

I. CONDITIONS OF USE OF THE « NUTRI-SCORE » LOGO

Version 21 dated June 16, 2020 and approved by Santé Publique France

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PREAMBLE

Regulation (EU) no.1169/2011 of 25 October 2011 on the provision of food information to consumers (hereinafter referred to as the “**EU Regulation**”) requires food operators to display mandatory information notices on their products, in order to achieve a high level of health protection for consumers and to guarantee their right to information, by providing consumers with the minimal information required to ensure they can make fully informed decisions and use food safely in compliance with, notably, health, economic, environmental, social and ethical considerations.

Articles 29 et seq. of the EU Regulation lay down the rules for part of this minimal information, namely the mandatory nutrition declaration including information on the nutritional features enabling consumers, including those who have to follow a special diet, to make an informed choice.

In order to facilitate the understanding of this declaration, Article 35 of the EU Regulation gives the possibility of affixing additional forms of expression or representations in the form of a graphic or symbol, provided that these forms and representations comply with demanding criteria in terms of quality and comprehensibility, as laid down in the same Article 35.

The French National Public Health Agency, hereinafter referred to as “**Santé Publique France**”, a public administrative establishment of the French State, responsible in particular for health promotion, has drawn up, on the basis of the work of the French National Institute of Health and Medical Research (Inserm), a signage system meeting the criteria laid down by the EU Regulation. This signage, hereinafter referred to as the “**Logo**”, has been filed before the INPI (French National Institute for Industrial Property) and the EUIPO (European Union Intellectual Property Office) for the protection of industrial designs and models and as a collective trademark.

Terms and conditions have been drawn up for the use of this Logo. These terms and conditions define the persons authorized to use this Logo, the conditions of use of this Logo as well as the graphic charter to be respected, and the sanctions that may affect non-compliance with said terms and conditions. If these persons meet the conditions set out in these terms and conditions and comply with them throughout their use of the Logo, several rights of use are automatically granted to them on the Logo, which differ depending on whether the products are referred to in their Requests or Notifications. Operators are informed that Santé Publique France may suspend or terminate all or part of the rights of use granted to them on the Logo under the conditions set out in these terms and conditions.

The first edition of these terms and conditions was approved by Santé Publique France on 12 May 2017.

Santé Publique France will ensure the relevance of these terms and conditions with regard to the evolution of the relevant markets, so that the terms and conditions may be updated.

Article 1. DEFINITIONS

1.1 – “Specifications” means the specifications attached to the exhibits (as Exhibit 1).

1.2 – “Logo Guidelines” means the visual guidelines setting out the conditions of use of the Logo, attached to the exhibits (as Exhibit 2).

1.3 – “Generic communication” means the general promotional communication of the Operator that is not specifically aimed at one or more Products.

1.4 – “Mandatory nutrition declaration” means the declaration compliant with articles 30 et seq. of the EU Regulation.

1.5 – “Application” means an Operator's application for registration under the Conditions of Use.

1.6 – “**EUIPO**” means the European Union Intellectual Property Office.

1.7 – “**Operator**” means any natural or legal person entitled to use the Logo on the Products (as defined below) in application of the Regulations for Use. In this respect, the “**Rightholder**” means the Operator which owns the title or exclusive license on the intellectual property rights on its Source Products and the “**Distributor**” means the Operator which makes any lawful commercial use of its Distributed Products in direct or indirect agreement with their Rightholder. An Operator can be Rightholder of its Source Products and Distributor of Distributed Products at the same time.

1.8 – “**INPI**” means the National Institute of Intellectual Property of France.

1.9 – “**Logo**” means the registered “Nutri-Score” signs:

- at the INPI, as collective trademarks, on April 28, 2017 under numbers 4357857 and 4357865;
- and at the EUIPO, as a collective trademark, on 19 May 2017, under numbers 016762312 and 016762379 and as industrial designs, on 20 July 2017, under numbers 004112415-0001, 004112415-0002 and 004112415-0003.

The Logo consists of:

- 5 logotypes, hereinafter referred to as the “**Classifying Logo**” presenting the 5 product rankings on the nutritional scale, associated with the word “Nutri-Score”.
- A neutral logotype, hereinafter referred to as the “**Neutral Logo**”, developed solely for the purposes of Generic communication or for the exception of Article 6.2, and which includes the nutrition scale, without highlighting a ranking, associated with the word “Nutri-Score”.

1.10 – “**Notification**” means the additional notification from a Distributor indicating the Distributed Products for which it exercises the rights provided for in the Conditions of Use.

1.11 – “**Products**” means goods subject to the obligation of Mandatory nutritional declaration. In this respect, “**Source Products**” means the Products covered by a Rightholder in an Application and “**Distributed Products**” means the Products covered by a Distributor in a Notification. The Source Products of a Rightholder can thus be qualified as Distributed Products for a Distributor.

1.12 – “**Conditions of Use**” means these conditions of use of the Logo and their Exhibits, including the are meant the present Logo Usage Rules and its Appendices.

1.13 – “**EU Regulation**” means Regulation (EU) n°1169 /2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) n°1924/2006 and (EC) n°1925/2006 of the European Parliament and of the Council and repealing Commission Directive n°87/250/EEC, 1999/10/EC, 2002/67/EC and 2008/5/EC, Council Directive 90/496/EEC, Directive 2000/13/EC of the European Parliament and of the Council and Commission Regulation (EC) No 608/2004.

1.14 – “**Santé Publique France**” means the French National Agency of Public Healthcare, a public administrative body of the French State, represented by its Director General. Santé Publique France is the sole owner of any and all rights and title on the Logo.

Article 2. OBJECT

The purposes of the Conditions of Use are to define the terms and conditions of use of the Logo by the Rightholder or the Distributor according to the categories of Products.

Article 3. IDENTIFICATION OF THE LOGO

The "Nutri-Score" Logo was designed by Santé Publique France in compliance with the prerogatives laid down in article 35 of the EU Regulation.

It serves as an additional form of expression to the Mandatory nutrition declaration and aims to help the consumer to take into account the nutritional quality of the products he or she buys by ranking the food product in the 5-level nutritional scale, calculated in accordance with the provisions of the Specifications attached to the present Conditions of Use.

It includes 5 Classifying Logos and 1 Neutral Logo.

Any use of the Logo implies formal acceptance of the provisions of the Conditions of Use.

