be instituted within one (1) year after the cause of action arose or be forever waived and barred. All actions shall be subject to the limitations set forth in Section 16 and Section 17. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party. This Agreement and all incorporated agreements and your information may be automatically assigned by us in our sole discretion to a third party in the event of an acquisition, sale or merger. Should any part of this Agreement be held invalid or unenforceable, that portion shall be construed consistent with applicable law and the remaining portions shall remain in full force and effect. To the extent that anything in or associated with the Site is in conflict or inconsistent with this Agreement, this Agreement shall take precedence. Our failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision nor of the right to enforce such provision. Our rights under this Agreement shall survive any termination of this Agreement.

Arbitration.

Any legal controversy or legal claim arising out of or relating to this Agreement or our services, excluding legal action taken by us to collect or recover damages for, or obtain any injunction relating to, Site operations, intellectual property, and our services, shall be settled solely by binding arbitration in accordance with the commercial arbitration rules of JAMS. Any such controversy or claim shall be arbitrated on an individual basis, and shall not be consolidated in any arbitration with any claim or controversy of any other party. The arbitration shall be conducted in Palo Alto, California, and judgment on the arbitration award may be entered into any court having jurisdiction thereof. Either you or us may seek any interim or preliminary relief from a court of competent jurisdiction in Palo Alto, California necessary to protect the rights or property of you and us pending the completion of arbitration. Each party shall bear one-half of the arbitration fees and costs incurred through JAMS.