Only an Operator may affix the Logo in accordance with the terms of use defined below.

Article 4. LOGO OWNERSHIP

The Operator acknowledges that Santé Publique France fully owns the Logo.

The license to use the Logo pursuant to the Conditions of Use does not lead to any transfer of ownership or title on the Logo.

Article 5. BENEFICIARIES OF A RIGHT TO USE THE LOGO

5.1. Eligible operators

The use of the Logo is reserved for individuals or legal entities which are manufacturers and distributors of Products on the French and/or European markets, subject to compliance with the terms of the Conditions of Use.

French administrations and public institutions have a right to use the Logo for the purposes of public actions in the field of healthcare, which do not compete with the use of the Logo on the markets. As an exception to Article 5.2.1, the relevant administrations and public institutions must make a request by e-mail to nutriscore@santepubliquefrance.fr.

Software and applications editors as well as journalists who wish to use the Nutri-Score Logo must first send an e-mail to nutriscore@santepubliquefrance.fr to receive the conditions of use of the Logo. The Logo Guidelines must be expressly respected by these third parties.

5.2. Procedure for obtaining the right of use for Source Products

5.2.1 Registration

Before any registration, the Operator must read the entire registration procedure described on the page dedicated to the Logo: <http://santepubliquefrance.fr/Sante-publique-France/Nutri-Score>.

For Products distributed in France, whether exclusively or not, the Operator must be prepared to send the requested files to the French Observatory of Food Quality (Oqali), within the specified time limit (see Article 9.6 of these Conditions of Use), via the following link:

https://survey.anses.fr/SurveyServer/s/formation7/Oqali_Suivi_Nutri_Score/questionnaire.htm

Any party eligible pursuant to article 5.1 of the Conditions of Use and which wishes to use the Logo must register its Application on the following site:

https://www.demarches-simplifiees.fr/commencer/enregistrement_nutri-score

Operators who wish to register Products marketed exclusively outside of the French territory may register using the procedure called “*Registration procedure of the operator to obtain the right to use the registered collective trademark Nutri-Score*”:

<https://www.demarches-simplifiees.fr/commencer/registration-for-brands-distributed-abroad-only>

The registration includes:

- The identification of the applicant and its activity,
- The detail by categories of the Source Products targeted by the use of the Logo,
- The undertaking to use the Logo for all Source Products marketed under the brand(s) registered as Rightsholder, in compliance with the Conditions of Use.

An electronic acknowledgement of receipt of this registration is immediately sent to the Operator, with the files allowing the use of the Logo, subject to the rights of use granted and the specific conditions relating to the Distributed Products.

5.1.2 Change of circumstances affecting the Operator and its right of use

The Operator undertakes to notify Santé Publique France of any change affecting its quality or modifying one of the characteristics declared at the time of its registration.

In this respect, it shall keep the list of Products referred to in its Application up to date, in particular according to the categories of Products (Source Products and/or Distributed Products), in application of Article 9.6. The right to use the Logo on a Product ceases from the withdrawal of the Product as a result of this update, whether this withdrawal is voluntarily declared by the Operator or results from the application of article 10 of the Conditions of Use.

These modifications are registered with Santé Publique France on the dedicated website.

It is understood that if the Operator no longer meets the conditions laid down in the Conditions of Use, the right to use the Logo is terminated in accordance with article 13.2 of the Conditions of Use.

5.3. Procedure for obtaining the right to use the Distributed Products

Any Operator who has submitted an Application under the conditions of article 5.2 above may also benefit from the license to use the Logo on Distributed Products, provided that it sends an annual Notification by e-mail to the address nutriscore@santepubliquefrance.fr containing the identification of the categories of Distributed Products as well as the identity of the manufacturer and of the holder of the intellectual property rights on these Distributed Products. This Notification must be renewed each year, indicating, as the case may be, (i) the categories of Distributed Products for which the Distributor ceases to use the Logo and (ii) the categories of Distributed Products for which the Distributor begins to use the Logo.

The Distributor undertakes to use the Logo only for the categories of Distributed Products indicated in the Notification and not to use the Logo for Distributed Products not previously indicated in an annual Notification.

The Distributor undertakes to only use the Logo for its lawful commercial use of the categories of Distributed Products. As a result, if the conditions of use and/or distribution of the Distributed Products prevent the Distributor from using the Logo, the Notification by the Distributor shall be deemed null and void for these Distributed Products and the Distributor does not have the right to use the Logo for

them. In this case, the Distributor shall be solely responsible for its Notification and its fraudulent use of the Logo, at its own risk and peril.

Article 6. LICENSE TO USE THE LOGO

The right to use the Logo granted by Santé Publique France must comply with the conditions of this Article 6 as part of a full performance obligation, and any violation by the Operator may result into the partial or total termination of the right(s) of use granted to the Operator on the Logo, in application of Article 10 of the Conditions of Use.

6.1. License to use the Logo on Source Products

Santé Publique France grants the Rightsholder the right to use the Logo on its Source Products, from the receipt of the Application:

- primarily, to be affixed on Source Products as a complementary presentation to the Mandatory nutrition declaration in accordance with the conditions of Article 7.1.
- collaterally, for the purposes of Generic communication or promotional communication regarding a Source Product in accordance with the conditions of Article 8.

The use of the Logo for the purposes of Generic communication or promotional communication on a Source Product is only granted insofar as the Operator uses the Logo on the Source Products as a presentation complementary to the Mandatory nutrition declaration according to the methods and implementation deadlines provided for in the Conditions of Use. Under no circumstances shall the Operator be authorized to use the Logo solely for the purpose of communicating on or promoting the Source Products.

6.2. Rights to use the Logo on the Distributed Products

The right to use the Logo on the Distributed Products is granted by Santé Publique France to the Distributor, from the receipt of the Notification and provided that the Distributor makes a lawful commercial use of the Logo in accordance with its rights over the Distributed Products:

- primarily, and subject to (i) the respect of the intellectual property rights of the Rightsholder and (ii) the use of the Classifying Logo by the Distributor on these Distributed Products in application of the conditions of Article 7.2, for the lawful marketing and commercial use of the Distributed Products in relation to the Logo (without affixing the Logo directly on the Distributed Products).
- collaterally, for the purposes of Generic communication or promotional communication on a Distributed Product in accordance with the conditions of Article 8.

The right to use the Logo for the purposes of Generic communication or promotional communication on a Distributed Product is only granted to the extent that the Distributor uses the Logo in connection with the Distributed Products as a complementary presentation to the Mandatory nutrition declaration according to the terms and implementation deadlines provided for in the Conditions of Use. Under no circumstances shall the Distributor be authorized (i) to use the Logo solely to communicate or promote on the Distributed Products or (ii) to use the Logo for Distributed Products that have not been the subject of an annual Notification.

6.3. Non-exclusivity

The Conditions of Use do not give any exclusive right to use the Logo to the benefit of the Operator.

6.4. Personal licenses

The right(s) to use the Logo is strictly personal. Under no circumstances may it be transferred or transmitted by any means whatsoever.

6.5. Financial conditions

The right(s) to use the Logo is granted to the Operator free of charge.

Article 7. CONDITIONS OF USE OF THE CLASSIFYING LOGO

7.1. Specific conditions for Source Products

7.1.1 Scope of application

If the Operator decides to use the Classifying Logo on one or more of its trademarks in application of article 6.1 of the Conditions of Use, the Operator must use it on all the categories of Products that it markets under his trademarks registered to the Conditions of Use.

The Operator enjoys a 24-month time period from the date of its registration to comply with all the provisions of the Conditions of Use for Source Products. If the number of references involved is greater than or equal to 2000, this time period is extended to 36 months, with an intermediary threshold of 80% of the products affixing the Classifying Logo within 24 months.

Promotional communications in connection with a Source Product must necessarily use the appropriate Classifying Logo, in accordance with the conditions of Article 7.2 below.

7.1.2 Choice of the Classifying Logo on the Source Products

- Exclusive use of the Classifying Logo

The use of the Logo as a complementary presentation to the Mandatory nutrition declaration is strictly limited to the single use of a Classifying Logo.

Under no circumstances may the Operator affix the Neutral Logo on its Products.

- Classification of the Product in the nutritional scale: Specifications

The choice of the appropriate Classifying Logo for each Product is determined by the Operator in accordance with the Specifications defined in Exhibit 1.

The use of the Classifying Logo is inseparable from the calculation of the nutritional score of each Product and its result, in accordance with these Specifications.

The Operator is solely responsible for calculating the nutritional score.

7.1.3 License to use the Classifying Logo on the Source Products

The Rightsholder grants to the Distributors (i) registered under these Conditions of Use and (ii) having the rights to commercially use the Source Products, a limited, non-exclusive, non-transferable, irrevocable, non-assignable right to use the image and the name of the Source Products in association with their respective Classifying Logos, to the exclusion of any and all sub-licenses, for the sole purposes of exercising the rights to use the Logo, free of charge, worldwide and for the duration of the

Rightsholder's registration to the Conditions of Use. Pursuant to this license of use, the Distributors may use the Source Products as Distributed Products.

7.2. Conditions specific to the Distributed Products

7.2.1 Scope of application

If the Distributor decides to use the Classifying Logo on one or more Distributed Products in application of article 6.2 of the Conditions of Use, the Distributor must, before any exercise of either the right of use or the right of communication:

- use the Classifying Logo selected by the Rightsholder for these Distributed Products, in application of the license of use granted by the Rightsholder under article 7.2.3 of the Conditions of Use, as the Distributor is not entitled to assign another Classifying Logo than the one assigned by the Rightsholder to these Distributed Products; or
- if the rightsholder(s) of the intellectual property rights did not register under the Conditions of Use as Rightsholder(s), send said rightsholder(s) a notice of use prior to any use of the Logo on the Distributed Products protected by the intellectual property rights of those rightsholder(s).

7.2.2 Prior Notice of use to third-party Rightsholders

As an exception to article 6.2, the Distributor may not assign a Classifying Logo to the Distributed Products when their rightsholder(s) are not registered under the Conditions of Use, nor use the Logo on or in association with the Distributed Product(s) of this rightsholder, before sending a prior notice to the rightsholder by registered letter with acknowledgement of receipt. This notification includes in particular:

- i. the identification of the categories of Distributed Products which intellectual property rights belong to the rightsholder(s) and targeted by the Distributor,
- ii. the possibility for the rightsholder to submit an Application as the Rightsholder in order to determine the Classifying Logo of the Distributed Products, or to respond to the Distributor by supervising the exercise of the right of use and/or of the right of promotional communication for all or part of the rightsholder's Distributed Products,
- iii. if data is available to the Distributor, details of the nutritional score calculated by the Distributor and the corresponding Classifying Logo that the Distributor intends to attribute to each Distributed Product, as well as the possibility for the rightsholder to modify the Classifying Logo of each Distributed Product by providing additional data or to restrict the use of the Classifying Logo to the right of communication, being specified such answer would not qualify as an Application from the rightsholder, and
- iv. a mention of a time period of three (3) months starting from the receipt of the notice.

When a prior notice must be sent to a rightsholder not registered under the Conditions of Use, the Distributor must indicate in its Notification relating to the categories of Distributed Products the steps taken to send this notice and the deadlines applicable to it.

Any anticipated use of the Logo in violation of this prior notice procedure is a case of partial or total termination (at the discretion of Santé Publique France) of the rights of the Distributor pursuant to Article 13 of the Conditions of Use.

7.2.3 Choice of Logo on the Distributed Products

At the end of a waiting period of three (3) months from the date of receipt of the prior notice by the last of the rightsholder, left unanswered by one or more of the rightsholder(s), the Distributor may exercise the rights of Article 6.2 of the Conditions of Use in the following manner.

If the Distributor (i) has the necessary data to calculate the nutritional score and to attribute a Classifying Logo to a Distributed Product and (ii) has duly informed the rightsholder of this Classifying Logo in its prior notice, then the Distributor may:

- assign the Classifying Logo to the Distributed Products (in particular by any labelling or shelf talker separated from the Distributed Products), but may not affix the Classifying Logo to the Distributed Products themselves; and
- exercise its right of promotional communication by attributing the Classifying Logo to the Distributed Products on any communication medium, under the conditions detailed below.

If the Distributor does not have the necessary data to calculate the nutritional score and to attribute a Classifying Logo to a Distributed Product in compliance with the Specifications, then in the absence of an answer from the rightsholder, the Distributor may not use a Classifying Logo and must limit its right of use and its right of promotional communication to the use of the monochrome Neutral Logo with the Distributed Products.

The right to use the Logo is limited to the use of a Classifying Logo or Neutral Logo as a complementary presentation to the Mandatory nutrition declaration on a Distributed Product. The Neutral Logo cannot be used if a Classifying Logo is affixed and/or attributed to a Distributed Product, and a Classifying Logo cannot be used for a Distributed Product outside of the conditions of use of this article 7.2.

In any event, if the Rightsholder expresses its refusal after the 3-month waiting period from the date of receipt of the prior notice, the Distributor shall have a period of one (1) month from the date of receipt of the refusal to remove the Classifying Logos from all its labelling, shelf information and communication media. Likewise, if the Operator submits an Application for Distributed Products, the Distributor shall use the Classifying Logo allocated to the Distributed Products by their Rightsholder and must replace the Classifying Logo on all its labels, shelf information and communication media within a period of one (1) month from the receipt of the Application by Santé Publique France.

7.2.4 Mandatory information on the informational and promotional media for the Distributed Products

If the Distributor uses the Classifying Logo assigned by the Rightsholder to the Distributed Products, then the Distributor must indicate on any information or promotional communication medium including the Distributed Product, by any appropriate means and adapted to the format of the medium, that the Classifying Logo has been assigned by the Rightsholder, under the sole responsibility of the Rightsholder.

If the Distributor uses the Classifying Logo it allocated to a Distributed Product in accordance with the prior notice procedure of article 7.2 of the Conditions of Use, then the Distributor must indicate on any information or promotional communication medium including the Distributed Product, by all appropriate means and adapted to the format of the medium, that the Classifying Logo has been allocated by the Distributor, independently of the Rightsholder and under the sole responsibility of the Distributor.

If the Distributor can only use the monochrome Neutral Logo with the Distributed Products in application of the prior notice procedure of article 7. 2 of the Conditions of Use, then the Distributor must indicate on any information or promotional communication medium including the Distributed Product, by any appropriate means and adapted to the format of the medium, that the Distributor does not have the necessary information for the calculation and attribution of a Classifying Logo and cannot, for the time being, apply the Conditions of Use to this Distributed Product.

Article 8. USE OF THE LOGO FOR COMMUNICATION PURPOSES

8.1. Choice of Logo for Generic communications

For its Generic communications on the Logo, the Operator may affix on its communication media:

- The Neutral Logo,
- And/or at least 3 of the 5 Classifying Logos arranged in such a way as not to mislead the consumer as to the classification of the Products, in particular by implying that all his products have the same classification.

The Operator acknowledges and accepts that the Generic communication on the Logo excludes any promotional communication on a Product, and more generally, any attribution or presentation of a Classifying Logo as applied or applicable to a Product. Any breach of this obligation is at the Operator's own risk and may result in the termination of its right of use on the relevant Product in application of article 13.2.2 of the Conditions of Use.

8.2. Promotional tools of the Nutri-Score system

8.2.1 Tools developed by Santé Publique France

The Operator may use the promotional tools of the Nutri-Score system under the conditions detailed in the Conditions of the Use for the Nutri-Score tools drawn up by Santé Publique France (as available on the webpage <https://www.santepubliquefrance.fr/determinants-de-sante/nutrition-et-activite-physique/articles/kit-de-promotion-du-dispositif-nutri-score>).

8.2.2 Tools developed by the Operator

The Operator will be able to create its own tools to promote the Nutri-Score system. In this case, the Operator is invited to specify that “*The Nutri-Score is developed and supported by Santé Publique France and the public authorities*”.

8.3. Logo Guidelines

The Operator undertakes to reproduce the Logo in its entirety and as filed with the INPI and EUIPO, in compliance with the Logo Guidelines.

The Operator undertakes not to make any modification, addition or deletion on the Logo.

In particular, the Operator undertakes to:

- not to reproduce separately a part of the Logo, in particular, not to reproduce the graphic elements alone or the denomination alone,
- subject to the adjustments provided for in the Logo Guidelines and in particular those linked to the results of the nutritional score (see articles 6.2 to 6.4 above), not to modify the graphic features of the Logo, both in terms of shape and color, not to modify the position of the figurative elements in relation to each other, not to modify the typography of the Logo, and to
- refrain from any additions to the Logo, in particular not to include any caption, text or any other indication that is not part of the Logo.

Santé Publique France shall send the Operator, by electronic means, all the media, documents and files necessary for the use of the Logo.

The Operator undertakes to use only these media in the context of the reproduction and use of the Logo.

Article 9. RESTRICTIONS OF USE

9.1. Respect of the Logo during its use

The Operator must, throughout its use of the Logo, comply with the requirements defined by the Conditions of Use.

9.2. Respect of the rights to the Logo

The Operator undertakes not to register, for any reason whatsoever (trademark, industrial design...) in any territory whatsoever, signs or logos identical or similar to the Logo that may infringe upon the intellectual property rights of Santé Publique France on the Logo. In particular, the Operator shall refrain from registering any trademark or design that reproduces, in whole or in part, the Logo, particularly associated within a more complex sign.

The Operator undertakes not to develop, use or exploit, for any reason whatsoever and in any territory whatsoever, any and all signs identical or similar to the Logo that may infringe upon the intellectual property rights of Santé Publique France on the Logo.

The Operator undertakes not to reserve any domain names, under any extension whatsoever, which reproduce or imitate the verbal elements of the Logo or which are likely to infringe upon the intellectual property rights of Santé Publique France.

9.3. Respect during the use of the Logo

Operators are expressly forbidden to present the use of the Logo as mandatory and not as a complementary and optional presentation of the Mandatory nutrition declaration, as well as to coerce a third party into submitting an Application. Santé Publique France declines all responsibility for any request, action or claim made by a third party due to the comments, actions or omissions of an Operator contravening this interdiction. Any violation of this interdiction may lead to one of the sanctions listed in Exhibit 3.

The Operator undertakes not to use the Logo for political or polemical purposes, or for purposes that are contrary to public order or morality, or likely to infringe rights recognized by law and, in general, not to associate the Logo with actions or activities that may be detrimental to Santé Publique France or be prejudicial to it, in particular any behavior that may be directly or indirectly associated with infringement on intellectual property rights or unfair competition, including customer diversion, libel or deceptive commercial practices.

9.4. Control and transmission

The Operator accepts that Santé Publique France may, as sole rightsholder on the Logo, carry out audits in order to control the Operator's compliance with the Conditions of Use, directly or through any independent third party mandated by Santé Publique France. The audit will ensure, among other things, the truthfulness of the Application, of the Notification and of the technical documentation held by the Operator in relation to the real and effective use of the Logo.

The Operator accepts that Santé Publique France may access, including on its premises, to the installations and infrastructures assigned to the use of the Logo, as well as to any information necessary to carry out the audit. The Operator agrees to answer any questions asked during the audit and to allow access, under the control of the Operator, to all the personnel, tools and means necessary for the audit. Each party shall bear the costs incurred during the audit procedure.

The Operator acknowledges and accepts that Santé Publique France is required to cooperate with the administrative and judicial authorities, in particular those dedicated to the respect of consumer law and competition law, including by transmitting the Application, the Notification, the technical documentation and the audit reports, which the Operator expressly authorizes.

In the event that the audit report reveals a breach by the Operator of its obligations with regard to the Conditions of Use, Santé Publique France may, at its discretion, take any measure or sanction against the Operator in order to sanction and/or remedy the said breach. In the event of failure to correct the breaches within the deadlines imposed by Santé Publique France, Santé Publique France is automatically authorized to terminate the Operator's registration to the Conditions of Use, without prejudice to the damages and interest to which Santé Publique France may be entitled.

9.5. Technical documentation

The Operator shall make technical documentation available to Santé Publique France and to the agents appointed by Santé Publique France, for the entire duration of the use of the Logo.

This technical documentation, which is sufficient to enable compliance with the conditions of the Conditions of Use to be checked, includes, in particular:

- 1° For each brand that it registers, the list of Source Products;
- 2° The list of the Distributed Products as well as the identity of their Source Operators and/or any rightsholder of intellectual property rights on these Distributed Products;
- 3° For each Product:
 - 3.a The Excel file presented in Exhibit 4 duly completed, including with the values allowing for the calculation of the nutritional score;
 - 3.b The results of the calculation of the nutritional scores; and
 - 3.c where appropriate, reference to the technical documentation of the Rightsholder;
- 4° The list of communication and presentation media using the Logo.

9.6. Transmission to the Oqali

When the Logo is used on French territory following registration to obtain the right of use, the file attached in Exhibit 4 shall be sent to the French “*Observatoire de l’Alimentation*” (Oqali), at the web address: https://survey.anses.fr/SurveyServer/s/formation7/Oqali_Suivi_Nutri_Score/questionnaire.htm, in Excel format, within one month of the Logo's implementation on packaging or in e-commerce.

Oqali is not responsible for verifying the reliability of the data on the form sent by the Operator. Nevertheless, Oqali must ensure that the form is correctly filled in, i.e. that there is no missing data or data that does not correspond to the terms of the drop-down menus on the Oqali form.

Failure to comply with the obligations of this section may result, at the discretion of Santé Publique France, in any appropriate sanction in accordance with Exhibit 3 as well as in the partial or total termination of the Operator's registration to the Conditions of Use.

9.6.1 Follow-up procedure for non-compliances:

In the event of a non-compliant form, a reminder will be sent once by Oqali. The Operator must then, within one month, send a compliant form.

9.6.2 Updating

In the event of an update of the Application (withdrawal or addition of Source Products or modification of Source Products), the Operator must send a new Application form, at the same time, containing all the information previously sent as well as updates relating to all the references the Logo is affixed to. Any new Product must be resubmitted to Oqali and any cessation of use of the Logo for a Product must be notified, in both cases within three (3) months before the Operator implements its decision.

The Operator must also update the form sent to Oqali following any decision of sanction by Santé Publique France, at the Operator's own expense.

Changes relating to the Distributed Products (withdrawals, additions, modifications, prior notices and deadlines) must be contained in the Notification sent each year on the anniversary date of the first Notification by the Distributor.

Article 10. INFORMATION AND PROMOTION

All acts of use, promotion and information relating to the Logo by the Operator must comply with the Conditions of Use, the laws and regulations in force and must not infringe on the rights of Santé Publique France on the Logo, nor on its image or interests.

Santé Publique France or the public authorities may be led to communicate on the companies committed to the Logo in various media such as press releases, press kits, on their proprietary media, in interviews, events, etc.

The Operator accepts that Santé Publique France or the public authorities communicate on its commitment in favor of the Logo. Otherwise, the Operator may inform Santé Publique France by sending an e-mail to nutriscore@santepubliquefrance.fr, within two (2) weeks from receipt of the registration of the right to use the Logo.

Article 11. DURATION

The Operator is authorized to use the Logo in accordance with the Conditions of Use, from the date of receipt of the files allowing its use (pending the procedure applicable to the Distributed Products) and until the end of the legal protection of the Logo devolved to Santé Publique France, without prejudice of the sanctions and cancellations provided for in Article 13.

Santé Publique France shall notify the date of the end of the legal protection granted to Santé Publique France under intellectual property law to the Operator, by any means allowing proof of receipt, at least two (2) months before the expiry date.

Article 12. CHANGES TO THE CONDITIONS OF USE

In the event of a change in the Conditions of Use, Santé Publique France will inform the Operator by e-mail at the address indicated by the Operator at the time of registration. The Operator must keep this e-mail address active at all times or, failing this, inform Santé Publique France of any change.

The Operator is deemed to have read and accepted the new provisions, unless the Operator notifies its opposition by any means and ceases to use the Logo within sixty (60) days following notification of the modification by Santé Publique France.

Where applicable, the Operator will be granted with a reasonable period of time by Santé Publique France to comply with the new provisions of the Conditions of Use.

The Operator is authorized to continue using the Logo, unless it no longer meets the new conditions at the end of the reasonable period of time to comply with them. In such a case, the authorization is terminated in accordance with article 13.2 of the Conditions of Use.

The Operator may not claim any compensation due to the modification of the Conditions of Use.

Article 13. TERMINATION OF THE RIGHT TO USE THE LOGO

13.1. General provisions

The Operator shall not be vested of any right to maintain its right to use the Logo.

The Operator may not claim any indemnity as a result of the termination of the right to use the Logo for the termination grounds listed in this article.

13.2. Termination of the authorization due to the Operator

13.2.1 Change in circumstances affecting the validity of the authorization

The right to use the Logo lapses automatically and without notification by Santé Publique France as soon as the Operator no longer meets the eligibility conditions stipulated in article 5.1 of the Conditions of Use.

The Operator must stop manufacturing and marketing Products bearing the Logo within three (3) months from the expiry of the right to use the Logo. Within the same time limit, the Operator must also stop affixing the Logo on its information and communication media and, in general, stop any information or communication involving the Logo. In this same case, the Operator must dispose of the stocks of Products within a maximum period of six (6) months from the expiry of the right of use.

13.2.2 Operator's non-compliance with the Conditions of Use

In the event the Operator fails to comply with the provisions of the Conditions of Use, Santé Publique France will notify the breaches detected to Operator by registered letter with acknowledgement of receipt.

A non-exhaustive list of possible breaches, together with the corresponding penalties, is attached as Exhibit 3 to the Conditions of Use.

The notification of the breach sent to the Operator includes the deadline to reinstate compliance with the provisions of the Conditions of Use and indicates whether the right of use is suspended until compliance.

If the notified breach is not cured within the aforementioned time limit, the right to use the Logo is automatically terminated without compensation or prior formal notice from Santé Publique France, solely due to the failure to comply with the notified request for compliance.

Suspension and termination of the right to use the Logo entail the immediate obligation for the Operator to cease all use of the Logo and to remove any reference to the Logo from all of its Products and communication media.

Consequently, the Operator must stop manufacturing and marketing Products bearing the Logo immediately as of the date of termination of the right to use the Logo. Within the same time limit, the Operator must also stop affixing the Logo on its information and communication media and, in general, stop any information or communication involving the Logo. The Operator must dispose of the stocks of Products within a maximum period of three (3) months from the effective date of suspension and/or termination.

13.2.3 Penalties

Any use that does not comply with the Conditions of Use and any continued use of the Logo after termination are illegal acts and Santé Publique France has all liberty to seek compensation and cease and desist orders before the competent courts.

13.3. Abusive use of the Logo

In addition to the sanctions stipulated in the previous articles, unauthorized use of the Logo by an Operator or by a third party entitles Santé Publique France to take any legal action it deems appropriate against the Operator and in compliance with the legislation in force.

Article 14. DEFENSE OF LOGO

The Operator undertakes to immediately notify Santé Publique France of any infringement on the rights of the Logo of which it is aware, in particular any act of infringement on intellectual property rights, of unfair competition or of parasitism.

Santé Publique France has the liberty to decide to file, at its own expense, risk and peril, any civil or criminal action against such infringements.

Consequently, the damages and interests awarded from the legal action taken by Santé Publique France in its name will be at its expense or to its exclusive benefit and consequently, in this case, the Operator will not be able to claim any indemnity.

Article 15. LIABILITY AND WARRANTIES

15.1. Operator Liability

The Rightsholder shall be solely responsible for direct and indirect consequences arising from its use of the Logo on its Source Products. It is solely responsible for the accuracy, sincerity and relevance of its calculation of the nutrition score and for its choice of any Classifying Logo for each of its Source Products, as well as for its use and communication on these Source Products, at its own risk and expenses.

The Distributor shall be solely responsible for the accuracy, sincerity and relevance of its calculation of the nutrition score and for its choice of any Classifying Logo for each of its Distributed Products pursuant to the procedure of article 7.2, as well as for its use and communication on these Distributed

Products, at its own risk and expenses, especially if the Distributor (i) did not have the necessary rights to make any lawful commercial use of the Distributed Products or (ii) did not respect all or part of the procedure of article 7.2. The Distributor is also responsible, during its commercial use of the Distributed Products, for its use of a Classifying Logo assigned to a Distributed Product by its Rightsholder, even though the Rightsholder is responsible for the calculation of the nutritional score and for the choice of said Classifying Logo for this Distributed Product.

In any event, the Operator acknowledges that any incorrect or incomplete use of the Logo, in particular (i) a calculation of the nutritional score that does not comply with all the rules of the Specifications in Exhibit 1 or that is based on incomplete or distorted data in relation to the real nutritional qualities of the Product or (ii) the attribution of an incorrect Classifying Logo, or which does not correspond to the reality of the nutritional score of the Product, whether it is unintentional or deliberately harmful, will expose and engage the Operator's sole liability, and may be qualified as misleading commercial practices under article L. 121-1 of the French Consumer Code. Santé Publique France declines all responsibility for such uses of the Logo, in particular in the event of erroneous or misleading information or promotional communication by the Distributor on a Distributed Product, which engage the sole responsibility of the Operator who is liable for it.

15.2. Operator Warranty

In the event that any third party issues a claim against Santé Publique France arising directly or indirectly from any non-compliant use of the Logo by the Operator, the Operator warrants to indemnify, defend and hold Santé Publique France harmless when Santé Publique France invokes this warranty, at the Operator's expenses and costs.

The Operator notably warrants Santé Publique France (i) that the contracts or chains of contracts between the Operator and the rightsholder of intellectual property rights on the Distributed Products, whether or not this rightsholder is registered as the Rightsholder, do not prevent the exploitation of the right of use granted by Santé Publique France on the Logo for the Distributed Products in article 7. 2, (ii) the absence of the slightest confusion, in the Operator's communications (for information or promotional purposes), between Products or between Products and other products and services, (iii) the absence of any error or inaccuracy in the attribution and use of a Classifying Logo in relation to a Product, as well as for against any false or misleading presentation by the Operator, by virtue of which the Operator shall indemnify, defend and hold harmless Santé Publique France from any liability, concerning any damages, obligations, costs and expenses (including reasonable attorney's fees) as well as (iv) against any claim resulting from a claim made by a third party (in particular a rightsholder of a Product) alleging that all or part of the use of the Products in relation to the Logo pursuant to these Conditions of Use is in violation of the intellectual property rights of this third party or constitutes an act engaging the tort liability of Santé Publique France, in particular with regard to unfair or parasitic competition.

The Operator shall be required to withdraw from the market, as soon as possible, any product that does not comply with the standards in force on the territory.

15.3. Santé Publique France Indemnification

Santé Publique France waives and disclaims any warranty other than on the material existence of the Logo and on its personal actions. Santé Publique France warrants that, to its knowledge and on the date of entry into force of the Conditions of Use, the Logo has not been the subject of any claim for rights. The Operator acknowledges that it is generally aware of the uncertainties regarding the availability and, in general, the validity of the trademarks and designs, and consequently accepts this authorization of use in full knowledge of these facts, at its own risk. Consequently, in the event that Santé Publique France loses its rights to the Logo at the request of a third party, whatever is the cause of the loss of rights and its legal qualification (nullity, counterfeiting...), the Operator undertakes not to engage the responsibility of Santé Publique France and not to claim any damages from Santé Publique France.

Article 16. APPLICABLE LAW

These Conditions of Use are subject to French law, regardless of where the Logo is used by the Operator.

Article 17. COMPETENT JURISDICTION

Any dispute arising from the interpretation or execution of these Conditions of Use shall be brought before any competent court within the jurisdiction of the court of appeals of Paris.

Article 18. ENTRY INTO FORCE OF THE RIGHT OF USE

The Operator is deemed to have the right of use, from the date of receipt of the files allowing its use after validation of its online registration and of its express commitment to comply with the Conditions of Use, including its appendices.

Article 19. SETTLEMENT OF DISPUTES

Santé Publique France does not settle possible disputes between Operators or between an Operator and a third party (the parties). If Santé Publique France has access to evidence of a violation of the Conditions for Use, assessed at the discretion of Santé Publique France, Santé Publique France may take any appropriate measure, including provisional or protective measures, particularly with regard to the sanctions of Exhibit 3 and Article 13 of the Conditions of Use, in order to put an end to the contractual violation as soon as possible.

In the event of discrepancies between the English and French versions of the Conditions of Use, the French version shall prevail.

II. LIST OF EXHIBITS

EXHIBIT 1: Specifications: ranking the food product in the 5-color nutritional scale

In order to establish the classification of a food product, food manufacturers and distributors shall comply with the following calculation rules to be implemented one after another:

- Calculation of the nutritional score of a food product;
- Ranking the food product in the 5-color nutritional scale based on the calculated score.

1) Calculation of the nutritional score of food products

The nutritional score is calculated the same way for all food products, save for cheeses, vegetable and animal fats, and drinks. For these categories of food products, the adaptations mentioned in 1-b must be taken into account.

1-a General case

The nutritional score for food products relies on the calculation of a single, overall score which takes into account, for every food product:

- a “negative” component N
- a “positive” component P

- The N component of the score takes into account nutritional elements which consumption should be limited: energy density (the energy in kJ per 100 g of the food), saturated fatty acid (SFA) content, amount of simple sugars (in g per 100 g of the food). Its value amounts to the sum of the points it accumulates (from 1 to 10) based on the food product’s nutritional composition (see. Table 1). The grade for the N component can range from 0 to 40.

Table 1: Points attributed to each of the elements of the negative N component

Points	Energy density (KJ/100g)	Saturated fats (g/100g)	Simple sugars (g/100g)	Sodium¹ (mg/100g)
0	≤ 335	≤ 1	≤ 4.5	≤ 90
1	> 335	> 1	> 4.5	> 90
2	> 670	> 2	> 9	> 180
3	> 1005	> 3	> 13.5	> 270
4	> 1340	> 4	> 18	> 360
5	> 1675	> 5	> 22.5	> 450
6	> 2010	> 6	> 27	> 540
7	> 2345	> 7	> 31	> 630
8	> 2680	> 8	> 36	> 720
9	> 3015	> 9	> 40	> 810
10	> 3350	> 10	> 45	> 900

¹: the sodium content corresponds to the salt content mentioned in the mandatory statement divided by 2.5.

- The P component is calculated based on the amount of fruits, vegetables, legumes, nuts as well as rapeseed, walnut and olive oils in the food product, calculated in terms of the vitamins, the fibers, and the proteins they contain (expressed in g per 100 g of the food product). For each of these elements, points from 1 to 5 are awarded based on the content of the food product (see Table 2). The positive P component of the nutritional score is the grade corresponding to the sum of the points defined for these three elements; the grade is therefore between 0 and 15.

Table 2: Points attributed to each of the nutrients of the positive P component

Points	Fruits, vegetables, legumes, nuts and rapeseed, walnut and olive oils ¹ (%)	Fibres (g/100g)	Proteins (g/100g)
		AOAC method	
0	≤ 40	≤ 0.9	≤ 1.6
1	> 40	> 0.9	> 1.6
2	> 60	> 1.9	> 3.2
3	-	> 2.8	> 4.8
4	-	> 3.7	> 6.4
5	80	> 4.7	> 8.0

¹: fruits, vegetables, legumes and nuts contain many vitamins (especially vitamins E, C, B1, B2, B3, B6, and B9 as well as provitamin A)

↪ Calculation of the nutritional score

The final calculation of the nutritional score is reached by subtracting the positive P component from the negative N component, with a few conditions described below.

Nutritional score = total N points - total P points

The final grade for the nutritional score assigned to a food product is therefore likely to be between a theoretical value of -15 (the best according to this nutritional plan) and a theoretical value of +40 (the worst according to this nutritional plan).

↪ Application of specific conditions

- If the total of component N is below 11 points, then the nutritional score is equal to the total N component points from which is subtracted the total for the P component.
- If the total of the N component is greater than or equal to 11 points and
 - If the total points for “Fruits, vegetables, legumes, nuts, and rapeseed, walnut and olive oils” is equal to 5, then the nutritional score is equal to the total N component points from which is subtracted the total for the P component.
 - If the total points for “Fruits, vegetables, pulses, nuts, and rapeseed, walnut and olive oils” is below 5, then the nutritional score is equal to the total N component points from which is subtracted the sum of the points for “fibres” and “Fruits, vegetables, pulses, nuts, and rapeseed, walnut and olive oils”. In this case, the protein content is therefore not taken into account in the calculation of the nutritional score.

1-b Specific cases

As the Nutri-Score is not suitable to foods products for children from 0 to 3 years, it is not recommended to affix it on the relevant brands.

To account for the nutritional references from the French National Program for Nutrition and Health (PNNS), some adaptations to the calculation of the score are necessary. They were established in compliance with the opinion of the French Agency for Food, Environmental and Occupational Health & Safety (ANSES) and the French High Council for Public Health (HCSP).

↳ Cheeses: The score is calculated by taking the protein content into account whether or not the total N points are ≥ 11
Nutritional score = total N points - total P points

↳ Added fats: The points table for fatty acids is calculated based on the total saturated fatty acid/lipid component with the table for attributing points starting at 10% and increasing by steps of 6%.

Table 3: Table for attributing points for total saturated fatty acids/lipids components in the specific case of added fats*

Points	Ratio Total saturated fatty acids/lipids
0	<10
1	<16
2	<22
3	<28
4	<34
5	<40
6	<46
7	<52
8	<58
9	<64
10	≥ 64

*The table for attributing points for added fats substitutes the “saturated fatty acids” column. Others columns (energy density, sugars, salt, fruits, vegetables, pulses, nuts and rapeseed, walnut and olive oils, fibres and proteins) are the same and should be taken into account.

↪ Drinks: Scores for drinks are calculated using the criteria from the following scales:

Table 4: Table for attributing points to drinks*

Points	Energy density (kJ/100g or 100mL)	Sugars (g/100g or 100mL)	Fruits, vegetables, pulses, nuts and rapeseed, walnut and olive oils (%)
0	≤ 0	≤ 0	≤ 40
1	≤ 30	≤ 1.5	
2	≤ 60	≤ 3	> 40
3	≤ 90	≤ 4.5	
4	≤ 120	≤ 6	> 60
5	≤ 150	≤ 7.5	
6	≤ 180	≤ 9	
7	≤ 210	≤ 10.5	
8	≤ 240	≤ 12	
9	≤ 270	≤ 13.5	
10	> 270	> 13.5	> 80

*The table for attributing points to drinks substitutes the columns for energy density, sugars, and fruits, vegetables, pulses, nuts and rapeseed, walnut and olive oils to the columns used in the general case. Other columns (saturated fatty acids, salt, fibers and proteins) are the same and should be taken into account.

2) Classification of the food product using the five-level nutritional scale based on the score calculated according to 1)

2-a General case

In general, the following ranges to take into account are as follows:

Class	Score ranges	Colour
A	Min to - 1	Dark green
B	0 – 2	Light green
C	3 - 10	Light orange
D	11 - 18	Orange
E	19 - max	Dark orange

2-b Specific case of drinks

For drinks, the following ranges are taken into account as follows:

Class	Score ranges	Colour
A	Waters	Dark green
B	Min - 1	Light green
C	2 – 5	Light orange
D	6 – 9	Orange
E	10 - max	Dark orange

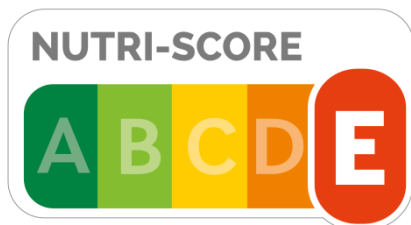
3) Placement of the graphic symbol on the packaging

The graphic symbol is placed on the lower third of the front of the packaging.

This does not apply to food products packaged in containers or packaging whose largest surface is smaller than 25 cm².

4) Graphic symbol used and characteristics

The retained graphic symbol, called Nutri-Score, is represented below:



The characteristics of the Logo, especially its size and colour, are defined in the Conditions of Use of the Nutri-Score collective mark.

EXHIBIT 2: Logo Guidelines

(PDF document to download :

<https://www.santepubliquefrance.fr/media/files/02-determinants-de-sante/nutrition-et-activite-physique/nutri-score/annexe2-charte-graphique>)

EXHIBIT 3: Sanctions

The following tables target the principal breaches in the present Conditions of Use, though they are not exhaustive as Santé Publique France reserves the right to sanction the Operator for any breach of the present Conditions of Use.

3.1. Sanctions – Use of Logo as a supplemental presentation to the mandatory nutritional statement

There are three levels of sanctions:

- Request to take corrective action
- Suspension of the right to use the Logo until compliance is reached
- Withdrawal of the right to use the Logo by Santé Publique France for a set period of time

NON-COMPLIANCE	SANCTION
1. Non-compliance with the Logo Guidelines of the Nutri-Score Logo (colour, size, font or use of the Logo for communication purposes)	Request to take corrective actions within a maximum time period of six months after the current stocks are sold off.
2. Use of the Nutri-Score Logo without prior registration under Article 5	Request to take immediate corrective action such as prior registration under Article 5.2
3. Use of the Nutri-Score Logo on Products that do not comply with the definition of Products laid out in the Conditions of Use.	Request for immediate corrective actions without the opportunity to sell of the stocks on the market
4. Non-compliance with the rules for calculating the nutritional score, leading to affixing a better Classifying Logo on the packaging of the Product than the actual nutritional score that should have been applied	Suspension of the right to use the Logo until compliance is reached + Immediate return of Products placed on the market or evidence of the implementation of appropriate rectifications towards the public
5. Misleading or defective presentation of the Nutri-Score Logo as mandatory or coercion of a third party to register an Application	Suspension of the right to use the Logo for a minimum time period of three (3) months
6. Repetition of any of the non-compliances described above	Level of sanction is immediately higher than the one described for the initial infraction
7. Refusal to reach compliance / multiple repetitions of non-compliances	Notice to the appropriate supervisory authorities. Withdrawal of the right to use the Logo for a time period which can be temporary or permanent

3.2. Sanctions – Using the Logo for communication purposes

There are three levels of sanctions:

- Request to take corrective action
- Suspension of the right to use the Logo until compliance is reached
- Withdrawal of the right to use the Logo by Santé publique France for a set period of time

NON-COMPLIANCE	SANCTION
1. Not complying with the Logo Guidelines for the Nutri-Score Logo (colour, size, font or inappropriate use of the Logo)	Request for immediate corrective actions
2. Use of the Nutri-Score Logo without prior registration under Article 5	Request for immediate corrective actions such as prior registration under Article 5
3. Use of the Nutri-Score Logo on Products that do not comply with the definition of Products laid out in the Conditions of Use	Request for immediate corrective actions without the opportunity to sell of the stocks on the market
4. Misleading or defective presentation of the Nutri-Score Logo as mandatory or coercion of a third party to register an Application	Suspension of the right to use the Logo for a minimum time period of three (3) months
5. Repetition of any of the non-compliances described above	Level of sanction is immediately higher than the one described for an initial infraction
6. Refusal to reach compliance / multiple repetitions of non-compliances of issues	Notice to the appropriate supervisory authorities. Withdrawal of the right to use the Logo for a time period which can be temporary or permanent

ANNEXE 4: Oqali documentation

(Excel file downloadable on the following link: <https://www.santepubliquefrance.fr/media/files/02-determinants-de-sante/nutrition-et-activite-physique/nutri-score/annexe4-oqali>)